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ELEMENTARY PRINCIPLES OF MODERN GOVERNMENT



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The Elementary Principles of Modern Government

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PREFACE

In this book I have endeavored to place before students the fundamental principles of modern liberal government, together with the specific way these principles are put into practice in the leading states of the world. I have followed the general lines of my previous book, *An Introduction to the Study of Government,* and have used freely material from that book. The momentous political changes following the World War, of course, have necessitated a redrafting of most of the material, a complete revision of the figures cited, and a new set of statistics and illustrative citations.

The present volume is intended to serve as an introductory text to any study of any particular government. It is a general presentation of elementary principles, to be followed by a close analytical study of the government of the United States, for example, or of Great Britain, or of France, or of any other country. It is believed that the study of such a text as this will provide a desirable broad foundation upon which to pursue advanced studies in particular governments.

The statistics and illustrative citations in the previous book proved so valuable a feature for reference work that they have been expanded in the present volume. These are supplemented further by the appendix containing the constitutions in full of important modern states. Students of government may be especially interested in the constitutions of the new Germany, of the Irish Free State, and of Soviet Russia.

A chapter on Military Government and one on the new Russian government have been included.

It is a pleasure in this place to record my thanks to officers in this department who have assisted in the preparation of the

book, especially to Majors Robert M. Lyon, James J. O'Hara, and Edwin F. Harding. Majors Lyon and Harding have checked over the statistics, and Major Harding has further assisted in preparing the chapter on Military Government. Major O'Hara has assisted in going through the book in proof. In addition, I acknowledge gratefully the aid of Major George V. Strong, Judge Advocate General's Department, who made many valuable suggestions for the revision of the chapter on the Judiciary.

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May, 1923.

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ELEMENTARY PRINCIPLES OF MODERN GOVERNMENT

ELEMENTARY PRINCIPLES OF MODERN GOVERNMENT

CHAPTER I

GOVERNMENT

I. The Nature and Importance of Government

The word *State* is familiar to us to-day as denoting a community of persons organized for government and possessing as a group a measure of independent authority within the limits of the definite territory they occupy. People, territory, authority, and government—all of them are associated with the conception of the state; these are the essential elements of the state.

Government the Most Distinctive Element of a State.—Of these elements, government is the most distinctive. By *government* we mean *the form of organization established within a state for the control, regulation, and administration of mutual relations and common interests of the people.* Government is, therefore, the means wherethrough the authority of a state as a whole is exercised. It is the concrete embodiment of that mind or soul which determines the acts and motions of the whole body. Any consideration of a state is certain to center around the study of its government. It is important to know about people and their race, habits, religion, standards of living; and to know the extent and the natural resources of its territory; and to know what measure of authority the state possesses; but knowledge of none of these facts will so accurately reveal the true nature of a state

as a knowledge of its government. The real genius of a community is strikingly revealed by a study of the form of political organization established therein, the scope of its activities, and the efficiency of its operation.

It may be well here at the beginning of this introductory chapter to ask, Why is Government?

Reason for the Existence of Government.—Government exists, and is accepted by social groups, because it performs a vast economic service for the community as a whole and for each individual thereof. The personnel of government as a body is by one means or another selected out of the social group as a whole, is expected to give up its ordinary economic pursuits, is intrusted with the exercise of authority over the community, and is paid (salary, pay, fees, or the like) out of the common group surplus to do for the group as a whole and as individuals the services which they would find it costly in time, effort, and sacrifice to do for themselves. The members of the group in modern liberal governments themselves establish the nature and extent of the authority intrusted to this personnel, at the same time setting up tribunals guarding their rights against infringement or encroachment by this personnel. Having thus delimited the powers of government personnel and safeguarded their own interests, the members of the group cheerfully subject themselves as individuals to that personnel in the exercise of the authority intrusted to it.

And what are the services it performs for the group, those services which individual members of the group would find it costly and difficult to do for themselves? A few examples will make these clear. The personnel of government provides an army and navy for the defense of the members of the group against aggression from other groups. It provides a police power for the defense of the individual members of the group against violence from other member or members of the group. It provides through representatives gathered in a legislative body a system of laws for the regulation of the relations of citizens to their government, and of citizens to each other; and

it provides a system of courts for the interpretation and application of these laws. It provides the machinery for representing the common interests of the whole community in dealings with those who represent other communities. It provides the ways and means for exacting from the common surplus production amounts necessary to pay its own expenses and the costs of the services it performs. It performs a great variety of functions for the general public good, as: the construction of great public works, as bridges, tunnels, lighthouses, post-offices, roads, irrigation dams; the handling of certain public services, as establishment and maintenance of a coinage and currency system, postal service; the furtherance of public education, by public schools, colleges, libraries, museums, art galleries, and the like; the maintenance of public charities; the maintenance of penological institutions; the extensive regulation for the benefit of the whole group of the actions and methods of the individual members of the group, as by regulation of banking business methods, of interstate commerce, of industrial combinations, of sanitation, of professional practice.

The above examples may be regarded as typical of the many kinds of service which the personnel of government performs for the social group, and which, if not performed by men thus withdrawn from normal economic life, would cost great effort and sacrifice on the part of each individual member of the group to perform for himself. Government, and the cost of government, become thus justified by public service.

Theories of the Origin of the State.—The origin of the state and of government is lost in antiquity. How men first developed a political consciousness, which led them to organize into a primitive and rudimentary state, can never be accurately known. The medieval theory of divine origin, succinctly expressed in a passage of the Augsburg Confession (1530) reading "all authority, government, law, and order in the world have been created and established by God Himself," has long since been discarded. The theory that the state originated in a voluntary agreement recorded in a covenant between

members of a social group has never been supported by a scintilla of historical evidence. Popularized by Jean Jacques Rousseau in *Le Contrat Social* (1762), this "social compact" theory had enormous influence in the days of the American Revolution and of the French Revolution, but has now fallen before the attacks of scholars. The attractive theory that the state is developed from the expansion of the primitive family has been effectually disproved by the discovery of the fact that "the earliest social group, so far from being a small household of a single man and his wives, is a large and loosely connected group called a pack or horde, organized for matrimonial purposes on a very artificial plan, which altogether precludes the existence of a single family." [1]

The Natural Theory.—There remains what we may call the natural theory of the genesis of the state, holding that the present complex institution is the product of long slow evolution, at first unrealized and unappreciated by the people themselves, from the simplest and most rudimentary forms of group organization. Organization of a crude kind was the natural result of the need for defence as the packs became more numerous and the contest for food supplies became more bitter. This organization, it may be believed, was in the beginning only temporary; it was maintained so long as need demanded, and it was so frail that it quickly dissolved when economic pressure relaxed. It existed before the idea of a state and of a government, and may have been responsible for the birth of this idea in the minds of some of the leaders of the pack. The advantages of the crude organization forced by necessity may have suggested the continuation of such organization when the crisis had passed. In the first primitive attempts to give permanence to an organization of the pack or horde we may reasonably look for the germ of government and of state. Once this idea was born, we can readily understand how by slow degrees it won its way, first among all the leaders, and gradually among the mass of the members of the group. With

[1] Jenks, *History of Politics.*

its general acceptance by the mass of the group, the history of the development of the state really began.

In our consideration of the state and its government, however, we shall not endeavor to treat the history and development of the institution, but rather to analyze and study it as it is established in the foremost civilized countries to-day. We realize, of course, that the existing forms constitute merely one stage in the evolutionary development from the crude beginnings we have mentioned to some higher and more perfect organization of the distant future. Our purpose, however, is to acquaint the student with the characteristic features of modern forms of government of the state.

State Government and Local Government.—According as we refer to the political organization of the whole state or to the political organization of divisions of the state we may talk of state government and of various kinds of local government, as commonwealth government, provincial government, departmental government, municipal government, colonial government, etc. The state government, however, exercises the supreme power throughout the whole territory and over the whole people of a state and determines the organization of the various kinds of local government. It is, therefore, with the fundamental characteristics of the government of states that our study is chiefly concerned.

Typical Governments in Europe and America.—We may restrict our examination of governments to the governments in the states of Europe and America, for in these states may be found the most important illustrations of modern practice. In the little continent of Europe ("the peninsula of Asia," as it is often called) and in North America have originated and developed the most important experiments in political organization of modern times. Throughout Africa, in sections where the territory is not under European control, governments are those of savage or semi-savage tribes; throughout Asia, in sections where the territory is not under European control, progressive states are introducing European or American forms of political

organization. Thus any consideration of government as illustrated in the states of Europe and America will give results applicable to the governments in all the civilized states of the world.

II. Purpose of Government

Purpose of Government.—The fundamental purpose for which the organization of political control known as government exists is (1) to maintain peace and order for the promotion of the general welfare within the state, and (2) to insure the safety of the state from external aggression.

It is essential that citizens of the state shall be allowed to live in conditions of peace and order, that they shall be protected in their legitimate undertakings from the consequences of disturbances incited by a portion of the public or from encroachments upon their rights by other individuals. Hence it is a primary duty of government to use its powers to suppress revolts, insurrections, or other forms of public disturbance, and to safeguard for the individual the security of civil rights, contracts, and the like. Only in a state where the public peace and order are strictly conserved, and individual rights guarded, can the people at large advance in material prosperity and general welfare.

It is essential, further, that the government insure the safety of the state from any aggression from another state. It is probable that this reason for the existence of government has its roots far back in the history of social institutions. The necessity for the protection of a community from the aggressions of neighboring tribes may have been one of the primary reasons for the development of political organization in very early times. This necessity still persists in the modern world. The greed of modern states for more territory and for superior advantages brings continual rivalry and sometimes war. The whole vast structure of international law, international diplomacy, and the like, exists for the better adjustment of the rival ambitions of various states. Every government recognizes that

it is a primary duty to maintain and perpetuate its own existence and the integrity of its territories, and to keep itself in constant readiness to repel, by force if necessary, any attempt on the part of neighboring states to terminate that existence or to diminish those territories.

In modern times, some political thinkers have added to these purposes a general purpose for the mental, spiritual, and moral uplift of the world. All governments are supposed to share this general purpose in common and to coöperate when opportunities arise to further such a desirable end. The best proof, however, that the primary and fundamental purpose of a government's existence is as outlined above is the readiness of any government to cast aside all considerations of world uplift if it considers its internal peace and order, or its existence or territories, threatened.

III. Classification of Forms of Government

Classification of Governments.—For convenience of treatment we may group modern types of government in certain general classes. Since governmental organization in a modern state is so complex that endless variety in detail exists, these classes must necessarily be very broad. They have a value, however, in allowing us to group the states according to certain fundamental and typical characteristics.

The most natural classification is the popular division of governments into monarchies and republics, the principle of selection being the method by which the executive head of the state is selected. According to this idea, any government whose executive head is an hereditary ruler is a monarchy, and any government whose executive head is an elected official chosen for a stipulated period is a republic. Thus England and Italy might be grouped as monarchies, and France and the United States as republics.

But unfortunately this method of classification is worthless for our purposes. Even the man who thus groups the governments realizes that there is a vast difference between the

nature of the English system and the Italian system, between the French system and the United States system. We must look for other bases of classification, bases which will reveal more truly the essential characteristics of the governments, which will differentiate the systems by reference to their nature and spirit, to their form or structure, and to their operation. We want a classification that will tell us at a glance whether a government is liberal or not, whether a government is organized according to the ancient monarchical forms or not, whether a government centralizes or distributes its powers. No single method of classification has been devised to include these various points, so that we must classify and reclassify the governments until we obtain a general notion of their characteristics.

With this consideration in mind, we may try first to group governments as (1) autocratic, (2) aristocratic, or (3) democratic, according as the system provides for control by one person, by a limited class or group of persons, or by the mass of persons in the state. Such a grouping is significant of the essential nature of the government, but a little thought will show that it reveals little of governmental structure or operation.

Again, we may group governments as (1) hereditary or (2) elective, according as the system provides for an executive head by any of the various forms of inheritance or by any of the various forms of election. Such a grouping complies with our second requirement in that it reveals a prominent characteristic of the form or structure of the government, but we realize that it gives little indication of government's essential nature or practical operation. It is, therefore, unsatisfactory for our purposes when standing alone.

Yet again, we may group governments as (1) unitary or (2) federal, according to the way the system provides for the centralization of governmental powers in a single organization, or for the distribution of these powers between the central and local organizations in the state. Such a grouping emphasizes

an important factor in the operation of government without revealing much of the fundamental nature or outward form.

By a combination of these three classifications we may gain a general notion of the chief characteristics of a government and its resemblances to and differences from other governments.

First Classification

Autocracies.—The classification of governments according to the relative number of individuals concerned in governing is as old as Herodotus (5th century B.C.), yet it is still serviceable. An autocracy (or despotism) is a government in which the final supreme control is vested in the will of a single individual. In complex governmental affairs, of course, a vast body of officials is necessarily associated with such an individual in execution and administration, but this fact does not alter the essential character of the government.

Autocratic government was almost certainly the earliest form of government. The unrestricted power of the chieftain in the rudimentary state of primitive times can scarcely be questioned. At an early period in authentic history, autocratic government was the usual government in the states of the world. Such was the government of ancient Egypt and of the mighty states of Asia. Even into a relatively modern period the autocratic government persisted. Whether Louis XIV ever used the words "*L'état, c'est moi*" or not, the statement accurately characterized the spirit of his government.

Aristocracies.—An aristocracy is a government in which the supreme power is in the hands of a limited group or class of the people.

Compared with the number of autocratic governments of the past and of democratic governments of the present, few examples of aristocratic governments are revealed by history. No aristocratic government has shown a capacity for permanent existence. The reason is to be found in the nature of the aristocratic form. The unity of action demanded by the

government of a great state is greater than can be consistently maintained by a group of men invested with equal authority and equal rank. Either the arrogance of the governing class excites the hostility of the other classes in the state and ends in the overthrow of the rulers, or natural jealousies create factions among the governing class that result in schism and the destruction of the government. Notable aristocracies have, however, existed for a limited period. In relatively modern times, Venice offers the best example of a strictly maintained aristocracy. Once among the most powerful and famous governments of Europe, controlling absolutely certain gateways of commerce, the government of Venice was a close aristocracy in which on the one hand the mass of the people were of no consideration and on the other the powers of the duke or doge were jealously checked on all sides lest they should be elevated into autocracy. The neighboring state of Florence, with its Guelphs and Ghibellines, and later with the famous Medici family, may properly be classed also as an aristocracy, even though a semblance of a popular advisory body existed.

Democracies: (1) Direct and (2) Representative.—A democracy is a government in the organization of which the people exercise an active control.

The people may exercise this control in one of two ways, *directly* or *indirectly*. In certain states the mass of the people gather in public assembly and act *directly* in governmental affairs. Such a system was in effect in the small city-states of ancient Greece and is to-day retained in a few of the small cantons of Switzerland. The enormous population of most democratic states in modern times, however, has made such direct action on the part of its citizens impracticable. Consequently, what is known as the representative system is now established in democracies. According to this system, a relatively small number of persons are delegated to act as the representatives of the mass of the people in affairs of government. Under this system, the people exercise their control

over the government *indirectly*. In theory, the representatives hold a trust for the mass of the people: the people have a right to expect their representatives to decide for them as they themselves would decide could they be gathered together in a deliberative assembly. In practice, grave abuses of the representative system have at times existed. In England, before the passage of the reform bill, for example, a considerable proportion of the so-called popular house of Parliament owed election to the will of a few great landowners and were naturally influenced by this fact in their deliberations. In the United States the people have upon occasions had a suspicion that the representatives were acting not so much as trustees for the nation at large as promoters of the interests of special individuals or corporations. In general, a disposition on the part of some of the representatives of the people to be influenced in one way or another against the public weal is one of the weaknesses of this representative system of government.

Second Classification

Hereditary and Elective Executive Head.—The second general classification is based on a feature of the structure of government; namely, on the distinction between an hereditary executive head and an elective executive head.

The elective executive head is not a recent development in government, nor has the election of the executive head been restricted to democratic governments. It is probable that in primitive times a form of election was used to choose the chieftains of tribes, and we know that in relatively modern times the autocratic head of the Holy Roman Empire was elected to his office. Yet it is a fact that generally in history the notion of elective executive is associated with democratic government and the notion of hereditary executive is associated with autocratic government. Since early in the nineteenth century, however, the principles of democratic government have made great progress, so that at the present time all the governments in the foremost states of the world, whether

with an hereditary or an elected executive, have important democratic features. Where hereditary executives are retained at the head of such governments, they are survivals from their autocratic predecessors and their powers are strictly limited and subordinated to the political control of the people. Thus in England the hereditary monarch is only a nominal sovereign, and in Italy his prerogatives are limited by constitutional provisions. In states where the hereditary monarch failed to adapt himself to the growing democratic spirit of his times, the whole organization of government was changed to replace the hereditary by an elective head. Thus in France with the throes of a series of bitter revolutions was born a republic. And thus, in our own age, little Portugal and unwieldy China have turned out their hereditary sovereigns to install a new organization with an elective head. And since the World War, Germany has joined the ranks of the republics.

Principles Governing Inheritance.—The principles governing the inheritance in hereditary governments differ widely, as do also the principles governing election in elective governments. In hereditary governments, according to one system, priority of birth entitles the oldest member, or the oldest male member, of the family of the deceased ruler to be successor. Thus a brother of a deceased ruler might succeed to the throne. According to a second system, the oldest immediate descendant of the deceased ruler is the successor, or, as modified in many cases, the oldest immediate male descendant of the deceased ruler. Thus in ordinary cases only children of a deceased ruler can inherit. In cases where a ruler leaves no children, the rule may revert to a living descendant of a former ruler.

Principles Governing Election.—In elective governments, according to one system, the executive head is chosen by direct vote of the people. This system is used to-day in the commonwealths of the United States and in certain of the South American republics, as Peru and Brazil. The method of electing the chief executive in the United States, although originally

indirect, is to-day practically direct, for the electors in the electoral college are chosen in the name of the candidate for whom they are pledged to vote. According to the second system, the executive head is named by a body selected by the people, either by a body elected especially for this purpose or by a body existing for other purposes but constitutionally invested with this power. The method of indirect election is used in Chile, the Argentine Republic, France, and Switzerland. In Chile and the Argentine Republic electors directly elected by the people name the executive; in France and Switzerland the legislative bodies are empowered to make the choice.

Each of the methods mentioned above for choosing the chief executive has its adherents and its critics. With reference to the hereditary system as compared with the elective: does the retention of the figure of royalty foster in the people of the state a kind of loyalty and willing obedience to constituted authority, unknown in the states where the people directly or indirectly make their own chief executive? Does royalty lend dignity and prestige to a government and tend to impart stability and continuity of policy? Or is royalty merely an outworn relic of a past age, tending to obstruct the progress of political institutions? With reference to the methods of determining the succession in hereditary governments: does the restriction of the succession to the male members of the family or to the male descendants operate usually to the best advantage for the government? Or is this likewise an outworn tradition? With reference to the distinction between direct and indirect choice in elective governments: does the direct election insure the choice of the man best qualified for the office. Is it wiser to leave the determination of so important an official to a small body of selected representatives of the people? Is it wise to throw the choice of the chief executive into the legislature in view of the subsequent relations that must exist between the executive and the legislature? These questions suggest the nature of the problems.

Third Classification

Unitary and Federal Governments.—The third basis of classification is to group governments as unitary or federal according to whether their powers are centralized or distributed. In unitary governments the system provides that one central organization shall administer the supreme authority. Local divisions of the state are made for convenience, but such local divisions are the creation of the central organization and have no rights except those which the central organization gives them. The bodies which act as administrators for these local divisions are created by the central organization, are intrusted by the central organization with certain functions, and are removable at the will of that central organization. In federal governments, on the other hand, the various powers of government are distributed according to their nature between (1) the central organization representing the whole state and (2) the several local organizations representing divisions of the state having certain rights guaranteed to them by the constitution of the state. In federal governments the local units have a constitutional right to their existence and their functions; each wields its constituted powers free from the interference or encroachment of the central organization or of the organizations of other units.

Historical Descent of Unitary and Federal Systems.—Historically, unitary governments are the direct descendants from the highly centralized monarchies of a previous time. Thus France to-day has inherited from its past the centralized system; England also, considered apart from its colonies, presents in its government of the United Kingdom the centralized system; all autocracies are by their very nature examples of unitary governments.

Federal governments, on the other hand, originated in leagues voluntarily formed by units originally possessing a sense of independent action and powers. The two foremost examples of federal government, Germany and the United

States, illustrate this fact. Modern Germany is the direct descendant from the North German Federation formed after the Austro-Prussian war of 1866. This North German Federation at first included, besides Prussia, one kingdom, ten duchies, seven principalities, and three free cities, and was increased after the Franco-Prussian war of 1870 by Bavaria, Würtemberg, Baden, South Hesse, and Saxony. The nature of the union from which our present federal state is descended is too familiar to need description.

Distribution of Powers in Federal States.—The principles underlying the distribution of governmental powers in a federal government are uniform, but in their application of these principles states differ. It is commonly agreed that those affairs which concern the common welfare of all parts of the federation should be under the control of the central organization; and that all other affairs, affairs of local interest and importance, should be under the control of the local organizations. The lack of uniformity in applying these principles comes from the difficulty of deciding on the affairs which require uniform regulation throughout the entire federation. Federations agree in placing under the control of the central organization the consideration and treatment of international relations, as in making war or peace, in forming treaties and in regulating commerce, and the handling of such internal affairs requiring uniform legislation as interstate commerce, state coinage, laws of copyright, patents, and postal regulations. In many instances, however, federations differ. For example, the United States has no uniform civil, criminal, and commercial law system: Germany has. Again, the United States allows the separate commonwealths to make the laws covering marriage and divorce: Germany has laws uniform for the whole federation covering marriage and divorce.

Confederate Government.—A transitory system of government, outwardly somewhat resembling the federal system but clearly distinguishable therefrom, is what is known as confederate government. Whereas in a federal government the

separate units are indissolubly united by the surrender of their independent sovereign powers into the common sovereignty of the government of the whole state, in a confederate government each separate unit retains its independent sovereign power, being bound with other equally independent units in a voluntary alliance. In a *confederation* the united organization is for certain delegated functions only: in a *federation* the organized government possesses the supreme power over its constituent units. In a *confederation* each unit has the right of separate decision in most governmental affairs, thus emphasizing its full independence: in a *federation* affairs of the government of the state as a whole are not referred to the separate units except in rare cases covered by the constitution. In a *confederation* the alliance is of the nature of a league of independent states, from which any one state reserves the right to withdraw at will: in a *federation* the notion of alliance of independent units is lost in the indissoluble unified state that is created. Confederations, like aristocracies, have not shown a capacity for permanent existence. The weakness of the central power does not enable it to act with rapidity in crises, and the conflicting interests of the component units prevent that coherence of action which makes for strength.

Weaknesses of the Federal System.—At first the federal system was almost universally praised as the last step in the evolution of government. The combination of the executive unity of the state with local independence was believed to give to government a flexibility that it had never possessed under any other form of organization. Rapidity of decision and action on the part of the central power was insured side by side with freedom for the development of local government along the lines desired by the various sections in the state. In states extending over a great area, parts of which differed radically in their social and economic conditions, federal government seemed especially necessary. In such states new territory might be developed under the control of a local government familiar with conditions and needs, old and

settled communities could continue along their conservative and traditional lines, and both new and old could in times of national stress be represented by a unified central government whose duty would be to defend and advance the interests of the state as a whole.

But the study of the operation of federal government in the light of history has revealed certain tendencies which are liable at any time to bring about serious trouble.

In the first place, possibility of dispute always exists on the relative spheres of action of the central government and the local governments. Any individual unit in the federal state may greatly embarrass the central government, for example, by measures which are out of accord with the treaty obligations of the central government; or the central government may tend to usurp authority over matters which are by many believed to be subject to the control of the local organizations.

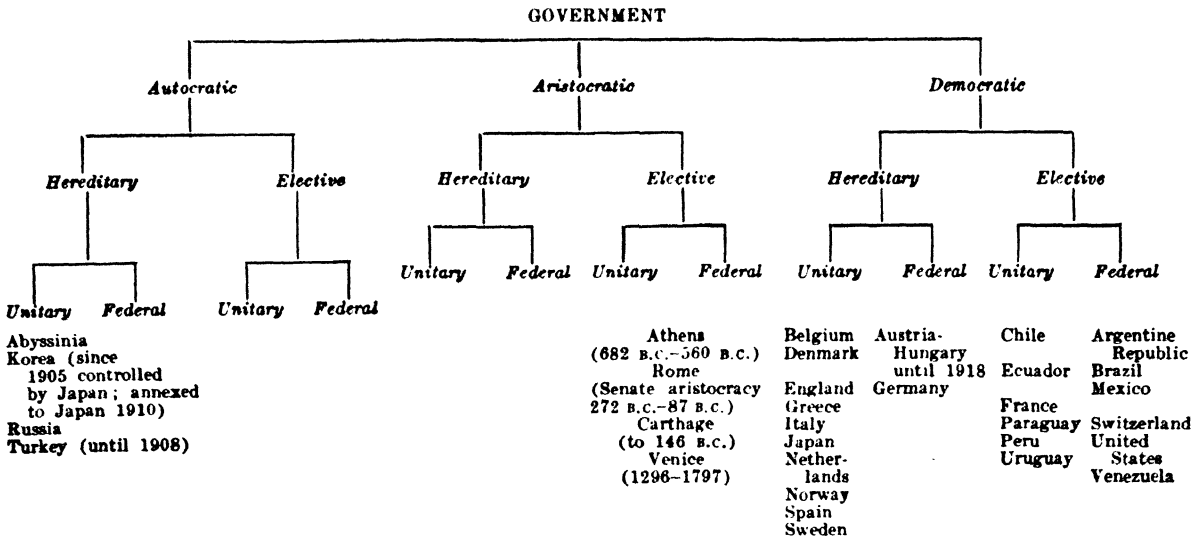
In the second place, the variety of laws existing in the different units on matters subject to their jurisdiction is a hindrance to the uniform development of the whole nation. For example, laws concerning labor, laws concerning the incorporation and regulation of industries, and laws concerning marriage and divorce differ radically in various of the commonwealths of the United States.

A third weakness, and a weakness that may threaten the very existence of the state, is the possibility of the formation of groups or factions of separate units within the state which shall consider that their economic interests demand their withdrawal from the federation. Such a division occurred in the United States in 1861, and was possible in Germany in the religious agitation of the Bismarckian period.

STATISTICS AND ILLUSTRATIVE CITATIONS

TABLE 1

DIAGRAM SHOWING GRAPHICALLY VARIOUS GOVERNMENTS CLASSIFIED UNDER THE THREEFOLD DIVISION ADOPTED IN THE TEXT



NOTE.—The suggestion for the above table was obtained from Leacock's "Elements of Political Science," p. 120, although the table itself is differently arranged.

CHAPTER II

SOVEREIGNTY AND THE CONSTITUTION

I. Sovereignty

Sovereignty is the supreme power of the state. The sovereign is that person or body of persons possessing the authority to direct the use of this supreme power. Notice carefully that the sovereign does not possess sovereignty: sovereignty is an attribute of the state as a whole. The sovereign is merely the person or body of persons who temporarily holds, either through the willing acceptance or approval of the people or through force and coercion, the authority to direct the use of this sovereignty (supreme power). So long as a state continues to exist, its sovereignty remains unchanged in nature, degree, or amount; but the sovereign, its personnel, its organization, its method of operation, may change a hundred times. Great Britain's sovereignty has not changed in the slightest degree through the centuries since Great Britain has been recognized as a separate state; but the sovereign has changed many times, as for example, to mention merely a few very conspicuous instances, in the Puritan Revolution, the Restoration, the Revolution of 1688, the rise and development of the British Cabinet.

A proper appreciation of this attribute of sovereignty is exceedingly important, for it is by virtue of this supreme power that a state is able to insure its own organization and to guide its own development. Some of the bitterest wars of history are traceable to the resentment felt by the people of one state at an attempt made by another state to interfere with a new proposed form of organization. A shining example is to be

noted in the European wars accompanying the French Revolution: the French state undertook to change its form of organization (its government); other European states intervened, not with an idea of destroying French sovereignty, but for the purpose of forcing France to maintain its old governmental organization; and the French state stood against the civilized world to defend its right to order its own internal existence in its own way.

Location of Sovereignty.—In the last analysis, sovereignty is located in the people of the state as a whole. This fact is true as well of ancient autocracies as of modern democracies. It may possibly be that the people are so ignorant, so inert, or so accustomed to oppression that they endure for long ages a monstrous and unnatural system of government, but the ultimate supreme power to destroy such a system and to substitute another rests with them. Even the most tyrannical of despots recognized the fact that he could not go beyond certain limits in his exactions from his people. This location of supreme political power in the hands of the people as a whole is more evident in the democracy of our modern civilized states. With the advance of the general level of education and of political privileges, the people make their sovereignty more directly felt. It is sometimes argued that in Great Britain the combined King, House of Lords, and House of Commons possess sovereignty, for any measures to which they unitedly give their sanction become ipso facto the fundamental and unquestionable law of the state. But the people in the next election may exert their power to change the personnel of the House of Commons, thereby changing the personnel of government, and thereby ultimately forcing the repeal of objectionable legislation. Again, it may be argued that sovereignty in France is to be located in the two houses of the legislature acting together as a National Assembly, for this National Assembly has the power of amending the constitution of the State. But similarly, the people may make their sovereignty felt in the next elections. In the United States, it is easily

proved that the sovereignty rests with the people. Under the provisions of the constitution, a combination of two-thirds of both houses of Congress and the legislatures of three-fourths of the commonwealth has the power to promulgate fundamental law by amending the constitution. It might seem as though this combination possessed sovereignty because of this power to promulgate fundamental law, but notice two facts: 1st, that it acts under the limitations of methods set forth in the constitution; and 2nd, that the constitution itself exempts certain spheres from the possibility of legislative action. Obviously, then, sovereignty, or supreme power, lies back of the constitution in the hands of the people, whose predecessors framed the document, and who themselves accept it as the basis of existing law.

Location of the Sovereign.—Since sovereignty resides ultimately in the people, it might seem to follow logically that the people is the sovereign. Strictly speaking this statement is true, but it is a fact that the word sovereign is commonly used, both in political science and in popular reference, *not* for the possessor of sovereignty, but for that person or body of persons who has the authority to direct the use of sovereignty. It is desirable then, not only to know where sovereignty resides, but also what person or body of persons has the authority in a state to exercise this sovereignty. It is desirable to locate the sovereign.

In ancient autocratic states, the location of the sovereign was relatively a simple problem. The monarch whose command became instantly the law to his people held the authority to exercise the supreme power. The autocrat was sovereign.

In certain of the modern democratic states the location of the sovereign is not a difficult task. In England, for example, the combined King, House of Lords, and House of Commons constitute the sovereign. Measures to which they unitedly give their sanction become the law of the state.

In France, on the other hand, ordinary legislation—which is unquestionably an exercise of sovereignty—issues from the

parliament and is signed by the President. Beyond this ordinary legislation, however, provision is made for a meeting together of the two chambers of the legislature in a National Assembly for voting on an amendment to the constitutional laws. The National Assembly, thus constituted and empowered, is also exercising sovereignty when it votes an amendment to the fundamental law of the state. The sovereign in France, then, for ordinary purposes is the legislature and the President, and for extraordinary purposes is the National Assembly.

In the United States the problem of locating the sovereign is most complicated, at least four different combinations according to conditions having the authority to exercise sovereignty. First, under normal and ordinary conditions, the Congress issues laws which take effect upon the signature of the President. In the second place, if the President disapproves congressional laws by a veto, Congress has the right by a two-thirds vote to pass the legislation over the veto. In the third place, any legislation passed by Congress, whether with the approval of the president or over his veto, may by the presentation of a case be laid before the Supreme Court for a determination of its constitutionality. And lastly, amendments to the constitution are proposed by a two-thirds majority of both houses of Congress and are ratified by the legislatures or special conventions of three fourths of the commonwealths. The sovereign in the United States, then, is variously according to conditions: (1) The Congress and the President; (2) The Congress alone; (3) The Congress with or without the President, and the Supreme Court; (4) The Congress and the legislatures or special conventions of three fourths of the commonwealths.

Implications of Sovereignty.—The notion of sovereignty implies two things, independence and unity.

1. Independence.—Sovereignty implies complete independence. The freedom from any restrictions placed upon its scope by any external or internal agency must be absolute.

The reason for this is easily understood. Sovereignty which is open to restrictions of any kind is a contradiction in terms, for sovereignty is the supreme power. If supreme power is restricted, the supreme power is at once transferred to that which imposes the restrictions.

The only difficulty in reconciling this conception of independence with known political facts lies in the status of certain states whose liberty of action seems to be restricted by some treaty or agreement. To take a striking example of such a state, consider the case of Cuba. Cuba has been declared a free and independent state: it maintains its own government, has its own foreign representatives, and receives recognition from other states. Yet the United States has caused to be inserted in the Cuban constitution the following proviso: "That the government of Cuba consents that the United States may exercise the right to intervene for the protection of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States, now to be assumed and undertaken by the government of Cuba." Upon this provision the United States has already acted once (1906). The question arises: Can it be reasonably maintained in view of the above facts that Cuba as a state possesses sovereignty? Is it not a fact that sovereignty resides outside of Cuba?

The solution of this problem lies in recognition of the fact already stated that sovereignty is an attribute of the state as a whole, and that by virtue of its supreme power the state can delegate the authority to direct the use of this power to such agents as it chooses. In the case of Cuba, the state by virtue of its supreme power has delegated the authority to use supreme power in certain specified emergencies to the United States. The delegation of such authority does not impair Cuba's independence, Cuba's sovereignty: Cuba is free by virtue of its sovereignty to alter its constitution and leave

out the provision mentioned above. Cuba therefore is a free and sovereign state.

Although the Cuban example is selected because it is an extreme instance of the point in question, it must be recognized that all treaties and international agreements are in a lesser degree of the same character. They are to be considered as acts of the sovereign state by which the state voluntarily by agreement restricts the exercise of its supreme power in certain specified directions. Such agreements or treaties do not impair the independence of sovereignty; they may be abrogated or annulled by a contracting state by virtue of this very independence implied in the notion of sovereignty.

2. Unity.—The notion of sovereignty implies also complete and absolute unity. In theory it is inconceivable that sovereignty can be divided in a state, that one section or organization within a state shall possess a part of the sovereign power separate from the sovereignty of the whole state.

This implication in the conception of sovereignty follows naturally from the proposition that sovereignty implies complete independence. If a portion of sovereignty be reserved by any section or organization within a state, it follows that the sovereignty of the whole state is restricted by just that portion. For the reasons we have already given, any restriction upon the state's sovereignty is logically inconceivable; hence, it is equally true that a division of sovereignty in the state is inconceivable.

An explanation of sovereignty as applied to the federal state will clear up the only difficulty in understanding this unity. In the federal state we learned that certain governmental powers were reserved by the component units of the state and were exercised by such units free from the control of the central organization. Without explanation, it might be thought that this condition destroyed the unity of sovereignty. It must be remembered, however, that the *state,* by virtue of its sovereignty (*supreme power*), can establish and distribute the

powers of *government* as it wills. Indivisible and independent sovereignty is an attribute of the *state* and not of the *government*. The governmental system is but an element in the state; the sovereignty of the state resides above, beyond, and superior to such system. The distribution of governmental powers, then, does not constitute a division of sovereignty, but merely an administrative convenience of government under the complete control of the ultimate independent unified sovereignty of the whole state.

Importance of Sovereignty.—From the foregoing discussion of sovereignty, the importance of this element in the state must be evident. By virtue of its sovereignty the state determines its governmental system, the relations between individuals and itself, the relations between itself and other states. Sovereignty underlies the fundamental nature of the state. Be the state large or small, autocratic or democratic, sovereignty is always the supreme power which it wields over its members, a power free from interference internal or external and completely unified within itself.

II. Constitution

Constitution: Definition and Scope.—The body of principles by which the practical application or exercise of the sovereignty of a state is determined is known as the constitution.

Inasmuch as the sovereignty of a state is exercised through the system of government, the chief province of the constitution is to define this system of government. Hence, the constitution must outline the practical organization and machinery of government, the functions of the various agencies of government, and the relations between the governing bodies and those governed.

More narrowly, then, we may define the constitution as a collection of principles providing for the organization and operation of government, and for the adjustment of the relations between governing bodies and the governed.

Written and Unwritten Constitutions.—A constitution may be written or unwritten. It may be a single document, like the constitution of the United States, or it may be a combination of legal precedent, individual bills and grants, and immemorial customs, like the constitution of England.

The distinction between a constitution that is written and a constitution that is unwritten is not important. In the case of all written constitutions that have lasted for any considerable period, judicial interpretations and acknowledged customs outside of the written document have become an essential part of the organization and operation of government. Thus to a certain extent it is true that no constitution is wholly written.

On the other hand, in the case of countries which have not a single document called a constitution, a large proportion of the fundamental principles which would be embodied in such a document is actually embodied in various separate acts decreed by the sovereign body. Hence it may be said that to a considerable extent all constitutions are written constitutions.

Furthermore, one constitution is of no more authority than another. With the early history of written constitutions it was commonly thought that these, by defining in precise and unmistakable terms the organization, functions, and operation of government, insured a greater degree of protection to the governed. It was believed that governments would be checked in their tendencies to encroach upon the rights of constituents. Experience has proved, however, that whether written or unwritten the constitution merely expresses the will of the sovereign power behind itself, and that, if the sovereign power actually resides in the people or their representatives, there can be no encroachment under either form of constitution.

Example of a Written Constitution.—The parent of written constitutions in the modern state is the constitution of the United States of America. This constitution was the work of a convention in 1787 to organize a government to replace that provided by the Articles of Confederation under which the

colonies had been loosely joined since 1781. The success of the convention in its task was such that this constitution, termed by Gladstone "the most wonderful work ever struck off at a given time by the brain and purpose of man," has not only continued to be the foundation of our government for more than a century, but has served as the inspiration for a series of written constitutions in other states. "This is virtually a new invention," says Lord Bryce (Modern Democracies, Chap. XXXIX), "a legitimate offspring of democracy, and an expedient of practical value, because it embodies both the principle of Liberty and the principle of Order. It issues from the doctrine that power comes only from the People, and from it not in respect of the physical force of the numerical majority but because the People is recognized as of right the supreme law-giving authority. Along with the principle of Liberty, a Constitution embodies also the principle of Self-restraint. The people have resolved to put certain rules out of the reach of temporary impulses, springing from passion or caprice, and to make these rules the permanent expression of their calm thought and deliberate purpose. It is a recognition of the truth that majorities are not always right, and need to be protected against themselves by being obliged to recur, at moments of haste or excitement, to maxims they had adopted at times of cool reflection. Like all great achievements in the field of constructive politics, and like nearly all great inventions in the field of science and the arts, this discovery was the product of many minds and long experience. Yet its appearance in a finished shape, destined to permanence, was sudden, just as liquid composed of several fluids previously held in solution will under certain conditions crystallize rapidly into a solid form."

Example of Unwritten Constitution.—The great example of the unwritten constitution is that of England. Among the various elements that form this constitution a distinction in kind may be made, but no distinction in importance. Those elements which exist by virtue of tradition and custom are

equally a part of the constitution with epoch-making compacts between the Crown and the people, or with great reform measures of Parliament.

Prominent Elements in English Constitution.—A study of the constitution of England involves an intimate knowledge of existing institutions which have their origin in tradition and custom. For example, the English cabinet is not provided for or recognized in any authoritative written document.

In involves, in the second place, a knowledge of written documents of the nature of compacts between opposing political forces in the state. To illustrate such compacts, we may select the Magna Charta (1215), commonly called the foundation of English liberties, which among other things provides (*a*) a careful definition of feudal obligations, (*b*) regulations respecting courts of law, (*c*) restrictions upon the power of extraordinary taxation, (*d*) proper trial by law, and (*e*) honest administration of justice in courts of law.

Further, a study of the English constitution involves a reference to the statutes. For example, the Habeas Corpus Act (1679), the Bill of Rights (1689), enacting in detail the rights and liberties of the people, and the various reform acts, all form a part of the constitution.

Again, such a study involves an acquaintance with some of the great judicial decisions which have established precedent. The decisions on the Prerogative of the Crown and on the privileges of the House of Parliament and of the members thereof may be cited as examples.

And lastly, such a study involves familiarity with parliamentary precedents. Such a familiarity can be gained only by reference to certain Committee Reports, and debates and proceedings.

Advantages and Disadvantages of Written and Unwritten Constitutions.—A comparison of the two types of constitution will reveal certain advantages and certain weaknesses in each. The written constitution lends a definiteness and stability to the governmental system. Where the province and func-

tions of the governing body are carefully set forth in a written document, it is not easy for such a body to exceed its bounds without the knowledge of the governed; and where the constitution is relatively difficult to alter, as is usually the case, changes in the fundamental provisions for government cannot be made to suit a transient whim. On the other hand, written constitutions have been criticized as tending to leave inadequate room for the development of the state. Written constitutions, difficult to alter or amend, are rapidly outgrown, but cannot easily be adapted to new conditions. By a written constitution, it is alleged, an attempt is made to incorporate in one document the principles of government for a state for all time, taking no account of what the future may bring forth.

The main advantage of the unwritten constitution lies in the fact that the state is able by ordinary processes to adapt its system to changed conditions. Unwritten constitutions are themselves continuously developing to keep pace with the development of the state. The danger in the unwritten constitution, however, lies in this very adaptability, for a radical element in the state may conceivably carry the constitution beyond what conditions throughout the whole state warrant, and thus do incalculable damage. Again, in unwritten constitutions, the possibility of serious misunderstanding is ever present, for, in such a vast complication of tradition-made, custom-made, judicial, and parliamentary sources, it is possible to find support for various interpretations of particular features.

People Favor Written Constitutions.—Whatever the theoretical advantages or disadvantages, the written constitution has met with favor in democratic states outside of England. With the single exception of Hungary—and this is sometimes classed as having a written constitution—all the leading states to-day have written constitutions. The people at large have undoubtedly been influenced by their belief that their interests and fundamental rights are better safeguarded by the written constitution. It is noteworthy, too, that no state

which has once adopted a written constitution has ever been satisfied subsequently with the other kind.

Three Requisites of Good Constitution.—Three essential requisites of a good written constitution are breadth, brevity, and definiteness.

1. Breadth.—A constitution must be broad in its scope, because it must include an outline of the organization of government for the whole state. A statement of the province and functions of government, and of the relations between the governing bodies and the governed, requires a comprehensive document.

2. Brevity.—On the other hand, such an outline for the successful constitution should be brief. The constitution is not the place in which the details of organization should be set forth. In complex governments of modern states a recital of such details would require very great length, and would ruin the flexibility with which governments can change the details of their organization to adapt themselves to new conditions.

3. Definiteness.—Lastly, the constitution must be definite. In a statement of principles underlying the essential nature of a state, any vagueness which may lead to opposite interpretations of essential features may cause incalculable harm. Civil war and disruption of the state may conceivably follow from ambiguous expression in a constitution.

Classification of Material in a Constitution.—The material in a constitution may be classified under three heads: first, material defining the rights and liberties of individuals; second, material outlining the organization and powers of the government; and third, material providing the means of altering or amending the constitution itself.

1. Material Defining Rights and Liberties of Individuals.—One part of a good constitution has to do with the rights and liberties of individuals. The notion that individuals as such could possess rights and liberties, privileges and immunities, free from any possible interference by the government, is an outgrowth of modern liberalism. Such a conception is directly

due to the different relations which are now acknowledged to exist between a state and its government.

In former times, government and the state were identical with respect to sovereignty—in other words, the government was the state. Thus the government then held supreme power. The conception of a sphere of rights and liberties of the individual over which the government had no jurisdiction was unknown. At the present day, however, government is recognized as merely an element of the state, an expression of the state's will for the political organization of the people. Sovereignty is seen to belong *not* to government, but to the state which is behind and responsible for government. The state, therefore, by virtue of its sovereignty, in the constitution which provides for government may directly provide also certain spheres in which the individual is free from the operation of government. Thus the state, by virtue of its supreme power, insures by constitutional guarantees the liberty of the individual from encroachments of government.

No generalization with respect to the specific rights and liberties thus guaranteed to the individuals in constitutions can be made. As men grow in political consciousness, more liberty is naturally demanded and granted. Thus the rights and liberties of the Englishman under King John would be considered wholly inadequate for the Englishman of to-day. Furthermore, the people in different modern states are not by any means in the same stage of development. The rights reserved to the Turk to-day would not satisfy the citizen of this country. In the leading states of the world, however, "individual liberty consists in freedom of the person, equality before the courts, security of private property, freedom of opinion and its expression, and freedom of conscience" (Burgess).

2. Matter Outlining the Organization of Government.— A second part of a good constitution has to do with the organization and powers of government for the state. The provisions contained in this part of constitutions uniformly treat certain

main features, but differ in the detail with which these features are elaborated. The features which are uniformly treated include (1) a statement of the general organization of the governing bodies, (2) the distribution of governmental powers among the various departments, (3) a determination of the various agencies of government with a description of the nature and extent of the authority of each, (4) the method of selection or appointment of officials, and (5) the composition of the electorate.

In its treatment of these features, the constitution of the United States is a model. It does not attempt to cover all the details of the organization of the government. It states that there shall be a Congress with legislative powers, and it indicates to some extent the organization of this Congress; that there shall be a President to execute the laws passed by the Congress; and that there shall be a Supreme Court to determine the legality under the constitution of laws passed by Congress and of acts of individuals, commonwealth governments, and federal officials. What the constitution does not do is to state in detail *how* Congress shall do its legislative work, and *how* the President shall perform his functions, and *how* the Supreme Court shall exercise its powers. These things were wisely left to the process of ordinary law.

3. Matter Relating to Amendment.—A third and very important part of the constitution deals with the methods by which the document can be amended. The importance of this amending provision rests in the fact that in it lies the possibility of the adjustment of the constitution to the development of the state.

(*a*) *Constitutions with no Provision for Amendment.*—The constitutions of some states, as Italy, do not contain specific provisions for amendment. The result in such cases is that the power of amendment has been presumed to reside in the legislative and executive bodies as one of their ordinary functions, and the state, so far as changing or amending its constitution is concerned, is exactly on a level with England. Any

law passed by the legislature and approved by the executive becomes legal and constitutional, just as in England a measure passed by Parliament and signed by the executive is legal and constitutional. Hence, although Italy possesses a written constitution its government is practically on the basis of an unwritten constitution.

(*b*) *Constitutions Denying the Power of Amendment.*—In other cases, constitutions have a provision denying to any body in the state the power of amendment. Examples of such constitutions are rare. Theoretically, however, in such cases the power to amend the constitution could reside only in the body which originally created it. Logically, such a constitution could hardly endure, for the political, social, and economic development of states always involves sooner or later a change in fundamental conditions which can be adequately met only by a corresponding change in the fundamental organization of government. A constitution which denied to any body the right to introduce and bring about such necessary changes would ultimately become so unfitted for its purposes that it would induce revolution.

(*c*) *Constitutions with Amendment Provisions: the United States Constitution.*—In written constitutions having the amendment provisions, these provisions differ widely. In the United States amendments may be *proposed* in one of two ways: (1) Congress may by a two-thirds vote in each house propose an amendment; or (2) the legislatures of two-thirds of the states may petition Congress to call a general convention for the purpose of proposing an amendment. After an amendment has been proposed, it may be *adopted* by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or other mode of ratification may be proposed by the Congress.

Under these provisions it has been very difficult in the United States to amend the constitution. More than eighteen hundred amendments have been offered, but, with the exception of the ten amendments passed shortly after the adoption of the

constitution, which may rightly be considered as an integral part of the original document, only nine have been adopted, and four of these (providing for the income tax, the direct election of senators, woman suffrage, and prohibition) have been adopted within the last few years.

Amendment Provisions in Constitutions of European States.—In European states the method of amendment to the constitution is commonly such as to render such amendments relatively easy. In France amendments may be passed by a process of ordinary legislation by a National Assembly made up of the members of the two houses of the legislature in joint session. In the German federation amendments to the constitution are passed in the same way as ordinary legislation, with the following provisos, however: two-thirds of the legal membership of the Reichstag must be present when the amendment is voted upon; a two-thirds majority of those present is necessary for adoption; and a two-thirds vote in the upper house (*Reichsrat*) is necessary for approval. If the upper house rejects the amendment, it may within two weeks demand a referendum in which the question will be settled by popular vote. If it fails to exercise this right, the amendment is promulgated without its consent. In addition to this method of amendment, provision is made whereby the people at large may initiate an amendment and have it voted upon by national referendum irrespective of the will of the legislature.

Criticism of Amendment Provisions in United States Constitution.—The comparative rigidity of the constitution of the United States has excited abundance of criticism. For one thing, it is possible for a very small minority of the people of this country to block the passage of an amendment favored by all the rest. The census of 1910 shows thirteen states, more than the necessary number to defeat an amendment, having a population of about one eighteenth of the entire population of the United States. The legislatures of these thirteen states, representing but one eighteenth of the population of the whole country, have the power under the consti-

tution to defeat the wishes of the legislatures representing seventeen eighteenths of the total population. Furthermore, the power of amendment is placed in legislative bodies of the various states and of the central government and not in the hands of the people of the country at large. This fact has, it is asserted, resulted in undue conservatism and has created a condition at the present time in which the state has outgrown its constitution. In general, the machinery of amendment is very unwieldy. Washington rightly advised "to resist with care the spirit of innovation upon the principles of the constitution," but there is a limit to the degree of rigidity which is desirable. There is a real danger in a constitution which blocks the introduction of changes based on experience and long, careful deliberation.

Judicial Interpretation of the United States Constitution. —In the case of the constitution of the United States, however, another method has been used to adapt its provisions to the development of the country. The Supreme Court has interpreted the construction and application of various provisions of the constitution as necessity has arisen, and has established itself definitely over and above Congress in the right to determine whether or not laws are constitutional.

Its decisions and its "judicial interpretations" have played a very important part in the history of this country. The federal constitution is the supreme legal authority in the United States; hence the meaning of each provision, even of each separate word, is of the utmost significance. Although its general principles are simple and comprehensible, the increasing complexity of government and social conditions has given rise to grave problems concerning the particular meaning of clauses in the document, or concerning the relative scope of two apparently conflicting statements. In its task of final judgment as to the meaning and application of the constitution, the Supreme Court has taken extraordinary precautions. Only as specific cases are brought before it does the court attempt an interpretation, and judicial precedent is consulted wherever

possible. As a result of the court's decisions through many years, gradually a logical theory of the constitution and laws has been evolved, which can be developed from generation to generation. The Supreme Court in its decisions has formulated a fairly coherent body of doctrine with respect to the construction and application of the provisions of the federal constitution. In this manner the judiciary has played an important part in adapting our constitution to the development of the state.[1]

In conclusion, it is necessary for the student of government to take care not to place too much reliance upon the mere words of a written constitution. Just because this document is in existence, and prescribes a certain form of organization, certain types of functions, and certain methods of administration, it does not necessarily follow that the actual government in that state is carried on in accordance with these provisions. It is necessary in order to gain an accurate idea of the actual conditions of government for the student to have a far more intimate knowledge of general conditions in a country.

To illustrate this necessity, we may take some striking examples which are familiar to all of us. During the emergency caused by England's experience in the World War, the original cabinet system of government which had developed through age-long experience proved to be unsatisfactory. Too many men were involved in the difficult problems brought about by the crisis. Without any precedent in history, therefore, the Prime Minister took a very small group of four or five men associated with himself and by means of this small group prosecuted the war against the Central Powers. Such action was not in accordance with any previous ideas concerning his constitutional status or his powers, and could not be gained by the study of previous constitutional history in England. In our own country, too, under the stress of the World War, the President asked and received from Congress the most extensive and autocratic powers of action. Not only

[1] Cf. chapter on the Judiciary.

is there no precedent in our own constitutional history for such powers as the President received by act of Congress, but it is undoubtedly true that these powers were themselves inconsistent with the provisions of the constitution itself. In anything but a war emergency the yielding of Congress of such powers to the President, and the acceptance by the President of such powers, would have been instantly challenged by individuals of the state and the question of constitutionality referred to the Supreme Court for a decision. During the war emergency, however, no such question was raised.

Another example of the failure of actual government to conform to the provisions of the constitutions is to be found in the case of our South American and Central American neighbors. In general the constitutions of these countries were modeled upon the constitution of the United States. On paper, their provisions read as liberally as the provisions of our own fundamental law. It has been said, for example, that the constitution of Mexico "is one of the most perfect constitutions in the history of world fiction." Those who are familiar with the actual conditions of government in these countries say that the form of the constitution is regularly circumvented by the ruling class. In one country it is the Spanish or their descendants, in another it is the Portuguese or their descendants, who with class-conscious efforts maintain the control of the agencies of government in their own hands. The government, though nominally and constitutionally a democracy, is to all intents and purposes an aristocracy. The political elections of which we hear are not the free expression of the will of the whole people registered at the ballot box, but the mere struggle between two or more factions of the ruling self-conscious class.

Even in countries where the level of education is far higher than in these we have just mentioned, and where adherence to the provisions of the constitution is more generally observed, professional politicians have found means of nullifying in actual effect the real purpose of the democracy and provisions of the fundamental law. These conditions are to be found

notably in the United States, France, and Italy. In our own country the existence and development of highly organized powerful political parties has, as we all know, added a new extra-legal element to our actual method of government. And we all know further that in many instances the operation of this extra-legal element determined for us the personnel of our government in a way far different from that set forth in, and intended by, the constitution. And in France, likewise, the centralization of the powers of government in the hands of the professional politicans in Paris has enabled them to exert influences throughout the country which tend to destroy the true representative nature of the French democracy.

Government, then, is not a subject which can be studied solely from books and documents. It is essentially a study of human society in action, and no student can justly feel that he is familiar with the system of government in operation in any state until he is familiar with the social conditions, methods of thought, political knowledge and experience, and actual details of political practice in that state.

STATISTICS AND ILLUSTRATIVE CITATIONS

Cuba. The Platt amendment, incorporated in the United States Army Appropriation Act of 1901, and accepted by Cuba as an addition to its constitution. The following letter contains the provisions added:

HAVANA, June 13, 1901.

Honorable MILITARY GOVERNOR OF CUBA.

HONORABLE SIR: Replying to your official letter dated on the eighth (8th), whereby you forward to the undersigned the report of the Honorable the Secretary of War, dated May 31st last, I have the honor to advise you that at the session held yesterday, June 12th, by the Constitutional Convention, there was taken the following

RESOLUTION

The Constitutional Convention, in conformity with the order from the military governor of the island, dated July 25th, 1900, whereby said convention was convened, has determined to add, and hereby does add, to the Constitution of the Republic of Cuba, adopted on the 21st of February ultimo, the following

APPENDIX

ARTICLE I. The Government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any way authorize or permit any foreign power or powers to obtain by colonization or for naval or military purposes, or otherwise, lodgment or control over any portion of said island.

ART. II. That said Government shall not assume or contract any public debt to pay for the interest upon which, and to make reasonable sinking-fund provision for the ultimate

discharge of which the ordinary revenues of the Island of Cuba, after defraying the current expenses of the Government, shall be inadequate.

ART. III. That the Government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba.

ART. IV. That all the acts of the United States in Cuba during the military occupancy of said island shall be ratified and held as valid, and all rights legally acquired by virtue of said acts shall be maintained and protected.

ART. V. That the Government of Cuba will execute, and, as far as necessary, extend the plans already devised, or other plans to be mutually agreed upon, for the sanitation of the cities of the island, to the end that a recurrence of epidemic and infectious diseases may be prevented, thereby assuring protection to the people and commerce of Cuba, as well as to the commerce of the Southern ports of the United States and the people residing therein.

ART. VI. The Island of Pines shall be omitted from the boundaries of Cuba specified in the Constitution, the title of ownership thereof being left to future adjustment by treaty.

ART. VII. To enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the Cuban Government will sell or lease to the United States the lands necessary for coaling or naval stations, at certain specified points, to be agreed upon with the President of the United States.

ART. VIII. The Government of Cuba will embody the foregoing provisions in a permanent treaty with the United States.

With the testimony of our greatest consideration, very respectfully, the President,

DOMINGO MÉNDEZ CAPOTE.

(From "Translation of the Proposed Constitution for Cuba, the Official Acceptance of the Platt Amendment, and the Electoral Law." Publ. by the Division of Insular Affairs, War Department, Nov. 1901.)

CHAPTER III

THE ORGANIZATION OF GOVERNMENT

Governmental Activities of Three Kinds.—It is commonly agreed among political thinkers that governmental activities are of three kinds: legislative, executive, and judicial. The legislative activities include the formation of and deliberation upon the commands of the government; the executive activities include the enforcement and administration of the commands of the government throughout the state; and the judicial activities include the decision respecting the construction and application of the commands of the government.

Theory of Corresponding Separation of Governmental Powers.—Although this distinction between the classes of governmental activities was recognized by Aristotle and reiterated by Cicero, the separation of governmental powers to correspond to these classes of activities was not clearly made in ancient or medieval political society. From early times the executive had concentrated in his own hands all political powers. What semblance of separation in the exercise of these powers appeared was due merely to administrative convenience. King Solomon himself made, executed, and decided the laws of his people. The ultimate legislative, legal, and executive power of Louis XIV in seventeenth-century France was unquestioned, however great the number of departments required by the complexity of government.

The growth of liberal ideas in relatively modern times is responsible for emphasizing the necessity of separating the powers of the government among mutually independent departments. The argument that only by such separation could the liberty and highest interests of the people be conserved

proved powerful in those states where the people were intelligent and progressive. A Frenchman, Montesquieu, in his book "L'Esprit des Lois" (The Spirit of Laws), 1748, did more than any other person to popularize the theory. He reasoned that if a single agent were intrusted with the power both to *make* the laws and to *execute* the laws, that agent would be strongly tempted to make tyrannical laws and to execute such laws in a tyrannical manner. And it is equally true that if the same agent *makes* the laws and *judges* of questions of obedience to the laws, the life, freedom, and property of the individual are utterly at the mercy of this single agent. And the third possible combination, of the agent who *executes* the laws being also the agent who *judges* the application of the laws, also gives to such agent all the powers of a tyrant. According to Montesquieu's argument, then, no one agent should be intrusted with more than one of the powers of government. He believed that the separation of powers was an essential requirement for the existence of true liberty for the people in a state.

Application of Theory in Constitutions.—Associated as they were with the idea of liberty, Montesquieu's arguments had great effect just at the time when written constitutions were first formed. The people lived in the dread of the return of monarchy and tyranny, so that they seized eagerly upon any theory of political organization which promised to preserve for them their liberty. The constitution of the United States was drawn by men thoroughly familiar with these political theories, and in so many words it is expressly provided that (*a*) "All legislative Powers herein granted shall be vested in a Congress of the United States," and that (*b*) "The executive Power shall be vested in a President," and that (*c*) "The judicial Power of the United States shall be vested in one Supreme Court." The constitutions of the various commonwealths of the United States have similar provisions, the most forceful statement, perhaps, being in the constitution of Massachusetts (1780): "In the government of this commonwealth the legislative department shall never exercise the ex-

ecutive and judicial powers or either of them; the executive shall never exercise the legislative or judicial powers or either of them; the judicial shall never exercise the legislative and executive powers or either of them, to the end that it may be a government of laws and not of men." In the several governments in France during the revolutionary period a succession of constitutions illustrated the effect of Montesquieu's theory, the most striking being the cumbersome constitution of the year VIII (promulgated Dec. 15, 1799) by which separation was carried so far that the legislative was divided into four independent parts: the first (the Council of State) to propose laws, the second (the Tribunate) to debate upon laws, the third (the Legislative Body) to vote upon laws, and the fourth (the Senate) to pass upon the constitutionality of laws.

Strict Separation of Powers Impracticable.—Experience has shown, however, that the strict and absolute separation of the powers of government in a state is utterly impracticable. A system by which the legislative body exercises *all* the legislative functions and *only* the legislative functions, the executive body *all* the executive functions, and *only* those, and the judiciary *all* the judicial functions and *only* those, would be unnatural and impossible. The state is a unified institution. The separate parts of its government are all closely coördinated in the work they do, just as the several members of the human body are coördinated. That each member of the body should act entirely independently of other members is inconceivable; likewise it has been found that separate and totally independent action on the part of each of the departments of the government in the work of governing is not possible.

Examples of Non-Separation of Powers.—In actual practice in democratic governments we have numerous examples of the intermingling of the several powers in one department. The most striking example is to be found in England, where the cabinet system has resulted in making the leaders in the *legislative* body practically in another capacity the *executive*

head of the Empire. At the same time, the legislative body in itself constitutes the highest *judicial* court in the Empire, the court of impeachment. Thus the English Parliament holds within itself *legislative, executive,* and *judicial* power. Further, in the practical operation of our own government, we do not observe a rigid separation of powers. The Congress, which should strictly be a purely *legislative* body, itself may constitute a high court of impeachment, thus partaking of the *judicial* powers. The *executive,* by virtue of his power of pardon, actually exercises *judicial* power. Other leading states present the same situation, especially noteworthy in those states, like Italy, which have a cabinet government modeled after the government of England.

Although the arguments of Montesquieu seem logically sound, the evils which he prophesied have not resulted from this union of different powers in one of the governmental agencies. Indeed, where the union of these powers is most strikingly evident, *i.e.* in England, we actually find the liberties of the people most extensive. In our country, where there is a manifest intermingling of powers upon occasion, we justly pride ourselves on the civic liberty allowed the individual. In Italy, France, and Germany, in varying degrees, the liberty of the individual seems assured. The prospects of tyrannical government never seemed more remote than in the leading states of the world at the beginning of this twentieth century.

The fundamental reason why civic liberty has been maintained, in spite of the union of powers in one branch of government, lies in the nature of modern democracy. Montesquieu could not have imagined, under the conditions of his own age, a government so fully responsible to the people in all its departments that the coalescence of powers could prove no danger. For example, in England to-day the influence of the people over their government is practically direct; in the United States the influence of the people over their government is exerted at such frequent intervals (by new elections) as to preclude the possibility of tyranny. Then there is always the

Right of Revolution—a moral though not a legal Right—whereby a people may rebel to overcome any effort to destroy their liberty or restrict their progress. Government to-day in democratic states, whatever its historical origin may have been, is practically a mutual contract between the people and their governors, and exists under such recognized conditions that political tyranny has become an anachronism.

What has been said above with regard to the impracticability of separating entirely the powers of government to correspond to the activities of government should not mislead any one with regard to the fundamental value of the theory propounded by Montesquieu. There is an essential truth in the theory, well brought out by Madison in the *Federalist:* "The powers properly belonging to one department ought not to be directly and completely administered by either of the other departments; . . . Neither of them ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers." The important point of this conception of the theory lies in the qualifying words *directly* and *completely* and *overruling.* The fact that one department may have partial agency in, and control over, the acts of other departments is clearly recognized, but the independence in spirit in each of the three departments of government is emphasized. The constitutions of the leading states in the world to-day have been drawn with the essential truth of the theory of the separation of powers in mind.

CHAPTER IV

THE LEGISLATIVE

Superior Position of Legislative.—Although in theory the three departments in the governmental organization are of equal importance, in actual practice the legislative department is seen to have the greatest power. In all governments, that department exercises a measure of control over the executive and judiciary, either by its office of allotting funds for the expenses of other departments or by its regulations for their performance of their functions. It is fitting, therefore, that we should discuss the legislative department before any of the others.

Powers of the Legislative.—Under all constitutions in democratic states the powers of the legislative are very broad. To the legislative is intrusted the power to consider and promulgate laws, which power includes also the power to amend or repeal existing laws, and in most cases to originate by one process or another a change in the constitution itself.

Legislative Body Commonly Composed of Representatives.—In the ideal democracy so important a function as this could be intrusted only to a deliberative assembly consisting of the entire body of citizens,—as was done in the small city-states of ancient Greece, and as is done at present in certain of the small cantons of Switzerland. In the great democratic states of the present day, however, the huge masses of population and the vast extent of territory have rendered the direct participation of the whole body of citizens impossible. To take the place of such a general deliberative assembly and to retain so far as practicable the participation of the people at large in the legislative functions, various systems of *representa-*

tion have been devised by which certain individuals, by one method or another, are selected or appointed to act as *representatives* of the whole mass of the people in the legislative functions.

I. Bicameral Legislative Bodies

Organization of Legislative into Two Chambers.—It is the common practice at the present day to have the legislative body organized in two separate branches,—chambers, or houses, as they are commonly called. This bicameral legislature, originating by a process of unconscious evolution out of the separate deliberative assemblies of the former different social orders, has proved in experience to have such decided advantages over a legislature of a single chamber that it has superseded the single chamber (unicameral) system in all the important countries of the world.

Necessity of Difference in the Composition of the Two Chambers.—To assure these advantages, however, it is necessary that the two houses be not mere duplicates of each other. It is obvious that the mere division of the total number of representatives into two chambers, where all the representatives were chosen under the same system, would not operate to make the deliberation in one chamber different in any way from that in the other: it would serve only to retard legislative action.

Various Methods to Insure Difference Found in Upper Houses Only.—The several states vary widely in the methods by which they insure a different character of representation in the two legislative chambers. The variance is found, however, mainly in the composition of the upper house of the legislature; the composition of the lower house is determined in much the same way in all the democratic states.

Lower Chambers the Same.—As a general rule, the members of the lower chamber are elected directly by the people, the state being divided into electoral districts of a size determined by the population, and the electors of each district vot-

ing for their representative. The right to vote, the suffrage, for members of this lower house is commonly liberally extended, thus making this chamber most truly popular and representative of the masses of the people in the state. The lower chamber is thus quickly responsive to public political opinion and feeling.

Upper Chambers Different.—The characteristics of the composition of the upper houses cannot be dismissed so briefly. In several of the more important states there is no similarity between the methods of choice, and even in those presenting a superficial similarity closer examination reveals vital differences.

England.—In England the composition of the upper house is unique in that, with the exception of four jurists appointed for life by the monarch and of certain church dignitaries, the sole qualification for membership is a peerage. Of the total membership, seven hundred and twenty-eight, the Scotch peers occupy sixteen seats, the Irish peers twenty-eight seats, and the English peers the remainder. The right of English peers to a seat in the House of Lords is hereditary, descending from one peer to his heir.

Criticism of English System.—This hereditary principle of membership in the upper legislative house is open to severe criticism. No warrant of ability goes with blood-descent. Often the Lords have shown an obstinate blindness to the unalterable course of history and have persisted in trying to stem the flow of liberal government to insure the safety of their own selfish interests, with the result that in recent years the state has taken measures to shear away much of their power, giving them as a body only a right to retard the action of the lower house. And yet strong arguments have been advanced to show that the Lords are capable of being an effective part of the government of England, in that their property is of various kinds, city, country, and commercial, and in that, as they are dependent upon no party or parties for election, their judgment is less liable to be prejudiced by ulterior motives than the judgment of members of the lower house.

Other States with Hereditary Members or Members Appointed by the Monarch.—The hereditary principle is not used for the determination of the entire membership of the upper house in any other great state. In Spain, together with a proportion of nobles having hereditary membership, are members appointed for life by the monarch, and a certain number of elected members. In Italy, outside of the princes of the blood who possess seats by right, the members of the upper house are all appointed by the monarch subject to the approval of the upper house itself. In Denmark a small proportion of the members is nominated by the monarch and the others are elected.

Germany.—The upper house (Bundesrath) in the former German Empire was of curious composition, representing the conditions under which the German Empire originated. The Bundesrath was composed of members appointed by the princes of the various states in the federation. The members of the Bundesrath were wholly responsible to their respective princes and had no hereditary right to membership. The seats were distributed among the component members of the federal Empire as the votes were distributed in the old German confederation, Bavaria, however, having six seats instead of four.

In post-war Germany, the upper chamber is known as the Reichsrat. In that body each state has at least one vote. The larger states have one vote for each million inhabitants, provided however that an excess population equal to the population of the smallest state in the federation is to be reckoned as according an additional vote. In order to keep down the relative representation of Prussia, it is further provided that no state shall be accredited with more than two fifths of all votes. The actual delegates representing the states of the federation must be members of the cabinets of their respective states.

Other States All Have Members Elected.—Outside of the states specifically named above, the members of the upper houses, as of the lower, are elected to their seats. Thus the

constitutions of France, Switzerland, Belgium, Norway, Sweden, Holland, and the United States provide for the election of members of the upper house.

Necessity for Elective Upper Houses of Insuring Difference Between the Two Houses. Methods.—In those countries wherein members of both legislative chambers are elected, the logical absurdity already mentioned of making the upper chamber a mere duplication of the lower has led to arbitrary distinctions in the method of election of members, in the constituencies represented by members, in the qualifications of candidates, and in the tenure of office of members. The elections for the lower chamber may be direct, for the upper may be indirect; the constituency for the members of the lower chamber may be small, for those of the upper chamber, large; the qualifications of candidates for membership in the lower may be markedly different from those of candidates for the upper; the tenure of office for the members of the lower may be some years shorter than that for the members of the upper.

Direct and Indirect Elections.—The members of one chamber may be elected by direct election and those of the other chamber by indirect election. In other words, the voter may be allowed to choose directly the man who shall represent him in the lower chamber, but may not be allowed to vote directly for the one who shall represent him in the upper chamber. In the latter case, he may be allowed to choose an intermediary who in conference with other intermediaries shall select the representative.

Such is the system in France. The members of the lower house, or Chamber of Deputies, are chosen by the direct vote of the people; the members of the upper house, the senate, are chosen by indirect vote in the following way: the senators representing each *département* (a *département* is the largest administrative division in France) are chosen by a body composed of officials originally elected by the people, namely, the deputies of the *département,* the members of the general coun-

cil of the *département,* members of the councils of the various districts (*arrondissements*) of the *département,* and delegates elected by the commune councils, these last named being in the majority. In the United States, until the passage of an amendment to the constitution providing for the election of senators by direct vote (1912), the members of the upper house of the national legislature were chosen by the legislatures of the various commonwealths.

Purpose of Indirect Elections.—The intent of the system of indirect elections is to remove the election of one branch of the legislature from immediate popular control. Undoubtedly the idea sprang from a distrust of the people. It was the theory that a higher grade of men would be selected for the upper house if this selection were made by a relatively small body elected by the people. It was supposed that the heat of factional struggle, which among the people at large sometimes results in the selection of unfit men, would be less liable to sway the judgment of the intermediary body.

In practice, however, the system has not worked well. Where political parties are strongly developed, the intermediaries have been pledged delegates of a party. The indirect election strictly carried out tends to lessen the voter's interest in the result, for it is not in human nature to be as interested in the selection of a proxy as in the selection of the representative himself. Again, where a comparatively small body of men are concerned in the final selection of a representative, the chances of corrupt influence are much greater than where all the voters are concerned. It is not easy to bribe the whole electorate. On the whole, then, the tendency has been to introduce the direct system of election. The general argument advanced long ago still holds, that if a voter is fit to choose his proxy, he is equally fit to choose his representative.

Variations in the Constituencies.—Variations in the constituencies electing a member to the lower and upper house form a common method of differentiating between the character of the houses. Invariably the constituency electing a

member of the upper chamber is very much larger than that electing a member to the lower house. The number of members in the upper chamber is as a result uniformly less than the number in the lower, and, theoretically at least, the members are men of superior prominence and ability. The makers of the constitution of the United States hit upon the happy device of utilizing the upper house to equalize the rights of the component commonwealths of the union in order to offset the great differences in representation in the lower house, due to the differences of population in the various commonwealths. Hence they provided that each commonwealth should be represented by two members in the upper house. Switzerland copied the system of the United States, allotting two members of the upper house to each canton and one to each one-half canton. In France the members of the upper house are elected from *départements*, of which there are ninety, but the number elected from each *département* varies from two up to ten.

Variations in the Qualifications.—Another general method of differentiating between the character of the two houses is to require different qualifications for membership in the upper house from those required for membership in the lower. In all states it is required that members of each house shall be citizens, for it is obvious that aliens, owing no allegiance to the state, should have no voice in the determination of the policy of government. In most states the age limit for membership in the legislative houses is placed above the legal age limit for the exercise of citizenship, and furthermore the age limit for membership in the upper house is higher than that in the lower house. For example, in Italy and Belgium the age limit for membership in the upper house is forty years, for membership in the lower house is thirty years; the United States, in common with many other states, sets the age limit for the upper house at thirty and for the lower house at twenty-five. In this regard it may be stated as a general rule that eligibility for election to membership in the upper house requires

an age greater than eligibility for election to membership in the lower house.

Variations Due to Different Tenure of Office in the Two Houses.—Many states have made another marked difference between the two chambers by making the tenure of office longer in the upper than in the lower. Combined with this longer tenure in the upper house is a device whereby a proportion of that chamber shall be renewed at stated periods. Thus in the United States members of the lower chamber are elected for two-year terms, but members of the upper house for six-year terms, with arrangements for the renewal of one third of the latter chamber every two years. In France members of the lower house are elected for four years, but those of the upper house for nine years, with renewal of one third every three years. The purpose of this difference is to constitute an upper house of a more stable and permanent character. A certain continuity of policy is assured which would be inconceivable if the composition of both houses were subject to complete change at similar intervals.

Summary of Methods by Which Upper House Is Made Different from Lower.—By the adoption of one or more of the above practices, then, states have tried to insure that the upper elective chambers shall not be a mere duplicate of the lower elective chambers. In general, the attempt has been made to create an upper chamber which shall be composed of persons with a broader knowledge of national needs because they are not responsible to so local a body of voters, of persons with superior intelligence and prudence for the weighty deliberations on state affairs, inasmuch as age is universally conceded to ripen and mature the powers of the understanding, and of persons who shall be able to conceive and carry through a continuous policy because their tenure of office is longer.

Advantages of Bicameral Legislature.—And now, briefly, what are the advantages obtained by having two legislative houses rather than one? The first and fundamental advantage lies in the safeguard this second (upper) house provides

against hasty, ill-considered legislation. The lower chamber, directly responsible to the people and dependent at frequent intervals upon the people for office, has often proved itself unduly influenced by a transient popular clamor for a measure which mature deliberation would show to be unwise. Such a measure, when passed by the lower house, is not so lightly passed by the upper. In the latter, men with a broader conception of statesmanship, with a tenure of office which may outlast the popular whim, and with an accumulated experience in political affairs, subject the proposed measure to a most careful scrutiny, amend it, or perhaps reject it entirely. Furthermore, it is conceivable that a single house endowed with the enormous power of the legislative function might become tyrannical. Against such a possibility the existence of a second chamber is a safeguard. The upper house from this point of view becomes a guarantee of the liberty and security of the people at large. A third advantage of the existence of a second (upper) chamber lies in the opportunity it gives for the fair representation of elements in the state which in a single popularly elected house might not be represented. Thus in the United States and Switzerland the upper house is used, as has been said, to give an equal representation to the several commonwealths which compose the Union. If our Congress were a single body similar in composition to the present lower house, one thickly populated commonwealth like New York would have an unfair advantage in the legislative over a thinly populated commonwealth like New Mexico. Some states of the world have made provision for the representation of landed or moneyed interests in the upper house by restricting the suffrage for members of such house to persons of high property qualifications. Such a device, however, has tended to create on the part of the nation at large a distrust of the motives of a house so constituted.

Disadvantages of Bicameral Legislature.—The system of a bicameral legislature is, of course, not wholly without disadvantages. There has at times been strong suspicion that a

lower house has passed legislation with the deliberate intention of embarrassing the upper house or of having the upper house reject it. Such cases may occur where the majority in the two houses is of different political complexion, or where the members of the lower house yield to what they realize is a passing popular clamor in order that they personally may be reëlected to their seats. Furthermore, the attainment of legislation is relatively slow. The debates are many times reproduced in the upper house from the lower and no new arguments advanced. Again, the upper houses have proved so conservative that in many cases they have lost the confidence of the people at large.

II. Powers of the Legislative Chambers

Equal Powers of the Two Houses.—In general, the two chambers are endowed under the constitution of the several states with equal powers. Either chamber may introduce legislative measures, either chamber may amend or reject such legislation when introduced, and the consent of both chambers is necessary for the passage of any bill whatever. The powers of the upper chamber in the new German republic are, however, much restricted. In the case of amendments to the constitution, it may by vote of disapproval, followed by a request within two weeks for a referendum, force an amendment to be referred to the people for decision. In case of ordinary legislation, it may coöperate with the cabinet in initiating legislation, and may submit legislative proposals of its own to the cabinet which the cabinet is required to forward with or without its approval to the Reichstag. After a bill has been passed by the Reichstag, the upper house by a vote of rejection may force the Reichstag to reconsider; but if the Reichstag on reconsideration passes the bill by a two-thirds majority, it becomes law subject to the promulgation of the President. In case of such disagreement between the two houses, the President in his discretion may submit the bill to the people for decision by referendum.

Exception: Money Bills.—The constitutions of the various states commonly provide that, in the case of any appropriation bill—"money bill," as it is commonly called, a bill having to do with the raising or appropriation of money—the powers of the upper chamber shall be more limited than those of the lower. Usually provision is made that money bills may be introduced only by the lower house, and that the action of the upper house shall be more or less perfunctory. In England, until very recently, it was commonly supposed that the upper house had no possible alternative to passing a money bill, but in 1910 the House of Lords precipitated a memorable conflict by rejecting the budget submitted to it from the lower house, as a result of which conflict the House of Lords was definitely shorn of its power of any finality of action on any bill. In some states, as France and the Netherlands, although the upper chamber may not originate or amend money bills, it has the right to reject them, thus throwing the bills back into the lower house for further discussion. In the United States, although the upper house may not originate money bills, it has the right to amend such bills; and it uses this right to such an extent that its powers in this regard are practically equal to those of the lower house.

Although the imitation of the English system was responsible in the first place for the greater power of the lower house in money legislation, the reasonableness of the arrangement is responsible for its retention in modern times. The house which is most directly elected by and subject to the people should control the raising and spending of that money which is procured only by the taxation of the people. In the economic life of a state, the question of national finance is most important; it is reasonable that this question, which is of personal interest to every citizen, should be under the control of his direct representative in the national legislature.

Relative Position of the Two Houses in Powers.—The power over money bills and the direct popular election of members have resulted in giving the lower house of the legis-

lative body a predominating influence in government. Whenever there is a conflict between the two chambers, public sympathy is always with that body which it has directly elected and which it has power at relatively short intervals to influence and change. Thus in England, France, Italy, and a number of less important states the upper chamber is dominated by the lower. Conditions in the United States and Switzerland, where the upper house represents the constituent commonwealths of the union, and where almost equal control over the finances is vested in each of the two houses, are different and have resulted in an upper chamber of exceptional power.

III. Rules of Procedure in Legislative Business

Need for Rules of Procedure in Legislative Business.—In a national legislative body where such a mass of business is continually pressing for attention, it has been necessary to devise certain methods of procedure to prevent confusion and interminable delay. The legislatures in all the leading states of the world have bodies of rules in accordance with which business must be transacted. These rules are, of course, made by the legislative bodies themselves and may upon occasion be amended or entirely disregarded. It is impossible to make these rules few in number and simple in character; indeed, Mr. Bryce is authority for the statement that in our own legislature experience through one entire session of Congress is necessary before a new member of the House of Representatives can learn the rules of procedure.

General Rules of Procedure.—There are certain rules which are common to the legislative bodies in many of the leading states which will illustrate in a general way the working of the legislative body.

(1) It is a general rule that a bill be subjected to three "readings" at intervals of time before its final passage. The object of this primarily is to insure the proper consideration of each bill and thus to prevent hasty legislation. In some cases

this rule has degenerated into a mere formality whereby only the title and number of the bill are mentioned for the first two times, no serious consideration being given to the substance of the bill by the whole house until its final reading. In other cases, however, notably in the English Parliament, the bill is voted upon at each reading, and its passage through each of the three stages provides opportunity for debate and serious consideration.

(2) Another general characteristic of procedure in legislative bodies is the reference of bills to committees. It has been found impossible to consider in the whole house each of the thousands of bills presented in a session, so that to expedite business numerous standing committees are created to which bills may be referred. In the Senate of the United States, for example, there are over fifty such committees. When a bill is introduced and read (usually by title and number only), it is referred at once to the appropriate committee. The bill may never be referred out of the committee,—most bills never are,—and in this case it dies, but within the committee it receives, theoretically at least, the consideration it deserves. Each committee is thus given extensive power, for upon its report in most instances the house acts. The committee may destroy a bill by an adverse report, may introduce a substitute of a very different character, or may (as indicated above) allow the bill to die by not referring it out to the house.

(3) A third rule commonly found in legislative chambers is one for restricting debate. Experience has shown the advisability of providing the majority of a house with the means of ending discussion and demanding a vote. This is done in our House of Representatives by moving "the previous question," which motion, if carried by a majority of the quorum present, operates to force a vote on the bill under discussion. In the House of Commons any member may make a motion to close the debate, but it is within the discretion of the speaker whether the motion shall be put to vote or not. The fault of the system by which debate may be closed is evident, namely,

that it provides the majority with a weapon by which legitimate discussion may be throttled; but the evils of the opposite system, whereby the opponents of a legitimate measure can by endless speeches hold up all the work of the legislature, have led to its adoption. Until 1917, the United States Senate was an exception to this rule. The senators held fast to the principle of unlimited debate. The abuse of the privilege, however, on the part of certain individuals led to the adoption (March 8, 1917) of a rule providing that, on the petition of sixteen members supported after an interval of two days by a two-thirds vote of the senate, debate on a pending bill should be brought to a close, each senator being limited thereafter to one hour's time and no amendments being permitted except by unanimous consent.

IV. The Individual Legislator

The Position of the Member of the Legislative.—The problem confronting a member of the legislative body, whether in the lower or the upper chamber, is very complex. His is a divided responsibility, a responsibility on the one side to the constituency which he represents, a responsibility on the other side to the state for which he is engaged in framing laws. The clash of the interests of the two is often enough very real. Theoretically, it may be argued that these two interests are the same, that the welfare of the whole state is conditioned upon the welfare of each of its constituent parts; but practically, as separate measures are introduced and discussed, each individual member is forced to reconcile as best he can the interests of his particular locality with the interest of the whole state, and vote accordingly.

Instructed vs. Uninstructed Representatives.—The difficulty of finding men who truly represent their constituencies has led to a discussion of the advisability of having instructed representatives, *i.e.* representatives instructed upon their election how to vote upon certain issues which it is known are to be introduced in the legislature. The argument for an in-

structed representative is that his duty is to serve merely as the mouthpiece of those who elected him, to record the collective will of his constituents. Without denying the responsibility of the representative to his constituents, a different view of the position of the representative should be emphasized. A representative is a person elected by his constituents to do what they would do were it possible for all of them to act in his place, to weigh the pros and cons of debate, to consider the bearing of each measure, not alone on his own small district, but on the whole state. A representative is elected to think, decide, and act, for and in the place of the people of his constituency. To bind him by rigid instructions before he takes his place in the legislature, before he hears the arguments on the one side and the other, free from the circumscribed prejudices of his own district, before he estimates the good or evil possibilities for the country at large, is to deprive him of his capacity as *representative* and to make him merely a *delegate*. From this point of view England, France, Germany, Italy, and Switzerland, all favor and provide for uninstructed representatives. The United States, though without definite provision, has tended toward the same ideal.

Statistics and Illustrative Citations

Method of Choice, Size of Constituencies, Qualifications of Members, Tenure of Office, etc., of Legislative in Different States

LOWER CHAMBER

Country	Total Membership	Size of Constituencies	Method of Choice	Qualifications of Members	Tenure of Office	Salary
Great Britain	707	One member per 70,000 population.	By direct election in districts, the right to vote being confined to adult males, and females who have reached the age of 30 years	Any male or female of full age and citizenship, except English and Scotch peers, English, Scotch, and Irish judges, clergymen or priests, government contractors, and holders of various specified offices	5 years	£400 a year Speaker has £5000 a year

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

UPPER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
Great Britain	(1922) 728		Mainly hereditary; elected or appointed members are peers or high dignitaries	1. Lords temporal. The peerage: Scottish peers send 16 representatives, elected after each general election to sit until Parliament is dissolved; Irish peers elect 28 representatives for life. Lords of appeal, judges appointed by the sovereign, not more than 4 in number, have dignity of baron for life. 2. Lords Spiritual, consisting of Archbishop of Canterbury, Archbishop of York, and 24 bishops according to seniority	Life, except for Scottish elected peers who sit until Parliament is dissolved	None

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

LOWER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
France	610	Each department has a minimum of 3 deputies. It is entitled to 1 for every 75,000 of its population, and 1 additional for a majority fraction of that number	Each voter is allowed as many votes as there are seats to be filled, and votes for specific candidates. A candidate who receives the votes of over a majority of the voters is elected. In case not all the seats are thus filled, a proportional vote system is applied to determine the remaining delegates	Citizenship; age, over 25; residence, not less than 6 months in one town or commune. No member of a family that has reigned in France is eligible	4 years	27,000 francs per annum

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

UPPER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
France	314	Elected from the *départements*, the number from each *département* varying from 2 to 10, except from certain territories and colonies, which have 1 each	Indirect election, by (1) body composed of the deputies of the *départements;* (2) the members of the general council of the *département;* (3) members of the councils of the *arrondissement;* and (4) delegates elected by the commune councils	Citizenship; age, over 40. No member of a family that has reigned in France is eligible	9 years, one third retiring at the end of each 3 years	27,000 francs per annum

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

LOWER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
Germany	(1921) 469	Districts vary in size, and the number of delegates depends on the number of persons voting. In general, there is 1 delegate for each 60,000 voters	Universal, equal, direct and secret suffrage by all men and women over 20 years of age; in accordance with the principles of proportional representation	Citizens who have reached the age of 25 years	4 years	

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

UPPER CHAMBER

COUNTRY	TOTAL VOTES	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
Germany	66 as follows: Prussia 26 Bavaria 10 Saxony 7 Wurtemberg 4 Baden 3 Other States 16 — 66	Each state has at least 1 vote. In the larger states there is 1 vote for every million of its inhabitants, and 1 additional for any excess equal at least to the population of the smallest state. States may send as many delegates as they have votes	Confined to members of individual state cabinets, with the exception that one half of Prussia's members must be representatives of her provincial administrations	The individual states decide upon the qualifications necessary for their own representatives	Dependent upon principle of responsibility to state legislature	

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

LOWER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
Italy	508	Electoral districts consist of Provinces represented by at least 10 deputies. The largest district, Milan, sends 20 deputies	Direct election, with *Scrutin de liste*. Voters, male and female, must be adult citizens	Qualified citizens at least 30 years of age. Government officials and ecclesiastics are not eligible	5 years	15,000 lire per annum

UPPER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
Italy	(1920) 368	Number which may be appointed by king is not limited	Nomination by the king Princes of the blood have the right to membership upon the attainment of their majority	Over 40 years of age and of special distinction in any of several branches	Life	None

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

LOWER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
United States	435 divided among the commonwealths on a basis of population	1 representative for each 212,407 population A reapportionment is made after each census, but thus far none has been made to correspond to figures of the 1920 census	Direct election by qualified voters in single electoral districts	Qualified citizen, 25 years of age, 7 years a resident of the United States, and a resident of the commonwealth from which chosen	2 years	$7500 a year and traveling expenses at 20¢ per mile Speaker has salary of $12,000 a year

UPPER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
United States	96	2 members from each commonwealth irrespective of the size or population of the commonwealth	By direct election by qualified voters	Qualified citizen, 30 years old, 9 years a resident of the United States, and resident in the commonwealth from which chosen	6 years	Same as for lower house, but the Vice President of the United States acts as presiding officer

CHAPTER V

THE EXECUTIVE

I. Executive as Agent of the Legislative

The executive is primarily that organ of government which is responsible for putting the laws into effect and securing their due operation throughout the state. Thus, primarily, the executive is the administrative agent of the legislative.

Duties and Functions of Executive as Administrative Agent of Legislative.—The duties and functions of the executive when acting in his primary capacity as the administrative agent of the legislative are varied and important. The executive is responsible for the collection of all public moneys, whether from internal taxation or from tariff on imports, and for the expenditure of such moneys; for the relations of the state with all other states in the family of nations; for the maintenance of the national defense by the use of the army and navy if needful; for the preservation of civil rights to individual citizens by the use of the police power if necessary; for the utilization of the natural resources of the country in a manner which shall most benefit the whole body of the citizens of the state; for the efficient supervision of all agencies affecting the general interests of all citizens, as agencies of transportation, communication, and the like; for the insurance of equitable relations between the great bodies of capital and labor, that the general prosperity of business may be forwarded at the same time that the rights of individuals are safeguarded. Such are among the most important functions of the executive organ acting as the administrative agent of the legislative in a modern democratic state.

Personnel of Executive Necessary to Act as Administrative Agent of Legislative.—The personnel of the executive department charged with administering the laws of the country is large in number. All members of the army and navy, all the officials of the various departments of state, as the State Department, the Treasury Department, the Department of the Interior, etc., all diplomatic and consular representatives, all revenue collectors of whatever kind, all of the thousands of assistants, clerks, and the like necessary for the subordinate duties in the various departments,—all these are a part of the executive in that they are concerned, however humbly, with the administration of the laws of the state. In its personnel the executive far outnumbers the other branches of government.

Unity Advisable for Executive Head.—For the headship of this great department experience has proved that it is wise to have a single person. For legislative deliberation many heads are better than one, but for executive action, the requirements of unity, resolution, and at times quickness of decision are best served by one head. Thus we find a king, an emperor, a czar, a sultan, a president, or the like at the head of each of the governments in the civilized world to-day. Switzerland presents the single notable exception to this general rule in that it has an executive head composed of a council of seven persons, each sharing the actual executive power equally with his colleagues.

Nominal and Actual Executive Heads.—A distinction should be observed between those states in which the executive head is actually in control of his functions, and those in which the executive head is only nominally in control, his functions being actually determined by others. In the United States the executive head, the President, is an actual executive. He may receive advice and may consult with many persons both in and out of official life, but the final decision and all the responsibility rest with him. In England, France, post-war Germany, and Italy, on the contrary, a body of ministers determines the policy and dictates the action of the executive

head. The executive head in these states is still a single person, and all executive action must be taken nominally by him, but in actual fact decision and responsibility rest upon the body of ministers.

Appointment of Assistants to Executive Head.—To cope with the vast amount of business included in the administration of the laws, a correspondingly vast number of officials is necessary. The selection and supervision of these officials in a large measure fall upon the executive head. Thus he appoints diplomatic representatives, postmasters, officers of the army and navy (although these appointments are now largely a matter of regular promotion), revenue agents, and the like. Much of the success of his administration depends upon the wisdom of his choice.

In various countries the abuse of the appointing power in its exercise to repay political debts, thus ousting worthy employees of the state and replacing them with inexperienced persons, has led to the establishment of a civil service system, whereby a large number of positions in the service of the state are open to merit as shown by competitive examinations. Thus, in the United States, certain grades of postmasters and a large proportion of the clerks engaged in executive departments hold their positions secure from political changes. The number and importance of the offices remaining under the direct appointing power of the President in this country, however, still make this power one of the most important he wields for the good or evil of the administration.

Responsibility of Executive Head for the Work Done by His Appointees.—It is not to be understood that the responsibility of the executive head ends with the appointment of a subordinate in the department. If the governor-general of India is at fault in any matter, the responsibility falls upon the English ministry to whom he is subordinate; if the French representative in Tangiers makes trouble for his nation, the attack in France is made upon the ministry conducting the government; if our foreign minister to Mexico involves us in

needless difficulties with that country, our criticism is directed against our President. The share of the executive head is thus a very real one.

II. Executive Functions Distinct from those as Agent for the Legislature

The chief executive has functions of the greatest importance entirely aside from those which he performs in his primary capacity of administrative agent for the legislative. In actual practice, the duties of the executive as administrative agent of the legislative, important as they are, are largely performed in routine manner by the army of assistants in the executive branch of government, but the powers which we shall outline below are exercised by the chief executive himself.

Function of Recommending Legislation.—In his relations with the legislative the chief executive commonly has means of suggesting, initiating, or influencing legislation on matters of general concern. The means by which this end is accomplished differ radically in different states.

Under the English system the ministry, which is the *actual* executive head, is itself a part of the dominant party in the House of Commons, itself frames legislative measures, superintends their enactment by the lower chamber, and influences in one way or another the considerations of the upper chamber.

In post-war Germany, the executive head (the President) of the republic is a nominal executive, the real executive being a cabinet ministry, wholly responsible to the legislative body.

In France the executive head (the President) is invested with the power to initiate legislation directly, but comparatively seldom avails himself of the privilege. There the real power is in the hands of the ministry, and it is the part of this ministry to prepare, introduce, and defend legislative measures.

In the United States neither the executive head (the President) nor any member of his cabinet is a member of the legislative, nor has the executive head any direct representative in the legislative body. He may, however, have an important part

in initiating and influencing legislation in various ways. For example, under the constitution he is required to give from time to time "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 fulfills this requirement by regular messages delivered to Congress at the beginning of each of its regular sessions and by such special messages as he may deem needful throughout the sessions. The amount of influence which these messages have upon the legislative body may be great or little, depending upon the political relations between the executive and the legislature, the wisdom of the suggestions, and the personal aggressiveness with which the suggestions are followed up. Furthermore, although the President has no accredited representatives in the Congress, he always has friends of his own party who will introduce measures in just the form he desires.

Veto Power.—In most states a very important legislative power in the hands of the executive head consists in his constitutional right to veto any legislative enactment. Such a veto is commonly under the constitution not final; in other words, provision is made for the passage of legislation over the veto of the executive head, generally by some unusual majority in the legislative chambers. In the United States, for example, the President must give his reasons for his veto, and the Congress must reconsider the measure in the light of the presidential veto, a two-thirds majority in each house serving to pass the measure in spite of the veto. In Germany, the executive is not empowered to veto legislation. He does have power, however, in case of a disagreement between the Reichstag and the Reichsrat, either to annul the proposed legislation by not promulgating it, or to refer it to the people. In case the Reichstag overrules the objections of the Reichsrat by a two-thirds majority, the executive no longer has the power of annulment but must either refer the measure to the people or promulgate it as law. The executive head of France has no power of veto upon the laws, but may require the reconsidera-

tion of proposed measures. In England the veto of the executive head is absolutely final, thus forming an exception to the general rule, but as a matter of fact the nominal executive head (king) never uses the veto, and the actual executive head (ministry) is the proposer and sponsor of all measures passed by the legislative body. The veto, therefore, has practically ceased to exist in English government.

Ordinance Power for Effecting the Operation of Laws.—Another function of the executive head which is legislative in character is the power to make and put into effect such ordinances as are necessary for the execution of legislative measures. Under this power the executive head actually drafts a very considerable amount of legislation. In the United States commonly the legislative measures are framed so as to cover all possible questions and to provide the means for their own proper execution; and yet all the regulations for the army and navy, all the rules governing the postal service, customs service, internal revenue service, civil service, consular service, are ordinances drawn up and promulgated by the executive. In foreign states, where legislative acts usually embody only the essentials, a much greater burden of ordinance preparation for the proper execution of the enactments devolves upon the executive, and this power is correspondingly more important.

Power over Meeting of Legislative Body.—In most states the executive head is invested under the constitution with certain rights relative to convening, adjourning, or dissolving the legislative body. In the United States, and in many of the republics patterned after it, the regular sessions of the legislative body are provided for by the constitution or by statute, and the power of the executive head is confined to convening the legislative in extraordinary session for special business. In other states, especially those in which a monarchical form has been retained, the executive head issues the summons to convene the legislative body and formally opens each session. Thus, in England, Parliament is always summoned by the king (at the direction of his ministry) and

opened with a formal address from the throne (prepared or carefully revised by the ministry). The King of Italy convokes the two houses each year; he also has the power to prorogue their sessions and to dissolve the Chamber of Deputies, provided however he convoke another within four months of the dissolution. In Japan, the Emperor convokes the imperial diet, opens its proceedings and closes them, and has the power to prorogue a session and to dissolve the House of Representatives.

Power in International Relations.—In the relations between states, *i.e.* in international relations, the executive head becomes the representative of the whole state. Through this executive head all communications to and from other states are transmitted. The powers of the chief executive in the matter of treaties and commercial agreements with foreign states are very great. Usually the consent of one or both houses of the legislative body is necessary to ratify a treaty negotiated by the chief executive, but in a few states, as in England, where the ministry is the actual representative of the legislature and is subject to direct control by the legislature, the legislative body has no share except to pass such measures as will make the provisions of the treaty effective. In the United States the Senate has claimed and exercised the right to amend treaties negotiated by the executive head as well as to ratify or reject them, and the House of Representatives reasonably shares in the ratification, rejection, or amendment of certain classes of commercial agreements, as reciprocity bills.

Power to Command Military Forces of the State.—The chief executive in all states is in supreme command of the military forces of the state. His right to distribute the forces both of the army and of the navy in such manner as seems most suitable, to choose officers, and, in case of war, to plan and carry through such operations as will bring ultimate success to the state, is unquestioned. The unanimous agreement of the great states of the world in concentrating the military forces of the state in the hands of the chief executive alone is

due to the necessity of having perfect unity in the operations of such forces.

Power in Connection with the Declaration of War.—Together with the supreme command of its military forces, the executive head is in some states, as England, invested with the power to declare war. In most states, however, the consent of one or both houses of the legislature is necessary to a declaration of war. Thus, in France the President must have the consent of both the Senate and the Chamber of Deputies. In the United States the right to declare war is vested in the Congress.

Pardoning Power.—Lastly, in most states the executive head is invested under the constitution with the power to pardon any one convicted by the courts of the state. Even under a most efficient system of administering justice it is impossible to be sure that no mistakes are committed; the pardoning power exists primarily for the purpose of correcting such mistakes as may be discovered.

Under some constitutions cases of impeachment or convictions for treason are specifically excepted from the operation of the executive pardon. The purpose of these exceptions is to prevent the possibility of an executive conniving with officials in high crimes against the state and using the pardoning power to shield himself and his accomplices from the results of conviction.

Summary of Functions and Powers of Executive Head.—From the preceding paragraphs the great importance of the chief executive is manifest. He is the chief of that department which is the agent of the legislative body in the vast and complicated business of administering the laws of the state; he has an important part in the actual framing of legislation, either by direct or indirect initiative of measures in the legislative body, or by his influence upon the legislative body, by his veto, or by the ordinances made to carry into effect measures passed by the legislative body; he has powers relative to the convening, adjourning, or dissolution of the legislative

body; he has extensive power in international relations, as in the framing of treaties or commercial agreements; he has supreme command and disposition of all the military forces of the state; he has the right to extend pardon to any person convicted in the courts of the state. The great powers of the executive head make correspondingly important for us a knowledge of the methods of selection of such head, his tenure of office, and the methods of procedure in undertaking the complicated duties of the position.

III. Selection of Chief Executive

Hereditary Method of Selecting Executive Head.—For the selection of the nominal head of the executive department two methods are used in modern states: the hereditary method and the elective method.

The hereditary method is a relic of the monarchical government of previous ages. By this method the person of the nominal ruler is determined by blood relationship, usually by direct descent from a previous monarch, and the selection in many states is confined to males. In all democratic states to-day the nominal ruler thus selected has his powers as executive head carefully hedged about by constitutional restrictions. In England, for example, the hereditary monarch has long since ceased to be more than a nominal executive head, all the executive power being in the hands of his ministry; in Italy and in Spain the king is now completely under the control of his ministry, though it is said that the monarch's personal influence is very great.

Elective Method: Direct Election.—The methods of selection by election vary, as did the selection by election of members of the upper house of the legislative body, in that in some states the executive head is elected directly by the people and in other states is elected indirectly by an intermediate body. The method of direct popular election is used in Germany alone among the great modern states which have been most under discussion; it is also used at present in a few important South

American republics, as Brazil and Peru. As an actual fact, however, the method of indirect elections in the United States has, under party influence, become a species of direct election, for the members of the intermediate body charged with selection are elected by parties and are under party pledge to cast their votes for a man previously named. So obvious is the uselessness of this intermediary body in the United States under present conditions that in 1913 the executive head proposed that measures be taken to provide for a system of direct election.

There is much to be said in favor of the direct election of the chief executive, the chief arguments being that this method is more nearly the ideal of modern democracy, and that an executive thus chosen is more likely to retain the confidence of the people at large. Those opposed to the selection of the executive head by direct election point to the great disturbance to the state which such direct election involves, and emphasize the proneness of the mass of the people to be swayed by demagogues.

Elective Method: Indirect Election.—There are two methods by which the executive head is chosen by indirect election: first, his selection by an intermediate body elected for the special purpose by the people of the state; and second, his selection by the legislative body.

The former of these methods is the system used in the United States and in certain American republics whose governments are modeled upon that of the United States, as Chile and the Argentine Republic. The advantages claimed for this system are that the final choice for so important an official in the government is restricted to a small body of select men, and that the excitement and turmoil attending a popular election are avoided; but it is a fact that, where the system has not, under party influences, become practically direct (as in the United States), the opportunities for intrigue and corruption in the small body are much increased.

The selection of the executive head by the legislative body

is the method of indirect election used in France. In that state the two chambers of the legislature meet in joint session (called the *national assembly*) at Versailles and ballot for the President of the Republic. The advantages claimed by the defenders of this method of selection are: (1) that in the legislative body are those men acquainted with the nature of the state problems and best fitted to choose an executive head to cope with these, and (2) that the choice of the executive head by the legislative body insures a cordial coöperation between the executive and legislative branches of government in the many and great tasks they jointly perform. Some very serious objections offset these, however. The possibility of intrigue where the head of one powerful branch of government is dependent upon the will of another branch of government is great; an ambitious and unscrupulous candidate might yield to the temptation to gain the office or to retain the office by promises of political rewards or influence to members of the legislative body. Furthermore, to put the burden of selecting the executive head upon the legislative body is to impose upon that body a task which is not primarily its function and which is certain to interfere, for a time at least, with legislative procedure. During the period when such a selection is in progress, ordinary necessary legislation is certain to be blocked or strongly affected; in an especially exciting contest for the executive officer, the time lost may be very considerable.

Tenure of Office of Elected Executive Heads.—In the case of elected executive heads, whether elected directly or indirectly, the tenure of office is commonly short, the idea being to keep the control of this office in the hands of the people or their representatives. In the United States the President is elected for four years and is eligible for reëlection; in France and Germany the term is seven years and the President is eligible for rëelection; the President of Chile is chosen for five years and is not eligible for reëlection. In general, the constitutions of the various states have been drawn with the purpose of making the tenure sufficiently long to insure a firmness and continuity

of policy and stability of administrative system on the part of each individual executive head. Were the tenure of office very short, as, for example, one year, a chief executive might be unwilling to risk the ill will of the people in pursuit of the policy he deemed right in view of the fact that he had to give up his position so soon, or he might hesitate to attempt some great undertaking in view of the burden he would have to pass on to his successors. On the other hand, were the tenure of office very long, as, for example, ten or fifteen years, the temptation would be correspondingly great for an unprincipled man to use all the means which his high position yields to gratify his ambitions and perpetuate his power indefinitely. In general, democratic states are in agreement upon a term of from four to seven years.

Eligibility for Reëlection of Elected Executive Heads.—The question of eligibility for reëlection is involved in this consideration. In favor of reëligibility it may be said that the state ought to have the opportunity to continue the services of an executive head who has been notably successful in the conduct of his office. Yet it is true, on the other hand, that the prospect of reëlection may have a harmful effect on the activities of the executive head, as where he is restrained from certain procedure for fear of incurring the displeasure of the electorate or where he yields to popular pressure in some matter of doubtful expediency that he may gain the favor of the electorate. In the United States the lack of any reference in the constitution to eligibility of Presidents for reëlection has permitted a number of chief executives to succeed themselves, but the custom established by the first President of restricting the number of terms to two has not up to this time been broken. In Mexico, where the term of the executive head is fixed at six years and the question of reëligibility not mentioned, one man (Diaz) was continuously in power from 1884 to 1910. In France a President has rarely succeeded himself, although he may do so under the constitution.

Nominal and Actual Executive Heads.—In the last few

paragraphs we have been considering the selection and tenure of office of the *nominal* executive heads of the states. It has already been emphasized that in some states the *nominal* executive head is not the same as the *actual* executive head. We should, therefore, include in our consideration an examination of the actual executive heads in such states.

The actual executive head differs from the nominal executive head most notably in England, France, post-war Germany, and Italy.

England: Cabinet System.—The system whereby the actual executive powers reside in a body of ministers rather than in the nominal executive head originated in England (where the body of ministers is known conventionally as the *cabinet*) and has attained its most typical form there. Like many other political institutions, as the bicameral legislature, the cabinet system is the product of evolution and not of deliberate invention.

The cabinet system developed out of the king's privy council of the eleventh century. This privy council, from the eleventh to the seventeenth century a powerful and important body, constituted an advisory board for the sovereign. Later kings, believing the privy council too large for confidential consultation, consulted only with a few of its leading members and thus developed an inner committee of the privy council, originally scornfully referred to as the *cabinet*, or the *cabinet council*. From this cabinet has descended directly the present cabinet. The privy council still exists, but all of its powers are in the hands of this select committee known as the cabinet. The cabinet has no recognized legal status; the king does not meet with it; it has no secretary and keeps no records of its deliberations; it is summoned by its head, the prime minister. It still remains, legally, a select committee of the privy council, and has no legal authority except by virtue of its being a part of the privy council.

The main features of the cabinet system as it exists at present in England are: (1) the appointment by the king of a

prime minister from the dominant party in the House of Commons; (2) the formation by the prime minister of a cabinet to be associated with him and composed entirely of leaders of the dominant party, usually members of the legislative body; (3) the complete and immediate responsibility of the cabinet to the popular chamber of the legislature; and (4) the assumption by the cabinet of all the functions of the executive in government and a direct participation by the cabinet in the functions of the legislative. The English cabinet acts as a body in initiating, defending, and urging legislation in the Parliament; and the members of the cabinet individually head the various executive departments which administer the laws of the state. So long as the policies and acts of the cabinet command majorities in the House of Commons, just so long the cabinet remains in power; when defeated in the Commons on a vote implying lack of confidence, one of two courses is open to it, either to resign or to dissolve Parliament and seek support in the members of a newly elected House of Commons.

France: Cabinet System.—The English system has never developed in France into the typical form in which it exists in England, owing largely to the fact that the party system in France has had a different development. The success of the English system is largely due to the fact that for generations only two great political parties have elected representatives to the House of Commons, one of which parties has always been able to command a majority of votes. In France, however, a large number of political groups exist in the Chamber of Deputies, and these groups are constantly shifting in membership and numbers, no one group under ordinary circumstances possessing a majority of votes. Thus, whereas in England the cabinet is all of one political party, in France the cabinet is a mixture of several political groups in the endeavor to satisfy a majority of the chamber. The cabinets in France are thus always compromise or coalition cabinets and are subject to sudden loss of legislative support on any shifting of members

of the coalition. Ministries rarely last long in France, the average in the history of the present government being less than a year. The results upon the continuity of policy and the stability of government are necessarily harmful. In its general features, outside of the above conditions, the system resembles the typical system in England; the cabinet as a whole participates in the legislative functions, and, by the appointment of its members at the head of the executive departments, administers the laws of the state. The presidency is largely a ceremonial office, none of its acts being legal without the approval of the ministry.

Italy: Cabinet System.—Conditions in Italy resemble those in France, in that the political groups are many and varied. The distinctions between them are more consistently maintained, however, so that there is less possibility of fusion or coalition and consequently more difficulty in choosing a ministry which can keep the support of the chamber. The king has theoretically somewhat more liberty in his choice of a cabinet, and somewhat more influence over it when chosen, than is the case in England, but in actual practice the leaders of the majority are forced upon him and the responsibility of the ministers to the lower chamber of the legislature is unquestioned. The main features of cabinet government exist here as in France. The executive acts of the king are completely controlled by his ministry.

Germany: Cabinet System.—The new German constitution provides for a cabinet system modeled upon that of Great Britain but containing some unique features. The head of the cabinet is the Chancellor, his status being analogous to that of the prime minister or premier. He is selected by the President and himself chooses his colleagues, who are nominally, though, appointed by the President. The Constitution provides, however, that "the national chancellor and the national minister require for the administration of their offices the confidence of the Reichstag; each of them must resign if the Reichstag by formal resolution withdraws its confidence." The German

constitution thus embodies in its fundamental law what is in other governments a traditional practice based, of course, on the necessity for coördination between the branches of government. In its attempts to assure complete subordination of the cabinet to the Reichstag and to the people, the constitution further provides that one-fifth of the members of the Reichstag may force the creation of an investigating committee with power to compel the administrative authorities to appear for testimony; that one hundred members of the Reichstag may require that body to consider the question of impeaching the President of the Republic, the Chancellor, or any minister, and further may, if the chamber gives a two-thirds majority in favor of the impeachment, require proceedings to be instituted before the Supreme Judicial Court.

Irish Free State: Cabinet System.—The cabinet system of the new Irish Free State is in most details similar to the systems in vogue in modern democratic governments with responsible ministries. In this case the cabinet consists in an Executive Council of twelve members responsible to the Chamber Dail Eireann. A unique feature of the system, however, is the requirement that the President, the Vice-president, and two other members of the Executive Council shall be members of the Parliament, whereas under ordinary conditions the remaining eight ministers shall not be members of Parliament.

Spread of Cabinet Government.—The system of cabinet government has decided advantages which have appealed to states abroad. The close and harmonious coöperation secured between the executive and the legislative branches of government, and the ultimate dependence of the actual executive upon the consent of the popularly elected house, have seemed to insure unity and facility in the operation of government on the one hand and the responsibility of the actual executive to the people on the other. The system is now established in Belgium, Holland, Norway, Sweden, and Denmark, in addition to the states which we have examined more in detail. On this

side of the ocean the conspicuous example of the United States has operated to cause imitation of the essentials of its system rather than that of England.

IV. Organization of Executive Department

Organization of Executive to Handle Mass of Business.—Emphasis has been laid upon the quantity and importance of the business which the executive is called upon to handle. The efficient performance of this business can be accomplished successfully only by careful organization and regular procedure. The "red tape," which is so often blamed for delay, is but a necessary part of the procedure; where in one case it may cause temporary and apparently needless delay, in a hundred it is responsible for the orderly and rapid dispatch of business.

Division of Work: Department Heads.—The most effective method of planning the work of the executive is to divide it into a number of parts. The duties of the executive, both in his administrative and executive capacity, fall naturally into several categories; there is, for example, his military duty, his naval duty, his duty in connection with foreign affairs, his duty in connection with internal affairs, his duty relative to the public moneys, etc. When various divisions are made, the executive assigns to each department a head or chief whose particular province it is to superintend the performance of the executive duties of that department. Thus in England the executive duties are distributed among as many as twenty departments; in France among twelve; in the post-war German Republic among nine; in the United States among ten, headed respectively by the Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-general, Postmaster-general, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, and Secretary of Labor.

Double Duty of Department Heads.—The heads of these various departments are appointed by the chief executive and act not only as the directing heads of their departments, but

also as an advisory body to the chief executive. In states such as England, France, Germany, and Italy the sovereign or president must choose his advisers from among the leaders of the majority in the legislature, and the nominal executive has to approve the policies of his ministers. In the United States, however, and other states similarly governed, the executive head is free to choose whatever men he wishes to head the various departments, and is likewise free to accept or overrule their advice.

Further Subdivision in Departments.—The process of subdivision in the business of the executive goes still further, each department being divided into bureaus headed by a commissioner responsible to the chief of the department. For example, the Department of the Interior in the United States contains among others the Bureau of Public Lands, the Pension Bureau, the Patent Bureau, the Bureau of Indian Affairs, the Census Bureau, the Bureau of Education, each headed by a commissioner taking his title from his office, as the Commissioner of Public Lands, the Commissioner of Patents, the Commissioner of Education.

Advantages of Division in Leaving Executive Head Free from Details of Executive Business.—This process of division and subdivision into a hierarchy of officials to perform the executive duties in no way removes the responsibility from the actual executive, but it does greatly simplify his labor. The details of administration are handled by subordinates experienced in, and, theoretically at least, especially qualified for, such work. The time of the actual executive is left free to use in the broader and more complicated problems of his office, such as the policies of the state in its relation to other states, the policies of the executive in his manifold and complex relations with the legislative body, the consideration of measures submitted to him from that body for approval or of measures and suggestions to be submitted by him to that body for its deliberations.

STATISTICS AND ILLUSTRATIVE CITATIONS

I

THE OVERMAN ACT, MAY 20, 1918

For the national security and defence, for the successful prosecution of the war, for the support and maintenance of the Army and Navy, for the better utilization of resources and industries, and for the more effective exercise and more efficient administration by the President of his powers as Commander in Chief of the land and naval forces the President is hereby authorized to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers hitherto by law conferred upon any executive department, commission, bureau, agency, office, or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this Act, and to this end is authorized to make such regulations and to issue such orders as he may deem necessary, which regulations and orders shall be in writing and shall be filed with the head of the department affected and constitute a public record: *Provided*, That this Act shall remain in force during the continuance of the present war and for six months after the termination of the war by the proclamation of the treaty of peace, or at such earlier time as the President may designate: *Provided further*, That the termination of this Act shall not affect any act done or any right or obligation accruing or accrued pursuant to this Act and during the time that this Act is in force: *Provided further*, That the authority by this Act granted shall be exercised only in matters relating to the conduct of the present war.

SEC. 2. That in carrying out the purposes of this Act the President is authorized to utilize, coördinate, or consolidate any executive or administrative commissions, bureaus, agencies, offices, or officers now existing by law, to transfer

any duties or powers from one existing department, commission, bureau, agency, office, or officer to another, to transfer the personnel thereof or any part of it either by detail or assignment, together with the whole or any part of the records and public property belonging thereto.

Sec. 3. That the President is further authorized to establish an executive agency which may exercise such jurisdiction and control over the production of aeroplanes, aeroplane engines, and aircraft equipment as in his judgment may be advantageous; and, further, to transfer to such agency, for its use, all or any moneys heretofore appropriated for the production of aeroplanes, aeroplane engines, and aircraft equipment.

Sec. 4. That for the purpose of carrying out the provisions of this Act, any moneys heretofore and hereafter appropriated for the use of any executive department, commission, bureau, agency, office, or officer shall be expended only for the purposes for which it was appropriated under the direction of such other agency as may be directed by the President hereunder to perform and execute said function.

Sec. 5. That should the President, in redistributing the functions among the executive agencies as provided in this Act, conclude that any bureau should be abolished and it or their duties and functions conferred upon some other department or bureau or eliminated entirely, he shall report his conclusions to Congress with such recommendations as he may deem proper.

Sec. 6. That all laws or parts of laws conflicting with the provisions of this Act are to the extent of such conflict suspended while this Act is in force.

Upon the termination of this Act all executive or administrative agencies, departments, commissions, bureaus, offices, or officers shall exercise the same functions, duties, and powers as heretofore or as hereafter by law may be provided, any authorization of the President under this Act to the contrary notwithstanding.

II

The Existing Organization of the Executive Departments in the United States [1]

The President

INDEPENDENT EXECUTIVE ESTABLISHMENTS

Smithsonian Institution (Education and Welfare):
- National Museum
- National Gallery of Art
- International Exchange Service
- Bureau of American Ethnology
- Astrophysical Observatory
- National Zoölogical Park
- International Catalogue of Scientific Literature

Columbia Institution for the Deaf (Education and Welfare)
National Home for Disabled Volunteer Soldiers (Education and Welfare)
Superintendent of the State, War, and Navy Buildings (Interior)
Civil Service Commission
Interstate Commerce Commission
Geographic Board (omitted)
Commission of Fine Arts (Interior)
Rock Creek and Potomac Parkway Commission (Interior)
Bureau of Efficiency
Federal Reserve Board
Federal Trade Commission
National Advisory Committee for Aeronautics (Defense)
Employees' Compensation Commission (Pensions)
Shipping Board:
- Emergency Fleet Corporation

Tariff Commission
Federal Board for Vocational Education (Education and Welfare)
Alien Property Custodian (Justice)
Railroad Administration
War Finance Corporation
Railroad Labor Board

[1] From *Congressional Record*. Feb. 16, 1923.

Federal Power Commission (Interior)
Veterans' Bureau (Education and Welfare)
Coal Commission
General Accounting Office (Treasury)
World War Foreign Debt Commission

(1) DEPARTMENT OF STATE

Secretary of State

Diplomatic Service
Consular Service
United States Sections, International Commissions
Undersecretary of State:
- Office of Economic Adviser
- Division of Latin American Affairs
- Division of Mexican Affairs
- Division of Current Information
- Division of Publications
- Office of Special Agent

Assistant Secretary:
- Division of Western European Affairs
- Division of Near Eastern Affairs
- Division of Eastern European Affairs
- Bureau of Appointments

Second Assistant Secretary:
- Division of Passport Control
- Visé Office
- Diplomatic Bureau
- Bureau of Indexes and Archives

Third Assistant Secretary:
- Office of Ceremonials
- Division of Far Eastern Affairs
- Bureau of Accounts
- War Trade Board Section

Director of the Consular Service:
- Consular Bureau
- Office of Consular Personnel
- Commercial Office
- Division of Political and Economic Information.
- Office of Chief Clerk

Solicitor

(II) DEPARTMENT OF THE TREASURY

Secretary of the Treasury

Undersecretary, in charge of fiscal bureaus:
- Commissioner of the Public Debt—
  - Division of Loans and Currency
  - Register of the Treasury
  - Division of Public Debt Accounts and Audit
  - Savings Division
- Commissioner of Accounts and Deposits—
  - Division of Bookkeeping and Warrants
  - Division of Deposits
- Treasurer of the United States
- Comptroller of the Currency
- Bureau of the Budget (independent)
- Bureau of the Mint
- Federal Farm Loan Bureau
- Secret Service Division

Assistant Secretary, in charge of foreign loans and miscellaneous:
- United States Section, Inter-American High Commission (Commerce)
- Bureau of Engraving and Printing
- General Supply Committee (independent)
- Departmental executive offices

Assistant Secretary, in charge of public health, public buildings, and Coast Guard (omitted):
- Public Health Service (Education and Welfare)
- Supervising Architect's Office (Interior)
- Coast Guard (Revenue Cutter Service to Defense; Life Saving Service to Commerce)

Assistant Secretary, in charge of the collection of the revenues:
- Bureau of Internal Revenue—
  - Prohibition Commissioner
- Division of Customs
- Customs Service

(III) DEPARTMENT OF WAR (DEFENSE)

Secretary of War
Assistant Secretary
Executive Offices

General Staff
War boards and commissions

Office of the Adjutant General
Office of the Inspector General
Office of the Judge Advocate General
Office of the Quartermaster General
Office of the Chief of Finance
Office of the Surgeon General
Office of the Chief of Ordnance
Office of the Chief of Chemical Warfare Service
Militia Bureau
Bureau of Insular Affairs (State)
Office of the Chief of Chaplains
Office of the Chief Signal Officer
Office of the Chief of Air Service
Office of the Chief of Infantry
Office of the Chief of Cavalry
Office of the Chief of Field Artillery
Office of the Chief of Coast Artillery
Office of the Chief of Engineers
- Board of Engineers for Rivers and Harbors (Interior)
- Board of Engineers, New York City (Interior)
- Supervisor of New York Harbor (Commerce)
- United States Engineer Offices (Interior)
- Lake Survey (Commerce)
- Mississippi River Commission (Interior)
- California Débris Commission (Interior)
- Board of Road Commissioners for Alaska (Interior)
- Office of Public Buildings and Grounds and Washington Monument (Interior)

Military Academy
Inland and Coastwise Waterways Service (Commerce)
Panama Canal
National Military Park Commissions (Interior)
Soldiers' Home (Education and Welfare)

(IV) DEPARTMENT OF THE NAVY (DEFENSE)

Secretary of the Navy
Assistant Secretary
Executive Offices

Office of Naval Operations
Navy boards

Bureau of Navigation:
- Hydrographic Office (Commerce)
- Naval Observatory (Commerce)
- Naval Academy

Bureau of Yards and Docks
Bureau of Ordnance
Bureau of Construction and Repair
Bureau of Engineering
Bureau of Aeronautics
Bureau of Supplies and Accounts
Bureau of Medicine and Surgery
Headquarters, Marine Corps
Judge Advocate General
- Solicitor

(v) DEPARTMENT OF THE INTERIOR

Secretary of the Interior
Executive Offices

First Assistant Secretary:
- General Land Office
- Reclamation Service
- National Park Service

Assistant Secretary:
- Bureau of Indian Affairs (schools to Education and Welfare)
- Bureau of Pensions (Education and Welfare)
- Patent Office (Commerce)
- Bureau of Education (Education and Welfare)
- St. Elizabeth's Hospital (Education and Welfare)
- Howard University (Education and Welfare)
- Freedmen's Hospital (Education and Welfare)

Administration of Alaska and Hawaii
Geological Survey
Bureau of Mines (Commerce):
- Government fuel yards (Bureau of Purchase and Supply, independent)

Alaskan Engineering Commission
War Minerals Relief Commission

(VI) DEPARTMENT OF JUSTICE

Attorney General
Soilcitor General

War Contracts Section
Assistant to the Attorney General:
    Antitrust Division
Assistant Attorney General:
    Division for the Defense of Suits
Assistant Attorney General:
    Public Lands Division—
        Office of Titles
        Office of Land Litigation in the District of Columbia.
Assistant Attorney General:
    Criminal Division
Assistant Attorney General:
    Division of Admiralty, Finance. Foreign Relations, Territorial and Insular Affairs
Assistant Attorney General:
    Division of Taxation, Insurance, Prohibition, and Minor Regulations of Commerce
Assistant Attorney General:
    Customs Division
Assistant Attorney General:
    Executive Offices
Solicitor of the Treasury (Treasury)
Solicitor of Internal Revenue (Treasury)
Solicitor for the Interior Department (Interior)
Solicitor for the Department of Commerce (Commerce)
Solicitor for the Department of Labor (Labor)
Bureau of Investigation
Office of Superintendent of Prisons (Education and Welfare)
Office of Pardons

(VII) POST OFFICE DEPARTMENT (COMMUNICATIONS)

Postmaster Gencral
Executive Offices

First Assistant Postmaster General:
    Postmasters' appointments division
    Post office service division
    Dead letter division

Second Assistant Postmaster General:
- Railway Mail Service division
- Railway Adjustments division
- Foreign mails division
- Air mail service division

Third Assistant Postmaster General:
- Money orders division
- Postal savings division
- Registered mails division
- Stamp division
- Finance division
- Classification division

Fourth Assistant Postmaster General:
- Rural mails division
- Motor vehicle service division
- Equipment and supplies division

Chief inspector
Purchasing agent (omitted)
Office of the comptroller
Solicitor

(VIII) DEPARTMENT OF AGRICULTURE

Secretary of Agriculture
Assistant Secretary
Executive Offices

Administration of Packers and Stockyards and Trading in Grain Futures
Weather Bureau
Bureau of Animal Industry
Bureau of Plant Industry
Forest Service
Bureau of Chemistry
Bureau of Soils
Bureau of Entomology
Bureau of Biological Survey
Division of Publications
States Relations Service
Bureau of Public Roads (Interior)
Bureau of Agricultural Economics
Insecticide and Fungicide Board

Federal Horticultural Board
Solicitor

(IX) DEPARTMENT OF COMMERCE

Secretary of Commerce
Assistant Secretary
Executive Offices

Bureau of the Census
Bureau of Foreign and Domestic Commerce
Bureau of Standards
Bureau of Fisheries
Bureau of Lighthouses
Coast and Geodetic Survey
Bureau of Navigation
Steamboat Inspection Service

(X) DEPARTMENT OF LABOR

Secretary of Labor
Assistant Secretary
Second Assistant Secretary
Executive Offices

Bureau of Immigration
Bureau of Naturalization
Bureau of Labor Statistics
Children's Bureau (part Education and Welfare)
Women's Bureau (part Education and Welfare)
Division of Conciliation
Employment Service
Housing Corporation

ESTABLISHMENTS UNDER CONGRESSIONAL DIRECTION

Library of Congress
Architect of the Capitol (Interior)
Government Printing Office (independent)
Botanic Garden (Agriculture)
Miscellaneous memorial commissions
National Forest Reservation Commission
Public Buildings Commission (independent)

III

Table of Ministers in England, France, and Italy since 1880

England Prime Minister			France Premier			Italy Premier		
Gladstone	Apr.	1880	Jules Ferry	Sept.	1880	Cairoli	July	1879
			Gambetta	Nov.	1881	Depretis	May	1881
			DeFreycinet	Jan.	1882			
			Duclerc	Aug.	1882			
			Fallières	Jan.	1883			
			Jules Ferry	Feb.	1883			
Salisbury	June	1885	Brisson	Apr.	1885			
Gladstone	Feb.	1886	DeFreycinet	Jan.	1886			
Salisbury	Aug.	1886	Goblet	Dec.	1886			
			Rouvier	May	1887	Crispi	July	1887
			Tirard	Dec.	1887			
			Floquet	Apr.	1888			
			Tirard	Feb.	1889			
			DeFreycinet	Mar.	1890			
						Rudini	Feb.	1891
Gladstone	Aug.	1892	Loubet	Feb.	1892	Giolitti	May	1892
			Ribot	Dec.	1892			
			Dupuy	Apr.	1893			
			Casimir-Perier	Dec.	1893	Crispi	Dec.	1893
Rosebery	Mar.	1894	Dupuy	May	1894			
Salisbury	June	1895	Ribot	Jan.	1895			
			Bourgeois	Oct.	1895			
			Meline	Apr.	1896	Rudini	July	1896
			Brisson	June	1898	Pelloux	June	1898
			Dupuy	Oct.	1898			
			Waldeck-Rousseau	June	1899			
						Saracco	June	1900
						Zanardelli	Feb.	1901
Balfour	July	1902	Combes	June	1902			
						Giolitti	Nov.	1903
Campbell-Bannerman	Dec.	1905	Rouvier	Jan.	1905	Fortis	Mar.	1905
			Sarrien	Mar.	1906	Sonnino	Feb.	1906
			Clemenceau	Oct.	1906	Giolitti	May	1906
Asquith	Apr.	1908						
			Briand	July	1909	Sonnino	Dec.	1909
						Luzzatti	Mar.	1910
			Monis	Mar.	1911	Giolitti	Mar.	1911
			Caillaux	June	1911			
			Poincaré	Jan.	1912			
			Briand	Jan.	1913			
			Barthou	Mar.	1913			

TABLE OF MINISTERS IN ENGLAND, FRANCE, AND ITALY SINCE 1880 (*Continued*)

ENGLAND PRIME MINISTER		FRANCE PREMIER		ITALY PREMIER	
		Doumerque	Dec. 1913		
		Ribot	June 1914	Salandra	Mar. 1914
		Viviani	June 1914		
		Briand	Oct. 1915		
Lloyd George	Dec. 1916			Boselli	June 1916
		Clemenceau	Nov. 1917	Orlando	Oct. 1917
				Nitti	July 1919
				Giolitti	June 1920
		Briand	Jan. 1921	Bonomi	June 1921
		Poincaré	Jan. 1922	Facta	Feb. 1922
Bonar Law	Oct. 1922			Mussolini	Oct. 1922

CHAPTER VI

THE JUDICIARY

I

The National Judiciary

Definition and Functions.—The judiciary is that organ of government charged with the interpretation and application of the law. To its part falls the task of deciding disputed points of law, of discerning and protecting the rights and privileges of individuals under the law, of determining infractions of the law and inflicting penalties therefor. The necessity for a department with such functions is due to the nature of government and its relations with individuals, and to the conflicts which inevitably arise between individuals themselves. Notice that the judiciary differs notably from the other two branches of government in that it cannot take the initiative. The judiciary cannot act until a case is directly brought before it for trial.

It is inconceivable that any legislative body, however wise and well organized, can foresee and provide for all the changes in social and economic conditions incident to the natural development of the state: it is the function of the judiciary to apply existing law to individual cases resulting from such changes. In states having a written constitution not subject to amendment by the ordinary processes of legislation, as is the case in the United States, it is possible that the legislative body will pass legislation not in accord with the provisions of this constitution: it is the function of the judiciary to determine whether or not legislation is constitutional. In all states the executive is vested with limited powers of inter-

ference with the liberties and property of the individual—powers necessary and proper if rightly used for the benefit of the whole people: it is the function of the judiciary to afford to any person who feels aggrieved a just and impartial hearing and to determine whether the executive power is legally exercised. In the modern state separate individuals are continually in dispute with one another as to their legal rights: it is the function of the judiciary to settle such disputes according to law. The laws of the state are continually being broken by individuals who try thus to prey upon society for their own gain: it is the function of the judiciary to try such individuals and to mete out to them such punishment as is fitting within the limits set by law.

The judiciary may be said to be the great adjusting force in government, on the one hand upholding the established rights of the individual against encroachment by another individual or against any conscious or unconscious usurpation on the part of the powerful legislative and executive branches of government, and on the other hand curbing the uprisings of individuals or bodies of individuals who rebel against the lawful functions of the legislative or executive branches.

The Personnel of the Judiciary

Qualifications of Judges.—The nature and importance of the judicial functions require two qualifications for the personnel of this department. The judges must be thoroughly qualified as to mind and character. They must have vast learning and broad legal experience, and must be marked for their integrity, firmness, and independence.

Means of Obtaining Judges with These Qualifications.—The existence of a personnel having such characteristics depends upon three factors: the method of selection, the tenure of office, and the rate of compensation.

Method of Appointment.—Three methods of choice exist: choice by legislative appointment, by executive appointment, and by popular election. Any one of these is open to theoreti-

cal objections. (1) The *legislative body* is hardly equipped to estimate fairly the ability and fitness of a man for judge: it is too liable to be swayed by party prejudice. Furthermore, the election of judges by the legislature tends to give the legislature a power over the judiciary which might foster tyranny. (2) The second of the objections just stated applies equally to the selection of judges by the *executive head;* this method, it is asserted, tends to place the control of the judiciary under the executive. (3) The method of selection by *popular election* is to be criticised on the ground that the people at large are not qualified to estimate the highly technical qualities necessary for judges; that they, as the legislature, are too liable to be swayed by party prejudices, and that judges elected by popular vote are under great temptation to temper their decisions to popular sentiment in order to increase their chances of re-election.

Of the three methods, the least objectionable is *selection by the executive,* when the confirmation of the selection is required by another branch, as is the case in our federal judiciary. One man can select better than many; and where confirmation is required by another body there can be little danger of improper appointment. This method is the one used in all great states of the world to-day. Furthermore, selection by the executive prevents the undignified intrusion of party politics. Control by the executive is prevented by the conditions of the tenure of office.

Tenure of Office of Judges.—In most of the states of the world at the present time judges are appointed to serve during good behavior. In other words, judges are appointed for life, subject to removal for cause, (i. e., as a result of impeachment proceedings). This provision for the tenure of office offsets the single important objection to choice by the executive head; namely, that such a method of choice gives the executive a degree of control over the judiciary. If the power of *appointment* and the power of *dismissal* were both vested in the chief executive, it is evident that he could if unscrupulous in the use

of these powers, have an immense influence over the judiciary; but where, after appointment, a judge is secure in his place for life, such judge may feel free to do his duty without prejudice of any kind, either for or against the chief executive. Judges are thus placed beyond the reach of fear or favor, and have nothing to consult except their own conscience. The waves of popular commotion cannot reach them; they have no occasion to court the good will of other departments. From the secure elevation on which they are thus placed, with all disturbing influences removed, they are left to the calm and fearless exercise of unbiased judgments, the rest of their natural life in which to perfect themselves for the conscientious exercise of their duty. In some countries, as Italy, the executive has the power to change the station of judges, reassigning them from one station to another on condition that such a reassignment be not to a station of lower rank. This power has been exercised at times to remove certain judges hostile to the executive policies to stations where their jurisdiction and decisions would not interfere with such policies. Action of this kind is in the nature of control by the executive over the judiciary and is partially responsible for the weakness of the judiciary in Italy. As a general rule, it may be stated that the tenure of office should be such as to allow no interference of any kind by another department, except when misbehavior of a judge is charged and proven.

Compensation of Judges.—The third factor to insure the high quality of judges is the compensation allowed them. It is manifest, first, that this compensation should be such as to enable a judge to devote his entire time and efforts to the service of the state, and second, that this compensation be in some way guaranteed to him so long as he shall serve the state. In the United States the salaries paid are low compared with the possible earnings in the practice of law. In the case of federal judges, salaries are guaranteed under the constitution not to be diminished during their term of office. Similar conditions exist in other great states, most of them, however,

merely guaranteeing that the salaries shall not be changed, thus leaving no chance for increase. With their material welfare provided for and secure for the future, the judges can do their duty with courage and independence.

Organization of Judiciary

Grades of Courts and Judges.—In discussing the executive we noticed a division and subdivision into departments and bureaus to correspond with the different character of the duties to be performed; similarly in the organization of the judiciary and of the courts we find divisions.

The most fundamental feature of division common to the judicial organization of all states is the division of the courts for the trial of cases into separate ranks or gradations, corresponding to the nature and importance of the cases involved. Thus in France the courts range upward from the courts of the justice of the peace (*juge de paix*), through the tribunals of the first instance (*tribunaux de première instance*), to the courts of appeal (*cours d'appel*), the assize courts (*cours d'assises*), to the court of cassation (*cour de cassation*). In the United States the entire country is divided into nine judicial circuits, and each circuit is subdivided into the number of districts, one or more to each state, as is determined by the volume of business before the courts. Each district has one district court and one or more district judges each holding two terms or sessions of court annually. The nine circuits have courts entitled "The Circuit Court of Appeals" and each court has three circuit judges, two of whom comprise a quorum, but with whom may sit a justice of the Supreme Court, or if necessary to form a quorum, one or more district judges. The number of judges sitting, however, in the Circuit Court of Appeals is never more than three. Above the Circuit Court of Appeals sits the Supreme Court, composed of nine justices (one Chief Justice and eight Associate Justices), six of whom are a quorum, and holding one session annually at the Seat of Government. In all the countries the attempt is made to give a

pyramidal arrangement to the system, its base being composed of a large number of courts distributed through the state according to the density of population and having a primary jurisdiction in most cases, and its apex being a single national supreme court to which cases of importance and difficulty may be carried on appeal.

Division According to the Nature of the Case.—The power of a court to hear and determine cases, and apply the law to them, is known as its "jurisdiction." The great majority of cases heard by courts fall either under its criminal jurisdiction, that is, the power to hear and to determine cases concerning those violations of public rights which comprise criminal law; or under its civil jurisdiction, that is, the power to hear and determine cases concerning the infringement of private rights or matters of constitutional or administrative law. On the continent of Europe the states generally have an additional system of courts known as administrative courts to handle cases where government officials are involved. In addition to these civil and criminal courts, and administrative courts, each state has special courts to handle cases of a special character, as ecclesiastical courts, commercial courts, courts of claims, etc. Of the divisions indicated above, the most important are those founded on the distinctions between criminal and civil jurisdiction, and those termed administrative courts; the jurisdiction and nature of these will be indicated in more detail.

All states distinguish between offenses which injure the state or community and offenses which injure the individual. The laws that prescribe the rules of civil conduct established by the governmental power in any state are known as National Law, (also known technically as *Municipal Law*) in contra-distinction to the laws that define the rights and duties of sovereign nations which is known as International Law. National Law is composed of two great divisions—Public Law and Private Law. Private Law deals with the rights, wrongs and duties of individuals as between themselves and generally speaking, con-

cerns persons, property or business. Public Law deals with the rights and duties of the state, and its relations with individuals, and generally speaking is classified under the headings of Constitutional, Administrative and Criminal Law.

Criminal Law concerns itself with the maintenance of public peace and order; it treats of those wrongs which the government notices as injurious to the community and punishes in what is known as a criminal proceeding in its own name. The wrongs referred to are known as crimes, and may be acts either of omission or commission, but either one to be criminal must be forbidden or commanded by the law on the grounds of public policy. The more serious crimes are known as, (1) *felonies* because the punishment authorized upon a finding of guilt is death or imprisonment in a penitentiary. Felonies may be classified as treason—a violation of the fundamental duty of allegiance to country or sovereign, crimes against the person —such as murder, rape, abduction, false imprisonment, etc; crimes against a habitation—such as arson, burglary; crimes against property—such as larceny, embezzlement, etc.; and the more serious offenses against justice, peace, public health, safety and morals, as well as offenses against the government such as counterfeiting and against the law of nations—such as piracy. (2) The less serious public offenses are known as misdemeanors and are punishable by fine and imprisonment *not in a penitentiary or state's prison.*

The civil jurisdiction of courts is concerned principally with the private rights of individuals in a community, infringement upon which does not necessarily constitute an offense against the public or community. Thus a dispute between two individuals as to the boundary line between their respective properties would, if no further interest were involved, naturally be a suit in civil law.

It is true that a single act may constitute a violation of a private right and at the same time constitute a public wrong; that is, it may give rise to an action for damages by a private individual and also be punishable by the state in a criminal

proceeding. For instance, you may be driving an automobile recklessly and run down and kill a man. The state in a criminal proceeding might and probably would bring you to trial for the homicide, and at the same time, a civil action might be brought by the man's heirs for damages. It is to be noted, however, that in such cases the private wrong is usually merged with the public wrong and criminal prosecution is given precedence. It is to be further noted that as a practical matter in such cases usually the criminal proceeding is the only action that is taken.

Civil and Criminal Courts.—The courts of various great states recognize by their organization this fundamental difference in the nature of cases. Although often the lower grades of courts, which are restricted to cases of small importance, have the same organization for the trial of both criminal and civil cases, the higher courts are usually divided. Thus in France the *cour de cassation*, the highest court of the French system, consists of three sections: the court of petitions (*chambre de requêtes*), the criminal division, and the civil division, the first named being a section which in civil cases submitted on appeal gives or denies the right of appeal to the civil court section; in England the distinct system of courts is more complete than in the countries just mentioned, civil cases of importance being tried in the county courts or in the High Court of Justice, and criminal cases in the courts of the general system, including the courts of the justice of the peace, the courts of quarter sessions, the assize courts, and the court of criminal appeal.

Systems of Administrative Courts in Foreign Countries.—The administrative courts form a notable feature of the organization of the judiciary in the great states of continental Europe. The purpose of these courts is to provide special tribunals for the trial of cases arising from disputes between individuals and administrative officials or from disputes between administrative officials themselves. The advantage claimed for these special courts is that the nature of adminis-

trative disputes is many times so peculiar that ordinary judges would not be qualified to determine the issue. When a government officer acting in his official capacity is a party to a dispute, he cannot, according to this theory, be treated like an ordinary individual, for if he be, the work of government is liable to be obstructed.

The objection to this system of administrative courts is that it tends to destroy the safeguard of the citizen against the tyranny of the administrative officials. In these special courts there is a tendency to emphasize the privileges of the administrative officials over the rights of the individual citizen. England and the United States have never introduced such courts. In both countries the officials of government (except the King, and the President during his term of office) are subject to the jurisdiction of the ordinary courts.

Organization of Judiciary Singly or in Small Groups.—Another notable feature of the organization of the judiciary for the performance of its work is that in all states the judges act, according to the nature and gravity of the cases under consideration or according to the courts in which they serve, either singly or in separate bodies relatively small in number. The judicial powers are not centralized under a single head, as are the executive powers, nor are they exercised by all the members of the judiciary in joint session, as are the legislative powers. A single judge may conduct cases in the lower courts, two or three judges together may conduct a court of a higher grade (as the circuit court of appeals in the United States), and a small body of judges may sit together in the highest court (as do the justices in the Supreme Court of the United States). The whole system is unified by the position of the supreme court at the top of the pyramid, but in all ordinary procedure the courts act separately and independently.

The Jury System.—A feature in the division of labor for the judiciary in England and the United States is the existence of the jury system. The right of trial by jury has come to be practically a most important element in the system in these

two states, to such a degree that it has been wittily said that the ultimate aim of the English constitution is to get twelve good men into a box.

A jury is a body of laymen summoned and sworn to inquire into the truth as to questions of fact raised in legal proceedings, whether criminal or civil. The jury and the judge act together in the case, the jury acting on the one hand as an assistant to the judge and on the other as a check on the judge. The function of the jury is the determination of matters of fact; the function of the judge is to apply the law to the state of facts determined by the jury. In consequence, the jury is a check upon the judge in whose hands too much power might be placed in case he were charged with the determination of questions of both law and fact. On the other hand, it is a very wise provision to leave the determination of the law, which in itself is a highly technical subject, in the hands of a man presumably well qualified for such duty. It is to be noted that in the United States under the provisions of Article 3, Section 2, Clause 3, of the Constitution, the trial of all crimes, except in the cases of impeachment, shall be by jury, etc. The phrase "trial of crimes" has reference to offenses against the United States only and such offenses must be defined by federal statutes before they can be tried in the federal courts because no common law offence exists against the United States. The jury which the Constitution requires for the trial of crimes is a body of 12 impartial men chosen from the district where the violation of the law has occurred and all of whom must concur in the guilt of the accused before he can be convicted. In the United States this rule applies only to federal cases and it is not improper for the states to provide for jury greater or less than twelve for the trial of offenses against the state in contradistinction to the federal law, nor is it improper to allow a conviction by the vote of a majority. As a matter of fact in certain western states in our country a majority of the jury can bring in a finding in a certain class of cases, in other classes of cases two-thirds must agree, in more serious cases three-

fourths must agree and in the most serious cases ten out of twelve must agree. This progressive principle, however, is not well received in the older and more conservative states where the idea that the trial by jury should consist of twelve men in which convictions can be had only on a unanimous verdict still maintains.

As stated above the Constitution requires all crimes against the United States to be tried before a jury. The requirements of a jury to-day, however, are practically the same as the requirements of centuries ago, and it is becoming more and more a question whether the trial by jury should not be abolished and more or less drastic reforms made in the methods of procedure. At present the system is hedged about by straight-laced demands and restrictions, and burdened by arbitrary antiquated forms. It is becoming more and more difficult to impanel a full jury of men who have education, experience and intelligence to permit them properly to decide even simple questions. One requirement for a juryman is that he shall have no previously formed opinion of the case before the court; in these days of almost universal education and rapid dissemination of knowledge this seems an absurdity that is in itself sufficient to condemn the present jury system.

Jurisdiction of State Courts. Federal and Commonwealth Courts in the United States.—In states where the judicial system is organized wholly as a unit in the organization of government, as in France and England, all the courts are state courts; in the United States, however, two separate and distinct systems of courts exist: the courts of the United States (the various grades of which have been outlined) and the courts of the separate commonwealths of the United States. In this country the courts of the various commonwealths handle the larger proportion both of civil and criminal cases. In general, the federal courts deal with cases in which the interests involved either concern the United States as a whole or are such as could not properly be handled by the separate commonwealth courts. Thus cases of the following

character would fall within the jurisdiction of the federal courts:

(1) To all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or to be made under their authority.

(2) To all cases affecting ambassadors, other public ministers and consuls.

(3) To all cases of admiralty and maritime jurisdiction.

(4) To controversies to which the United States shall be a party.

(5) To controversies between two or more states.

(6) To controversies between a state and citizens of another state.

(7) To controversies between citizens of different states.

(8) To controversies between citizens of the same state claiming lands under grants from different states.

(9) To controversies between a state or citizens thereof and foreign states, citizens or subjects.

Powers and Functions of the Judiciary in Matters Affecting Legislation

In the due exercise of its functions and powers the judiciary in all states is called upon at times to make decisions which practically create new law. In England, for example, the legislative body is, as we have emphasized, the supreme law-making body of the state, but the judicial body is called upon in many cases to interpret and apply the laws enacted by that supreme body. The interpretations and applications made by the judiciary establish precedents and themselves become part of the fundamental law of the state. This function is not one expressly granted by the constitution, but one which is a practical necessity demanded by varying social and economic conditions in all states. As in England, so in other countries, the courts have gradually built up a very considerable amount of what is known as "judge-made" law.

Notable Power of the Supreme Court in United States.—In this connection the Supreme Court of the United States has exercised very notable and unusual powers; namely, (1) the power to set aside and declare to be without force any enactment of the federal legislative body which in the opinion of the court is not in accord with the constitution, and (2) the power to interpret authoritatively the language of the constitution. These powers are exercised on the ground that the constitution is the fundamental law of the state and that the judicial power is expressly extended by the terms of the constitution "to all cases, in law and equity, arising under this constitution, the laws of the United States, etc." (U. S. Const., Art. III, Section 2). The right of the Supreme Court to exercise these powers has been acknowledged since early in the history of the country.

Importance and Result of this Power in the United States.—The importance of these powers in the hands of the judiciary upon the character of the government and the position of the judiciary is beyond estimation. In England, Parliament is supreme: the courts may declare certain acts unwarranted under the existing law, but Parliament may remedy this by the passage of a new law in the ordinary processes of legislation. In the United States, however, the rôle of guardian of the constitution has been intrusted to the Supreme Court: the legislature has not the power of passing on the legality of its own acts, as it has in England; nor do the executive head and the legislature have it in their power to put in force acts of doubtful constitutionality. The Supreme Court has been unsparing in its use of these powers, having thus defeated over twenty acts of Congress. The Supreme Court, as a result, occupies a position of dignity and respect that the judiciary occupies in no other country in the world. It is the steadying influence in government, the ultimate authority withstanding any attempts by the legislative body to use its great power in a tyrannical way, the body whose judgments are most respected by public opinion throughout the state.

Judicial Procedure

The Parties to an Action.—Of the procedure in the courts only a few general features can be given. In every case in all countries there must be an accuser or plaintiff, an accused, and a judge. It should be noted that in the United States no case can be brought before a court without an information or statement under oath, or an indictment by a grand jury. These preliminary proceedings are intended to prevent the presentation of unfounded or capricious actions to a court. In England and the United States, and to some extent in other countries, the judge may in cases of some importance be assisted by a jury. The accused is permitted to be represented and defended by a lawyer or advocate, who has thus become in all civilized states to-day an essential element in civil and criminal cases. The accuser or plaintiff may be an individual citizen, also represented by a lawyer or advocate, or may be (and commonly is in the states of continental Europe) an official of a government department charged with this duty.

The Jurisdiction of Various Courts.—The grade or degree of court into which a case is first introduced is determined by the nature and importance of the case. In civil cases a common custom is to give original jurisdiction to the lowest grade of courts in cases involving an amount less than a stipulated value, as two hundred dollars; and to give original jurisdiction in cases involving greater value to a higher grade of courts. In criminal cases a similar procedure is followed, petty offenses being dealt with in courts of the lowest grade and crimes of a serious nature in courts of higher grade. Cases of a special nature not coming within the province of the regular system of courts are dealt with in special courts. In some countries, as France, where doubt exists as to which courts properly have jurisdiction, as, for example, whether the regular civil courts or the administrative courts should receive a case, courts of conflict have been established, the function of which is to refer cases to the proper courts. Commonly, under the system in

various countries, certain specified cases fall in the jurisdiction of a certain grade of courts; thus, for example, in the United States under the constitution the Supreme Court has original jurisdiction "in all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party." [1]

The Right of Appeal.—A feature of the judicial system common to all great states is the right of appeal from the decision of a court of a lower grade to that of a court of a higher grade. The right of appeal may be exercised in both civil and criminal cases and in the special cases in the special courts. The ground on which an appeal is based is usually error in trial. The granting of an appeal is in some cases a perfunctory matter, being insured under the legal system, and in other cases is in the power of the higher court itself; but such grant is not understood in any case to prejudice the upper court in its consideration of the trial by, and decision of, the lower court. The action of the superior court, upon appeal, may be either to affirm the decision of the lower court, or to reverse it and to remand the case to the inferior court for retrial. A case of importance may be carried from the lower courts to the highest court in the state by successive appeals. So commonly is the right of appeal taken and granted that it has been found necessary in many states to have intermediate courts which deal with these cases alone, such as the circuit court of appeals in the United States, the court of criminal appeals in England, and the court of petition (*chambre des requêtes*) in France.

Penalties and Punishments.—In the modern state the infliction of penalties and punishments in the courts is upon a very different basis from that of former times. For criminal offenses the punishments in former times were usually severe, such punishments being inflicted on the theory of revenge or retaliation, or on the theory that cruel punishments served to frighten prospective criminals. Thus in England of the eigh-

[1] U. S. Constitution, Art. III, Section 2.

teenth century there were approximately two hundred and fifty offenses for which the punishment was death, and as late as 1830 a nine-year-old boy was sentenced to death for breaking a shop window and stealing a trifling amount of paint. The jails and prisons, too, were kept in an inhuman way. In modern times the theory of the aim of punishment has entirely changed. Painstaking investigation of the causes of crime has inspired the belief that on the one hand a considerable proportion of crime can be prevented, and that on the other many criminals can be converted into useful members of society. Thus prevention of crime and reformation of the criminal have become the ends of modern justice. In view of these ends, the offenses for which death (capital punishment) is meted out have been reduced in numbers, juvenile courts have been established to deal with the cases of children, reform schools have taken the place of prisons for youthful offenders, prisons have been made light, clean, and airy, criminals have been taught useful trades during their term of imprisonment, and numerous social agencies outside of the judicial department coöperate in finding honest work for the released criminal.

II. International Courts

In relatively modern times, serious attempts have been made to establish an international tribunal to which nations might refer cases in dispute for arbitration. These attempts have been bound up with the endeavors by thoughtful and forward-looking men in various advanced countries to remove, or at least to minimize, the chances for disastrous wars. The burdens of the huge armaments maintained by great nations in the late XIXth and early XXth centuries and the devastating possibilities of war between nations of the first rank gave special impetus to the movement during this period and the increasing number of cases in which nations were willing to pledge themselves to arbitration and to abide by arbitrators' decisions gave the movement its direction.

International arbitration of disputes is no new practice be-

tween nations. Continued resort to arbitration by nations of all ranks during the XIXth century in cases not considered as involving national honor gave this practice the stamp of authority. Some two hundred cases had been thus settled in the last three quarters of the century, and it is interesting to note that Great Britain and the United States had frequently taken the initiative in suggesting this practice. Before 1899, the United States had participated in fifty-seven arbitrations, of which twenty were with Great Britain.

It is true, however, that though this method of settling disputes of certain kinds had become common, it had by no means been reduced to a system. Each presented anew a problem involving the suggestion of arbitration by one or another of the interested parties, the acceptance of this method of settlement, the selection of the arbitrators, the agreement upon a statement of the case and the conditions of arbitration. Negotiations were always delicate and often protracted. The possibilities of a resort to war were ever present.

The Czar of Russia has the honor of having taken the first decisive step in an endeavor to bring the nations of the world into common agreement upon measures to reduce the possibilities of war and to systematize and legitimize existing practices for the settlement of international disputes. In August, 1898, he issued invitations to all nations diplomatically represented at St. Petersburg to participate in a conference at The Hague, the agenda of the proposed conference being as follows:

"1. An understanding not to increase for a fixed period the present effective of the armed military and naval forces, and, at the same time, not to increase the budgets pertaining thereto, a preliminary examination of the means by which a reduction might even be effected in future in the forces and budgets above mentioned.

"2. To prohibit the use in the armies and fleets of any new kind of firearms whatever, of any new explosives or any powders more powerful than those now in use either for rifles or cannon.

"3. To restrict the use in military warfare of the formidable explosives already existing, and to prohibit the throwing of

projectiles or explosives of any kind from balloons or by any similar means.

"4. To prohibit the use in naval warfare of submarine torpedo boats or plungers, or other similar engines of destruction; to give an undertaking not to construct vessels with rams in the future.

"5. To apply to naval warfare the stipulations of the Geneva Convention of 1864 on the basis of the articles added to the Convention of 1868.

"6. To neutralize ships and boats employed in saving those overboard during or after an engagement.

"7. To revise the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, which has remained unratified to the present day.

"8. To accept in principle the employment of the good offices of mediation and facultative arbitration in cases lending themselves thereto, with the object of preventing armed conflicts between nations; an understanding with respect to the mode of applying these good offices, and the establishment of a uniform practice in using them."

The conference assembled May 18, 1899. As might have been expected, certain of the great powers were so suspicious of the motives underlying proposals for reduction of armaments that none of these could be brought to a decision. Germany was the worst offender in this respect, its delegates having been carefully instructed to refuse an agreement to or any discussion of such proposals. It was difficult in this atmosphere of mutual suspicion to obtain an agreement even upon a declaration of principles upon any question of international relations. Conventions were finally adopted with respect to the laws and customs of land warfare, and to the adaptation of maritime warfare to the principles of the 1864 Geneva Convention. The most prominent result of the conference, however, finally adopted after long deliberation, was a "Convention for the pacific settlement of international disputes," which provided for a permanent court of arbitration.

Although called a "court of arbitration," this institution consisted merely of an eligible list of persons designated respec-

tively by the nations present at the Hague Conference, from among whom tribunals might be formed for the determination of such controversies as parties concerned might agree to submit to them. No nation was required to submit its dispute to the court; and the court was not in permanent session, its proponents apparently fearing the possibility of a court in session with no cases referred to it. This first court was but an experiment, and its future depended wholly upon the willingness of the contracting nations to make use of the machinery thereby provided.

To the credit of the nations, it may be stated that from the very beginning they adopted a favorable attitude toward the court. Not only were cases soon presented to it, but within five years thirty-three treaties on the principles adopted at The Hague were made among European states, by the terms of which these states bound themselves to submit to the Hague court all disputes over questions of law or over the interpretation of treaties, providing such questions did not involve the vital interests, independence, or honor of these states.

The continued desire of statesmen in advanced countries to forward the cause of international peace led President Roosevelt as early as the autumn of 1904 to sound the nations with respect to the practicability of holding another international conference at The Hague. It was not until after the close of the Russo-Japanese war, however, that the time seemed opportune. The conference finally assembled June 15, 1907, and remained in session until October 18 of the same year.

This Second Hague Conference was scarcely more fruitful than the First Conference. The European nations were frankly sceptical of any results, and certain of them again were jealous and suspicious. Nothing was accomplished toward disarmament, or toward limitation of armaments, Germany again being the most prominent objector. And the deliberations over the extension of arbitration yielded no practical results. The Conference's most important work lay in the adoption of conventions to regulate methods of warfare, as one respecting the

opening of hostilities, one affecting the laying of automatic submarine contact mines, one defining the rights and duties of neutrals in land warfare as well as in naval warfare, and one creating an International Prize Court. These results were far below the hopes of the leaders of the movement.

Unsatisfactory as the results seemed, the Conference gave added impetus to the conclusion of arbitration treaties between nations. The United States took the lead in these treaties, negotiating twenty-five in the years between 1908 and 1910.

The next great step forward was taken by President Wilson. He recommended to the nations of the world provisions that all questions whatsoever which failed to be settled by diplomacy should be submitted to an international commission for investigation and report. This commission was to be chosen as follows: each of the parties to the dispute was to select one of its own nationals and one member from another country, and the two parties were to agree jointly upon a fifth member. It was further provided that the parties to the dispute should refrain from a declaration of war or from any act of hostility during the progress of investigation, and from any increase of armament or military preparation. This plan was presented to thirty-nine nations, and quickly accepted in principle by thirty-five of them. By the end of 1914, treaties embodying these principles had been signed with these thirty-five states, including such powers as Great Britain, Germany, France, Italy, Spain, and Japan.

The World War, of course, sharply interrupted this development of an international peace movement and judicial settlement of disputes between nations. Throughout the war, however, the minds of thinking men were bent upon projects for making such a world catastrophe impossible in the future, and their plans were commonly directed toward a fuller and more perfect development of the international court idea. It is not remarkable, therefore, that in the covenant of the League of Nations, included in the final treaty of peace, is to be found,

among articles bearing upon international arbitration, the following:

COURT OF INTERNATIONAL JUSTICE

ARTICLE 14. The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

In accordance with this article, the council of the League of Nations appointed an advisory committee of jurists which sat at The Hague in 1920 and formulated a plan for the establishment of such a court. This plan with a few modifications was adopted by the assembly of the League on December 13, 1920.

The court thus established holds annual sessions at The Hague and is "composed of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are juris-consults of recognized competence in international Law." [1] The court consists of fifteen members, eleven judges and four deputy judges, elected for nine years by the assembly and by the council of the League of Nations. Its jurisdiction comprises "all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force." [2] Cases are brought before the court ordinarily by a written application addressed to the registrar; hearings are public unless specially ordered secret; and careful minutes are kept of the proceedings. Questions are decided by a majority of the judges, and the judgment is final and without appeal. "An application for revision of a judg-

[1] Art. 2 of Statute for the Permanent Court of International Justice.
[2] *Ibid.*, Art. 36.

ment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the court and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application for revision must be made at latest within six months of the discovery of the new fact. No application for revision may be made after the lapse of ten years from the date of the sentence." [1]

The judges of this court were elected September 14 and 15, 1921. Included among the number was John Bassett Moore, a distinguished jurist of the United States. The court met June 15, 1922, for its first annual session. Three cases were at once presented to it, all having to do with labor problems and all calling for interpretations of the Treaty of Versailles. Opinions were duly handed down on these cases, and the court adjourned. In November, the President of the Court summoned an extraordinary session of the court for January 8, 1923, to consider a matter referred to it by the Council of the League of Nations concerning a difference between the British and French governments regarding French nationality decrees in Tunis and Morocco (French zone).

On February 24, 1923, interest of the people of the United States was directed toward the nature and functions of this court by a message from President Harding recommending the adhesion of the United States to the special "Protocol of Signature." This protocol reads as follows:

PROTOCOL OF SIGNATURE

The Members of the League of Nations, through the undersigned, duly authorized, declare their acceptance of the adjoined Statute of the Permanent Court of International Justice, which was approved by a unanimous vote of the Assembly of the League on the 13th of December, 1920, at Geneva.

Consequently, they hereby declare that they accept the juris-

[1] *Ibid.*, Art. 61.

diction of the Court in accordance with the terms and subject to the conditions of the above-mentioned Statute.

The present Protocol, which has been drawn up in accordance with the decision taken by the Assembly of the League of Nations on the 13th of December, 1920, is subject to ratification. Each Power shall send its ratification to the Secretary-General of the League of Nations; the latter shall take the necessary steps to notify such ratification to the other signatory Powers. The ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The said Protocol shall remain open for signature by the Members of the League of Nations and by the States mentioned in the Annex to the Covenant of the League.

The Statute of the Court shall come into force as provided in the above-mentioned decision.

Executed at Geneva, in a single copy, the French and English texts of which shall both be authentic.

December 16, 1920.

The President recommended that reservations be attached to the acceptance of the court by the government of the United States, as follows:

1. That such adhesion shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the covenant of the League of Nations constituting Part I of the treaty of Versailles.

2. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other states members respectively of the council and assembly of the League of Nations in any and all proceedings of either the council or the assembly for the election of judges of the Permanent Court of International Justice or for the filling of vacancies.

3. That the United States will pay a fair share of the expenses of the court as determined and appropriated from time to time by the Congress of the United States.

4. That the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

STATISTICS AND ILLUSTRATIVE CITATIONS

THE SUPREME COURT OF THE UNITED STATES AND ITS POWER OVER LEGISLATION

I

Chief Justice Marshall's famous decision in the Marbury *v.* Madison case, 1803, contains the argument upon which rests the power of the United States Supreme Court to interpret the constitution and to declare legislation by Congress null and void when such legislation is not in accord with the constitution. The pertinent part of the decision is as follows:

The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it. That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established, are deemed fundamental: and as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments. The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The dis-

tinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or that the legislature may alter the constitution by an ordinary act.

Between these alternatives, there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act, contrary to the constitution, is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature, illimitable.

Certainly, all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void. This theory is essentially attached to a written constitution, and is, consequently, to be considered, by this court, as one of the fundamental principles of our society. It is not, therefore, to be lost sight of, in the further consideration of this subject.

If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow, in fact, what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

It is, emphatically, the province and duty of the judicial department, to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So, if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case, conformable to the law, disregarding the constitution; or conformable to the constitution, disregarding the

law; the court must determine which of these conflicting rules governs the case: this is of the very essence of judicial duty. If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

Those, then, who controvert the principle, that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law. This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare, that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure. That it thus reduces to nothing, what we have deemed the greatest improvement on political institutions, a written constitution, would, of itself, be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the constructions. But the peculiar expressions of the constitution of the United States furnish additional arguments in favor of its rejection. The judicial power of the United States is extended to all cases arising under the constitution. Could it be the intention of those who gave this power, to say, that in using it, the constitution should not be looked into? That a case arising under the constitution should be decided, without examining the instrument under which it arises? This is too extravagant to be maintained. In some cases, then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read or to obey?

There are many other parts of the constitution which serve to illustrate this subject. It is declared, that "no tax or duty shall be laid on articles exported from any state." Suppose, a duty on the export of cotton, of tobacco or of flour; and a suit instituted to recover it. Ought judgment to be rendered

in such a case? Ought the judges to close their eyes on the constitution, and only see the law?

The constitution declares "that no bill of attainder or *ex post facto* law shall be passed." If, however, such a bill should be passed, and a person should be prosecuted under it; must the court condemn to death those victims whom the constitution endeavors to preserve?

"No person," says the constitution, "shall be convicted of treason, unless on the testimony of two witnesses to the same *overt* act, or on confession in open court." Here, the language of the constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the legislature should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these, and many other selections which might be made, it is apparent, that the framers of the constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature. Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: "I do solemnly swear, that I will administer justice, without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as . . ., according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States." Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? If it is closed upon him, and cannot be inspected by him? If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United

States, generally, but those only which shall be made in pursuance of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.

(Cranch 1, p. 137 ff.)

II

UNITED STATES SUPREME COURT DECISIONS DECLARING FEDERAL LEGISLATION UNCONSTITUTIONAL

United States *v.* Todd. Opinion not published (see statement, 13 How. 52).

Marbury *v.* Madison (1 Cranch, 137). Act of September 24, 1789 (1 Stat. 181). Congress has no power to give original jurisdiction to the Supreme Court in other cases than those described in the Constitution.

Scott *v.* Sanford (19 How. 393). Act of March 6, 1820 (3 Stat. 548). The Constitution of the United States recognizes slaves as property and pledges the Federal Government to protect it, and Congress can not exercise any more authority over property of that description than it may constitutionally exercise over property of any other kind.

Gordon *v.* United States (2 Wall. 561; see 119 U. S. 697). Act of March 3, 1863 (12 Stat. 765). The power conferred on this court is exclusively judicial, and it can not be required or authorized to exercise any other.

Ex parte Garland (4 Wall. 333). Act of January 24, 1865 (13 Stat. 424). The admitted power of Congress to prescribe qualifications for the office of attorney and counselor in the Federal courts can not be exercised as a means for the infliction of punishment for the past conduct of such officers against the inhibition of the Constitution.

Reichart *v.* Felps (6 Wall. 160). This has been classed as a decision declaring a Federal act unconstitutional. It determined the validity of certain patents and the power of the board issuing them, but the constitutional element or congressional act involved is difficult to determine.

The *Alicia* (7 Wall. 571). Act of June 30, 1864 (13 Stat. 311). This court can not acquire jurisdiction of a cause * * * though such transfer be authorized by the express provision of an act of Congress. Such provision must be regarded as an attempt, inadvertently made, to give to this court a jurisdiction withheld by the Constitution.

Hepburn *v.* Griswold (8 Wall. 603). Acts of February 25, 1862 (12 Stat. 345) and March 3, 1863 (12 Stat. 709). The making of notes or bills of credit a legal tender in payment of preëxisting debts is not a means appropriate, plainly adapted, or really calculated to carry into effect any express power vested in Congress, is inconsistent with the spirit of the Constitution, and is prohibited by the Constitution.

United States *v.* Dewitt (9 Wall. 41). Act of March 2, 1867 (14 Stat. 464). But this express grant of power to regulate commerce among the States has always been understood as limited by its terms and as a virtual denial of any power to interfere with the internal trade and business of the separate States.

The Justices *v.* Murray (9 Wall. 274). Act of March 3, 1863 (12 Stat. 755). The provision in the seventh amendment of the Constitution of the United States which declares that no fact tried by a jury shall be otherwise reëxamined in any court of the United States than according to the rules of the common law applies to facts tried by a jury in a cause in a State court.

The Collector *v.* Day (11 Wall. 113). Act of June 30, 1864 (13 Stat. 281). It is not competent for Congress, under the Constitution of the United States, to impose a tax upon the salary of a judicial officer of a State.

United States *v.* Klein (13 Wall. 128). Act of July 12, 1870 (16 Stat. 235). Now it is clear that the legislature can not change the effect of such a pardon any more than the executive can change a law.

United States *v.* Railroad Co. (17 Wall. 322). Act of June 30, 1864 (13 Stat. 284). A municipal corporation is a portion of the sovereign power of the State and is not subject to taxation by Congress upon its municipal revenues.

United States *v.* Reese (92 U. S. 214). Act of May 31, 1870 (16 Stat. 140). The power of Congress to legislate at all upon the subject of voting at state elections rests upon this (the fifteenth) amendment and can be exercised by providing

a punishment only when the wrongful refusal to receive the vote of a qualified elector at such elections is because of his race, color, or previous condition of servitude.

United States *v.* Fox (95 U. S. 670; R. S. 5132). It is competent for Congress to enforce by suitable penalties all legislation necessary or proper to the execution of the powers with which it is intrusted * * *. But it is otherwise when an act committed in a State has no relation to the execution of a power of Congress or to any matter within the jurisdiction of the United States.

Trade Mark Cases (100 U. S. 82; R. S. 4937-4947). That legislation is void for want of constitutional authority, inasmuch as it is so framed that its provisions are applicable to all commerce and can not be confined to that which is subject to the control of Congress.

United States *v.* Harris (106 U. S. 629; R. S. 5519). As, therefore, the section of the law under consideration is directed exclusively against the action of private persons without reference to the laws of the State or their administration by her officers, we are clear in the opinion that it is not warranted by any clause in the fourteenth amendment to the Constitution.

Civil Rights cases (109 U. S. 3). Act of March 1, 1875 (18 Stat. 336). The first and second sections of the civil rights act * * * are unconstitutional enactments as applied to the several States, not being authorized either by the thirteenth or fourteenth amendments of the Constitution.

Boyd *v.* United States (116 U. S. 616). Act of June 22, 1874 (18 Stat. 187). Held to be unconstitutional and void as applied to suits for penalties, or to establish a forfeiture of the party's goods as being repugnant to the fourth and fifth amendments of the Constitution.

Baldwin *v.* Franks (120 U. S. 678; R. S. 5519). Section 5519, Revised Statutes, is unconstitutional as a provision for the punishment of a conspiracy within a State to deprive an alien of rights guaranteed to him therein by a treaty of the United States.

Callan *v.* Wilson (127 U. S. 540; R. S. D. C. 1064). The provision in article 3 of the Constitution * * * is to be construed in the light of the principles which, at common law, determined whether or not a person accused of crime was entitled to a trial by jury; and thus construed it embraces not only felonies punishable in the penitentiary, but also some

classes of misdemeanors the punishment of which may involve the deprivation of the liberty of the citizen.

Counselman *v.* Hitchcock (142 U. S. 547; R. S. 860). In view of the constitutional provision, a statutory enactment, to be valid must afford absolute immunity against future prosecution for the offense to which the question relates.

Monongahela Navigation Co. *v.* United States (148 U. S. 312). Act of August 11, 1888 (25 Stat. 411). It does not rest with the public, taking the property, through Congress or the legislature, its representative, to say what compensation shall be paid, or even what shall be the rule of compensation.

Pollock *v.* Farmers' Loan & Trust Co. (157 U. S. 429). Act of August 27, 1894 (28 Stat. 553). A tax on the rents or income of real estate is a direct tax, within the meaning of that term as used in the Constitution of the United States. A tax upon income derived from the interest of bonds issued by a municipal corporation is a tax upon the power of the State and its instrumentalities to borrow money and is consequently repugnant to the Constitution of the United States.

Pollock *v.* Farmers' Loan and Trust Co. (Rehearing, 158 U. S. 601). Act of August 27, 1894 (28 Stat. 553). The tax imposed by * * * the act of 1894, so far as it falls on the income of real estate and of personal property, being a direct tax within the meaning of the Constitution, and therefore unconstitutional and void because not apportioned according to representation, constituting one entire scheme of taxation, are necessarily invalid.

Wong Wing *v.* United States (163 U. S. 228). Act of May 5, 1892 (27 Stat. 25). When Congress sees fit to further promote such a policy by subjecting the persons of such aliens to infamous punishment at hard labor or by confiscating their property, such legislation, to be valid, must provide for a judicial trial to establish the guilt of the accused.

Kirby *v.* United States (174 U. S. 47). Act of March 3, 1875 (18 Stat. 479). Held that that provision of the statute violates the clause of the Constitution of the United States declaring that in all criminal prosecutions the accused shall be confronted with the witnesses against him.

Fairbanks *v.* United States (181 U. S. 283). Act of June 13, 1898 (30 Stat. 451). A stamp tax on a foreign bill of lading is, in substance and effect, equivalent to a tax on the articles included in that bill of lading, and therefore is a tax

or duty on exports and therefore in conflict with Article I, section 9, of the Constitution of the United States.

James *v.* Bowman (190 U. S. 127; R. S. 5507). That amendment 15 relates solely to action by the United States or by any State and does not contemplate wrongful individual acts. While Congress has ample power in respect to elections of representatives to Congress, section 5507 can not be sustained under such general power, because Congress did not act in the exercise of such power.

Matter *v.* Heff (197 U. S. 488). Act of January 30, 1897 (20 Stat. 506). When the United States grants the privileges of citizenship to an Indian, gives to him the benefit of and requires him to be subject to the laws, both civil and criminal of the State, it places him outside the reach of police regulations on the part of Congress.

Rassmussen *v.* United States (197 U. S. 516). Act of June 6, 1900 (31 Stat. 358). The Constitution is applicable to that Territory (Alaska) and under the fifth and sixth amendments Congress can not deprive one there accused of a misdemeanor of trial by a common-law jury, and that section 171 * * * in so far as it provides that in trials for misdemeanors six persons shall constitute a legal jury, is unconstitutional and void.

Hodges *v.* United States (203 U. S. 1; R. S. 1977). The result of the amendments to the Constitution adopted after the Civil War was to abolish slavery and to make the emancipated slaves citizens and not wards of the Nation * * *. The United States court has no jurisdiction * * * to prevent citizens of African descent * * * from making or carrying out contracts and agreements to labor.

The Employers' liability cases (207 U. S. 463). Act of June 11, 1906 (34 Stat. 232). An act addressed to all common carriers engaged in interstate commerce, and imposing a liability upon them in favor of any of their employees, without qualification or restriction as to the nature of the business at the time of the injury, of necessity includes subjects wholly outside the power of Congress under the commerce clause of the Constitution.

Adair *v.* United States (208 U. S. 161). Art of June 1, 1893 (30 Stat. 428). It is not within the power of Congress to make it a criminal offense against the United States for a carrier engaged in interstate commerce, or an agent or officer

thereof, to discharge an employee simply because of his membership in a labor organization.

Keller *v.* United States (213 U. S. 138). Act of February 20, 1907 (34 Stat. 399). That portion of the act * * * which makes it a felony to harbor alien prostitutes held unconstitutional as to one harboring such prostitutes without knowledge of her alienage or in connection with her coming into the United States, as a regulation of a matter within the police power reserved to the State, and not within any power delegated to Congress by the Constitution.

United States *v.* Evans (213 U. S. 297). Act of March 3, 1901 (31 Stat. 1341). Hearing and deciding such an appeal for the purpose of establishing a rule of observance in cases subsequently arising is not an exercise of judicial power.

Muskrat *v.* United States (219 U. S. 346). Act of March 1, 1907 (34 Stat. 1028). That part of the act * * * which requires of this court action in its nature not judicial within the meaning of the Constitution, exceeds the limitation of legislative authority and is unconstitutional.

Coyle *v.* Oklahoma (221 U. S. 559). Act of June 16, 1906 (34 Stat. 267). Congress has no power to restrict in the enabling act admitting a State to the Union its power to move its seat of government.

Butts *v.* Merchants Trans. Co. (230 U. S. 126). Act of March 1, 1875 (18 Stat. 335). The civil rights act is unconstitutional in its entirety and has no force in places wholly subject to Federal jurisdiction

United States *v.* Hvoslef (237 U. S. 1). Act of June 13, 1898 (30 Stat. 460). A tax on charter parties on cargo from State ports to foreign countries is a tax on exports from a State and void.

Thames and Mersey Ins. Co. *v.* United States (237 U. S. 19). Act of June 13, 1898 (30 Stat. 461). Taxes on policies of marine insurance on exports are a tax on exports from a State and void.

Hammer *v.* Dagenhart (247 U. S. 251). Act of September 1, 1916. (39 Stat. 675.) It (the commerce clause) was not intended as an authority to Congress to control the States in the exercise of their police power over local trade and manufacture, always existing and expressly reserved to them by the tenth amendment. (Child labor case.)

Eisner *v.* Macomber (252 U. S. 189). Act of September 8,

1916. (39 Stat. 756.) A stock dividend * * * is a tax on capital increase and not on income, and, to be valid under the Constitution, such taxes must be apportioned according to population in the several States.

Knickerbocker Ice Co. *v.* Stewart (253 U. S. 149). Act of October 6, 1917. (40 Stat. 395.) The attempted amendment (making State law applicable in maritime cases) is unconstitutional as being a delegation of the legislative power of Congress and as defeating the purpose of the Constitution respecting the harmony and uniformity of the maritime law.

Evans v. Gore (253 U. S. 245). Act of February 24, 1919. (40 Stat. 1062.) A tax upon the net income of a United States district judge * * * operates to diminish his compensation in violation of the Constitution.

United States *v.* Cohen Grocery Co. (255 U. S. 81). Act of August 10, 1917. (40 Stat. 276.) A provision imposing penalty for making "any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries" is repugnant to the fifth and sixth amendments to the Constitution. Similarly decided in Tedrow *v.* Lewis & Son Co. (255 U. S. 98); Kennington *v.* Palmer (255 U. S. 100); Kinnane *v.* Detroit Creamery Co. (255 U. S. 102); Weed and Co. *v.* Lockwood (255 U. S. 104); Willard Co. *v.* Palmer (255 U. S. 106); Oglesby Grocery Co. *v.* United States (255 U. S. 108); Weeds (Inc.) *v.* United States (255 U. S. 108).

Newberry *v.* United States (256 U. S. 232). Act of June 25, 1910. (36 Stat. 822.) Federal regulation of expenditures in election of Members of Congress is a usurpation of State rights.

III

To illustrate the process of judicial interpretation of the constitution by the United States court, the following table of cases interpreting different parts of a single sentence is presented. This table includes only a small proportion of the total number of cases bearing on the text in question.

The original words of the constitution are as follows: "The Congress shall have power . . .

"To regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

The particular part which is subject to interpretation in the following list of cases is: "The Congress shall have power to regulate commerce among the several States."

Interstate and Foreign Commerce.

9 Wh., Gibbons *v.* Ogden,	means intercourse between the states and with foreign countries.

Subjects of Commerce.

7 How. 283, Passenger Cases,	passengers are:
10 How. 410, Ducat *v.* Chicago,	passengers are:
135 U. S. 100, Leisy *v.* Hardin,	all commodities ordinarily exchanged are:
8 Wall. 168, Paul *v.* Va.,	policies of insurance are not:

Things become Subjects of Commerce when

116 U. S. 517, Coe *v.* Errol,	the journey to another State has actually commenced.

And remain Subjects of Commerce

95 U. S. 485, Hall *v.* DeCuir,	
12 Wh. 419, Brown *v.* Md.,	during the journey;
13 Wall. 29, Low *v.* Austin,	until sale by the importer; or breaking of the original package in which they were imported.

The Federal Power over the Subjects of Commerce gives Congress the right to

12 Pet. 72, U. S. *v.* Coombs,	punish any interference, or willful injury to goods *in transitu.*
9 How. 560, U. S. *v.* Marigold,	prohibit the importation of a subject of commerce.
112 U. S. 580, Hard-money Cases,	tax immigrants.

The Federal Power over the Means of Commercial Intercourse, derived from the Power over Commerce, gives Congress the right to

18 How. 421, Pa. *v.* Wheeling Brdg.; 10 Wall. 454, The Clinton Brdg.; 109 U. S. 385, Miller *v.* Mayer; 105 U. S. 470, Bridge Co. *v.* U. S.;	establish or authorize a bridge which obstructs the navigation of a river; or abate such a structure.
6 Wall. 646, White's Bank *v.* Smith; 7 Pet. 324, Peyroux *v.* Howard,	regulate liens on vessels.
10 Wall. 557, The Daniel Ball,	regulate a boat carrying interstate freight between two points in the same state.
102 U. S. 541, Lord *v.* Steamship Co.,	regulate the liability of the owners of a boat plying the high seas between two points in the same state.
96 U. S. 1, Pensacola Tel Co. *v.* W. U. Tel. Co.,	establish a telegraph company.
127 U. S. 1, Cal. *v.* Cal. Pac. R. R.,	establish a railroad
196 U. S. 369, Wis. *v.* Duluth,	improve harbors, rivers, etc.
135 U. S. 641, Cherokee Nation *v.* Southern Kansas Railroad Co.	grant to a corporation engaged in interstate commerce the right of eminent domain through a state.

(From "The Federal Power over Commerce and its Effect on State Action," W. D. Lewis, p. 125 ff.)

IV

A single example from one of these decisions will suffice to illustrate the method of interpretation.

Extract from decision, 1824, written by Chief Justice Marshall in the case of Gibbons *v.* Ogden. This opinion "is the basis of all subsequent decisions construing the commerce clause, and is the recognized source of authority."

The words are: "Congress shall have power to regulate commerce with foreign nations, and among the several states and with the Indian tribes." The subject to be regulated is commerce: and our constitution being, as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations. Commerce undoubtedly is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations, which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals, in the actual employment of buying and selling, or of barter.

If commerce does not include navigation, the government of the Union has no direct power over that subject, and can make no law prescribing what shall constitute American vessels, or requiring that they shall be navigated by American seamen. Yet this power has been exercised from the commencement of the government, has been exercised with the consent of all, and has been understood by all to be a commercial regulation. All America understands, and has uniformly understood, the word "commerce" to comprehend navigation. It was so understood, and must have been so understood, when the constitution was framed. The power over commerce, including navigation, was one of the primary objects for which the people of America adopted their government and must have been contemplated in forming it. The convention must have used the word in that sense; because all have understood it in that sense, and the attempt to restrict it comes too late. . . .

The universally acknowledged power of the government to impose embargoes, must also be considered as showing that all America is united in that construction which comprehends navigation in the word "commerce." Gentlemen have said, in argument, that this is a branch of the war-making power, and that an embargo is an instrument of war, not a regulation of trade. That it may be, and often is, used as an instrument of war, cannot be denied. An embargo may be imposed for the purpose of facilitating the equipment or manning of a fleet, or for the purpose of concealing the progress of an expedition preparing to sail from a particular port. In these, and in similar cases, it is a military instrument, and partakes of the nature of war. But all embargoes are not of this description. They are sometimes resorted to without a view to war, and with a single view to commerce. In such a case, an embargo is no more a war measure than a merchantman is a ship of war, because both are vessels which navigate the ocean with sails and seamen. When Congress imposed that embargo which, for a time, engaged the attention of every man in the United States, the avowed object of the law was the protection of commerce, and the avoiding of war. By its friends and its enemies it was treated as a commercial, not as a war measure. . . . The word used in the constitution, then, comprehends, and has been always understood to comprehend, navigation within its meaning; and a power to regulate navigation is as expressly granted as if that term had been added to the word "commerce."

To what commerce does this power extend? The constitution informs us, to commerce "with foreign nations, and among the several states, and with the Indian tribes." It has, we believe, been universally admitted that these words comprehend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other, to which this power does not extend. It has been truly said, that commerce, as the word is used in the constitution, is a unit, every part of which is indicated by the term. If this be the admitted meaning of the word, in its application to foreign nations, it must carry the same meaning throughout the sentence, and remain a unit, unless there be some plain, intelligible cause which alters it.

The subject to which the power is next applied, is to com-

merce "among the several states." The word "among" means intermingled with. A thing which is among others is intermingled with them. Commerce among the states cannot stop at the external boundary line of each state, but may be introduced into the interior.

It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does not extend to or affect other states. Such a power would be inconvenient and is certainly unnecessary.

Comprehensive as the word "among" is, it may very properly be restricted to that commerce which concerns more states than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a state, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended, would not have been made had the intention been to extend the power to every description. . . . The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the states generally; but not to those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself.

But, in regulating commerce with foreign nations, the power of Congress does not stop at the jurisdictional lines of the several states. It would be a very useless power if it could not pass those lines. The commerce of the United States with foreign nations is that of the whole United States. Every district has a right to participate in it. The deep streams which penetrate our country in every direction, pass through the interior of almost every state in the Union, and furnish the means of exercising this right. If Congress has the power to regulate it, that power must be exercised wherever the subject exists. If it exists within the states, if a foreign voyage may commence or terminate at a port within a state, then the power of Congress may be exercised within a state.

This principle is, if possible, still more clear, when applied to

commerce "among the several states." They either join each other, in which case they are separated by a mathematical line, or they are remote from each other, in which case other states lie between them. What is commerce "among" them; and how is it to be conducted? Can a trading expedition between two adjoining states commence and terminate outside of each? And if the trading intercourse be between two states remote from each other, must it not commence in one, terminate in the other, and probably pass through a third? Commerce among the states must, of necessity, be commerce with the states. In the regulation of trade with the Indian tribes, the action of the law, especially when the constitution was made, was chiefly within a state. The power of Congress then, whatever it may be, must be exercised within the territorial jurisdiction of the several states. The sense of the nation, on this subject, is unequivocally manifested by the provisions made in the laws for transporting goods, by land, between Baltimore and Providence, between New York and Philadelphia, and between Philadelphia and Baltimore.

We are now arrived at the inquiry, What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution. These are expressed in plain terms, and do not affect the questions which arise in this case, or which have been discussed at the bar. If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several States, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments.

V

EXTRACTS FROM STATUTE FOR THE PERMANENT COURT OF INTERNATIONAL JUSTICE PROVIDED FOR BY ARTICLE 14 OF THE COVENANT OF THE LEAGUE OF NATIONS.

ARTICLE 1

A permanent court of international justice is hereby established, in accordance with article 14 of the covenant of the League of Nations. This court shall be in addition to the court of arbitration organized by the conventions of The Hague of 1899 and 1907, and to the special tribunals of arbitration to which States are always at liberty to submit their disputes for settlement.

CHAPTER I

Organization of the Court

ARTICLE 2

The permanent court of international justice shall be composed of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are juris-consults of recognized competence in international law.

ARTICLE 3

The court shall consist of 15 members—11 judges and 4 deputy judges. The number of judges and deputy judges may hereafter be increased by the assembly, upon the proposal of the council of the League of Nations, to a total of 15 judges and 6 deputy judges.

ARTICLE 4

The members of the court shall be elected by the assembly and by the council from a list of persons nominated by the national groups in the court of arbitration, in accordance with the following provisions:

In the case of members of the League of Nations not represented in the permanent court of arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the permanent court of arbitration by article 44 of the convention of The Hague of 1907 for the pacific settlement of international disputes.

ARTICLE 13

The members of the court shall be elected for nine years.

They may be reëlected.

They shall continue to discharge their duties, until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

ARTICLE 22

The seat of the court shall be established at The Hague.

The president and registrar shall reside at the seat of the court.

ARTICLE 23

A session of the court shall be held every year.

Unless otherwise provided by rules of court, this session shall begin on the 15th of June, and shall continue for so long as may be deemed necessary to finish the cases on the list.

The president may summon an extraordinary session of the court whenever necessary.

ARTICLE 25

The full court shall sit except when it is expressly provided otherwise.

If 11 judges can not be present, the number shall be made up by calling on deputy judges to sit.

If, however, 11 judges are not available, a quorum of 9 judges shall suffice to constitute the court.

ARTICLE 36

The jurisdiction of the court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force.

The members of the League of Nations and the States mentioned in the annex to the covenant may, either when signing or ratifying the protocol to which the present statute is adjoined, or at a later moment, declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other member or State accepting the same obligation, the jurisdiction of the court in all or any of the classes of legal disputes concerning:

(a) The interpretation of a treaty.

(b) Any question of international law.

(c) The existence of any fact which, if established, would constitute a breach of an international obligation.

(d) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain members or States or for a certain time.

In the event of a dispute as to whether the court has jurisdiction, the matter shall be settled by the decision of the court.

ARTICLE 37

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the court will be such tribunal.

ARTICLE 38

The court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States.

2. International custom, as evidence of a general practice accepted as law.

3. The general principles of law recognized by civilized nations.

4. Subject to the provisions of article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the court to decide a case ex æquo et bono if the parties agree thereto.

ARTICLE 40

Cases are brought before the court, as the case may be, either by the notification of the special agreement or by a written application addressed to the registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The registrar shall forthwith communicate the application to all concerned.

He shall also notify the members of the League of Nations through the secretary general.

ARTICLE 42

The parties shall be represented by agents.

They may have the assistance of counsel or advocates before the court.

ARTICLE 43

The procedure shall consist of two parts: written and oral.

The written proceedings shall consist of the communication to the judges and to the parties of cases, countercases, and if necessary, replies; also all papers and documents in support.

These communications shall be made through the registrar, in the order and within the time fixed by the court.

A certified copy of every document produced by one party shall be communicated to the other party.

The oral proceedings shall consist of the hearing by the court of witnesses, experts, agents, counsel, and advocates.

ARTICLE 46

The hearing in court shall be public, unless the court shall decide otherwise, or unless the parties demand that the public be not admitted.

ARTICLE 47

Minutes shall be made at each hearing, and signed by the registrar and the president.

These minutes shall be the only authentic record.

ARTICLE 48

The court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its

arguments, and make all arrangements connected with the taking of evidence.

ARTICLE 53

Whenever one of the parties shall not appear before the court, or shall fail to defend his case, the other party may call upon the court to decide in favor of his claim.

The court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with articles 36 and 37, but also that the claim is well founded in fact and law.

ARTICLE 55

All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the president or his deputy shall have a casting vote.

ARTICLE 56

The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.

ARTICLE 57

If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

ARTICLE 58

The judgment shall be signed by the president and by the registrar. It shall be read in open court, due notice having been given to the agents.

ARTICLE 59

The decision of the court has no binding force except between the parties and in respect of that particular case.

ARTICLE 60

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the court shall construe it upon the request of any party.

ARTICLE 61

An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision and declaring the application admissible on this ground.

The court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

No application for revision may be made after the lapse of 10 years from the date of the sentence.

CHAPTER VII

THE ELECTORATE

Importance of the People in Modern Government.—In preceding chapters we have had occasion a number of times to speak of "*popular* government," "*popular* election," "election by the *people*," etc.; indeed, in the classification of governments we made the distinction between democratic and autocratic governments on the basis of participation or non-participation in the government by the *people*. In England and the United States especially the right of the people to exercise the suffrage (*i.e.* to vote) for the personnel of government, and thereby to hold an important degree of control over the government, is the very foundation of the liberalism and free institutions which have existed in those countries longer than in most. On the continent the French Revolution established the right of the people to a share in the government, and now such a right is universally recognized in the states of western Europe. The fundamental principle of democracy is involved in the suffrage of the people.

Not All People Are Allowed to Vote.—Strictly speaking, however, the phrases "*popular* government" and "election by the *people*" are misleading, for the reason that in no state do *all* the people possess the suffrage. The principle on which certain specified persons or classes of persons are excluded from the suffrage in democratic countries is in general one of reason and common sense. For example, it is absurd to suppose that an infant in arms is capable of casting an intelligent vote; it is equally absurd to suppose that an imbecile should be allowed to vote, or that a convicted criminal should have a share in government by the use of the ballot. The restrictions upon

the suffrage are intended to prevent the exercise of this right by all persons who could not do so with judgment and propriety.

The Electorate: Proportion Relative to Whole People.—The body of persons in a state who *are* legally qualified to exercise the suffrage is known as the electorate. In those states where the suffrage is most widely extended to-day the ratio of the electorate to the entire population is not greater than one to five; in former times in states which considered themselves democratic, as in England, various restrictions made this ratio between the electorate and the whole people very much less, in some cases not more than a few hundred thousand possessing the suffrage in a total population of several millions. We live to-day in an era of liberalism in which the tendency is to extend the suffrage as widely as reason will allow.

I. Qualifications of the Electorate

By What Method Legally Declared.—The qualifications required for the exercise of the suffrage are differently determined in the different states. In a few of the great states, as France and Germany, a single comprehensive law or article of the constitution embraces the whole state. In England a series of laws, including the great reform acts of 1832, 1867, 1884, and 1918, has extended the suffrage without wholly repealing previous statutes, thus rendering the condition theoretically complex. In actual fact, however, the suffrage is to-day very liberally extended in England. In the United States, under the constitution, the electorate must have "the qualifications requisite for electors of the most numerous branch of the State legislature" (U. S. Const., Art. I, Section 2), and provision is made in the famous fifteenth amendment that "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." In this country, therefore, the electorate of the United States is determined

by the qualifications set by the separate commonwealths each for itself, with the curious result that certain classes of persons living in one commonwealth are privileged to vote and the same classes living in a different commonwealth are not privileged to vote. In our discussion of the electorate as constituted in the United States we shall have to refer at times to the conditions in the separate commonwealths, in order to make our treatment of the subject clear.

Age Limitation.—Among the limitations upon the electorate the most obvious is that of age. In general, states require the attainment of the twenty-first year before bestowing the right to vote. It is obvious, of course, that this limit is an arbitrary one set for the average person; many persons are mentally qualified to vote at eighteen, many others of slow development may not really be qualified at thirty. Common sense demands that there shall be some limit applicable to all alike, and the age of twenty-one has commonly been accepted as just.

Citizenship.—A second limitation upon the suffrage is to be found in the requirement that a person, to possess that right, must be a citizen of the state in which he proposes to vote. This is obviously a reasonable requirement. It is fundamentally an instinct of self-preservation that permits only those who acknowledge allegiance to the state to have a share in its government. Persons who are aliens could not be expected to vote with a thought only to the welfare of a state in which they happen to reside but to which they acknowledge no allegiance.

In modern times, however, on account of the rapid and inexpensive means of transportation, vast numbers of people are continually migrating from one state to another for the purpose of benefiting themselves materially, so that the great states of the world have uniformly introduced methods of bestowing citizenship upon newcomers and thus admitting them to the suffrage. No individual, therefore, with a real intention to remain in a state and a desire to participate in its government,

need continue to be alien, provided he is otherwise qualified for the electorate.

This problem of the bestowal of citizenship has been especially pressing in the relatively new countries, as the United States, Canada, Australia, and the South American states, for it is to these countries that the great overflow from the old states has gone. In some cases it has been recognized that the bestowal of citizenship upon all races and peoples indiscriminately would be bad policy, would be indeed suicidal. Thus in the United States it is recognized that persons of the Mongolian race cannot mix with, and be assimilated by, the dominant Caucasian race in the country; therefore the law provides that no alien Mongolian can be admitted to citizenship. Realizing further the economic dangers in an influx of a horde of Chinese coolies whose standards of wages and living are far below those of the native citizens of this country, the United States has even gone so far as to prevent such persons from entering the country at all.

In this same connection the action of many of the southern commonwealths of the United States in making such requirements for the electorate as will include the whites and exclude the negroes, yet not contravene the fifteenth amendment, is notable. The negro problem is one peculiar to our country, and in our country is restricted to one section, the South. In many districts of the South the negroes outnumber the whites, so that a free and unrestricted suffrage would throw the control of the local government entirely into the hands of negroes. Such an event being repugnant and impossible to the whites, various special property, educational, and ancestry requirements exist, enforcement of which has resulted in the virtual disfranchisement of the negro in the South. Such procedure is justified by the unique conditions in that section and the necessity of the dominant white minority to take measures for its self-preservation. As a general principle, measures by which a minority seeks to perpetuate its control over the government cannot, of course, be too strongly condemned.

Identification.—Closely coupled with the requirement of citizenship for the enjoyment of the suffrage is some form of identification requirement. Commonly this consists in qualification by actual residence in a district or subdistrict for a specified time before voting, and by the registration of the person's name in the list of voters of that district. This requirement is also obviously reasonable. So long as exclusions from the electorate are necessary, some simple method must be devised to insure that no persons legally excluded shall vote. The requirements of residence and registration are the simplest method possible. The length of residence varies much in different states. In some of the commonwealths of the United States it is only one month, in one commonwealth it is two years, the long period being defended by the argument that only by such residence can the citizen become sufficiently familiar with local conditions to exercise the suffrage with good judgment.

Mental and Moral Requirements.—So far as mental and moral requirements are concerned a citizen is qualified in most states who can read and write, is not a lunatic, has never been convicted of any one of certain classes of high crimes, and is not in jail or prison at the time of an election. The mere recitation of the above conditions shows how far the modern democratic movement has proceeded.

Sex Restrictions.—One of the most important restrictions laid upon the electorate, and one much under discussion at the present day, is the sex restriction. In most great states the exercise of the suffrage is restricted to men. The reasons for this restriction are historical and traditional. In primitive society political power was coincident with military power, and was wholly in the hands of men. Early in authentic history we find women in a subordinate and dependent position relative to men, having no legal, economic, or civil rights. In an era when nations lived by warfare, the women, who were not subject to military service, sank into insignificance as a political element in society. With the approach of the modern

age, however, as ushered in by the French Revolution, the legal, economic, and civil disabilities which had been imposed upon women were gradually removed, so that women now may in most states enter into contracts, carry on business, engage in a profession, and in general compete on an equality under the law with men in various economic pursuits. Women have taken advantage of their new freedom with eagerness and intelligence. The women workers in modern states are an asset of ever-increasing importance to the prosperity of the country. With their economic and legal equality has come the demand for political equality, for admission to the electorate on the same basis as men.

The arguments for woman suffrage are strong and have been forcibly presented by a number of able thinkers in modern times. The growth of modern democracy is responsible for the development of the idea of "one citizen, one vote." Thus women have been led to claim the ballot because they are citizens equally with men. Again, the property of women is taxed without regard to sex; whereupon the cry of "taxation without representation" is raised. The injustice of man-made government deciding the laws for women is strongly emphasized; the women assert that their rights would be better protected had they a right to participate in the government. The use of sex as one of the restrictions upon the electorate puts the women in the same class with idiots and criminals, the women argue, an unnatural grouping which is abhorrent to enlightened humanity. The women point to prominent members of their sex who in the position of rulers have performed distinguished political services, as a proof that women have political capacity.

On the other hand, the opponents of woman suffrage have their best arguments in the fundamental difference between the sexes. They assert that to woman is given the function of bearing and rearing children, of creating and maintaining the home. They argue that the suffrage would tend to destroy the purely feminine quality of the average woman, would distract

her interest and attention from the great function intrusted to her by nature, and would introduce discord into the home.

In considering this question it must be understood that universal suffrage prefaces a great revolution in political conditions in a state. Universal suffrage would in nearly all countries more than double the number of voters. The part that would be added to the present electorate would undoubtedly have much the same elements of bad and good, of ignorant and educated, as the present electorate has. The chances of ill-advised clamor would be as great as at present, with the added misfortune of seeming more unanimous. The election of unsuitable officials would not cease were women to vote: their faculties for discerning the politically good and bad are no finer than those of men. The production of hasty and injurious legislation would not wholly cease, for the political acumen of women is no greater than, and, at present at least, not so well trained as, that of men. The advantage to the state, therefore, is dubious: an enormous addition to the electorate is provided, with no corresponding benefit assured.

The theoretical arguments for the right of women to vote have had such weight that equal suffrage has made great strides in recent years. The most important successes to be noted are those in England and the United States. In England, the long agitation for woman suffrage was ended in 1918 by the inclusion in the important Representation of the People Act of a provision granting the vote to every woman over thirty years of age who is herself a local government elector or the wife of a local government elector. By decision of the government in October of the same year, women duly elected are allowed to take their seats in Parliament. It will be noted that England has placed the age limit for women's qualification for the suffrage higher than for men—thirty instead of twenty-one. This difference is the main distinction between male and female parliamentary franchise. In the United States, a proposed amendment to the federal constitution providing for woman suffrage was passed by the House of Repre-

sentatives May 21, 1919, and by the Senate June 4, 1919. It was duly submitted to the several states and ratified by the required number in time to allow the women to vote in the presidential election of 1920. The amendment reads as follows: "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 sex. Congress shall have power, by appropriate legislation, to enforce the provisions of this article."

Property Restrictions.—A restriction upon the electorate which exists in some states and is justified by certain reasonable arguments is that the right to vote shall be a privilege only of those who possess property of, or more than, a stipulated value. The fundamental argument advanced to support this restriction is that only the man of property has a real interest in the state. If the state prosper, his property and his rights to it are protected; if the state do not prosper, his property and his rights to it are endangered. The possession of property, too, is thought to imply something more than average ability in its possessor: thus such a restriction will on the whole operate to keep the suffrage in the hands of the intellectually worthy. It is only the man of property, according to this argument, who is entitled to participate in the government. He will have a better judgment than the average man and will be inspired by self-interest to advocate wise measures and to cast his vote for the best men. The man without property has nothing at stake, nothing to lose; presumably he has less judgment and less interest in the welfare of the state.

Most democratic states at the present day have discarded this restriction. In the first place, such a restriction places the government in the hands of the moneyed classes. There exists always under such circumstances a suspicion that legislation is class legislation, legislation not for the good of the whole state but rather for the material advantage of the propertied classes. Furthermore it is justly argued that a large class of persons may by education be unusually well qualified to exercise the suffrage but may never be able to meet the property qualifica-

tion. Again, it is emphatically denied that the propertyless have no interest or stake in the welfare of the state. The propertyless class is composed mainly of artisans, laborers, farmers on a small scale, and the like. The stake of the propertyless class is their very lives. In a prosperous state there is work in abundance and the laboring man is in demand at good wages: in a misgoverned and unprosperous state the mills and factories shut down, money is hoarded, and the laborer suffers. It is to the laborer's highest interest that the state be well governed and prosperous. From the other side, too, the laborer has an interest in the state, for it is by his labor and production that under favorable conditions the prosperity of the state is maintained and increased.

The most conspicuous example of this property qualification for the suffrage is to be found in Japan. There the suffrage is extended only to men of twenty-five or over who have paid direct national taxes to the amount of ten yen ($5.00). Small as this sum may seem, it is largely responsible for the relatively low proportion of voters to the whole population—only about twenty-one in each thousand being admitted to the suffrage.

Breadth of Electorate under these Restrictions.—The above are the chief restrictions placed upon the electorate in modern democratic states. It will be seen that in general all male citizens of mature age and average intelligence and morality are given the vote. The consideration of no other phase of modern political conditions will so astonishingly reveal the difference between the present era and the past.

II. Function of the Electorate

Function of the Electorate.—The function of the electorate is to vote. Strangely enough, this function, which was so desired by men of past ages, is now not exercised by a very large proportion of those qualified. One of the problems of the modern state is to contrive means to induce the whole electorate to cast its vote. In an election of unusual interest, at

times as much as seventy-five per cent of the qualified electors vote; in local elections which are considered of little importance, the percentage runs far below this.

A curious experiment has been suggested, and tried on a small scale, in this connection. Czecho-Slovakia and Spain have introduced a system of compulsory suffrage, by which each qualified voter, if without reasonable excuse, is required to cast his ballot. Failure to comply with this requirement is punishable by fine, increase of taxes, or loss of political rights. It cannot be said that compulsory suffrage has appealed widely to political thinkers. The right to vote, to participate in one's government, is a privilege rather than a duty, and the voluntary exercise of this right is certain to be more conscientious on the part of the individual and more valuable to the state than its compulsory exercise. The voter who casts his vote under fear of punishment is of little value to the state: what is most desirable is the intelligent voter who after careful deliberation casts an intelligent ballot for men or measures which seem to him wise.

III. Appointive Powers of the Electorate

Powers of the Electorate: Appointive.—The powers of the electorate are mainly appointive in the democratic states of the world. The degree of democracy which a state has reached is measured largely by the number and importance of the offices which the electorate controls. In the *legislative* department, the electorate controls the appointment of members of the lower chambers in all modern democratic states. In many states, as in France and the United States, the electorate controls also the appointment of members of the upper chamber. In the *executive* department, the electorate in democratic states commonly controls the appointment of the chief executive, except in certain states where the office is hereditary, as England, Italy, Japan, etc. In many cases this control is exercised by an intermediate body, as in France and the United States, but the essential fact remains true that the

ultimate control is in the hands of the electorate. In England the electorate controls the ministry, though it does not actually appoint the personnel of the ministry. In the *judicial* department, experience has, as has been explained, tended to take the control of appointments away from the electorate.

Importance of Electorate's Appointment of Legislature.—Because of the importance of the legislative department, the control which the electorate exercises over it is the most vital element in a democracy. However important a personage the chief executive may be, his functions are to a large extent determined by the legislative body. He is unable to obtain funds for the exercise of his authority without legislative sanction, he cannot promulgate laws for the state until these laws have been passed by the legislative body, he cannot carry on war without the aid of the legislative body. In short, the legislature is the heart of the whole structure of the government. It behooves us, therefore, to understand thoroughly the powers of the electorate as they are exercised in the control of appointments to the legislative body.

General Method of Appointment (Election).—The general method of appointment can be very briefly and explicitly stated. The territory of a state is divided into a number of districts, and the electorate in each district appoints a representative to the national legislative body. The boundaries of the districts may be determined on a basis of population, as is commonly the case in districts whose electorate appoints members of the lower house, or on a basis of administrative convenience (as in the case of the French *départements*), or historical unity (as in the case of the various commonwealths in the United States). Where the electorate controls directly or indirectly the appointment of members of the upper house, such members are commonly appointed from much larger districts than are the members of the lower house. Thus in the United States the number of members of the lower house is proportionate to population, but the number of members of the upper house is dependent upon the number of common-

wealths in the Union. In France the members of the lower house (Chamber of Deputies) represent small districts (*arrondissements*), the members of the upper (Senate) represent departments (*départements*).

The appointee or representative elected is commonly he who obtains the greatest number of votes from the electorate. Rarely is a clear majority of all votes cast required; a plurality is commonly sufficient to elect under the laws in various democratic states.

Objections to Method.—Strong arguments have been advanced to prove the injustice of the above method of election. These arguments are all based on the fact that election by plurality of votes deprives a large proportion of the electors of any representation at all. Thus in a hypothetical district containing 9,000 electors, of whom 3,001 are in party A, 3,000 in party B, and 2,999 in party C, party A might, under this system, elect its representative and leave 5,999, a majority of the voters in the district, entirely unrepresented. On a larger scale, it is conceivable that an actual minority party of the electorate may control the government by carrying a majority of the districts by a small margin and losing the remainder by a large number of votes. Thus, supposing there were 500 districts in all, one party might conceivably carry 260 with a total vote of 1,000,000 votes to 750,000, and lose 240 districts by a total vote of 250,000 to 1,500,000. The party which carried 260 districts would then control the government with a national poll of 1,250,000 votes, and the other party would be in the minority, although throughout the nation it had polled 2,250,000 votes.

Proposed Substitutes for Present Method: Proportional and Minority Representation.—Although the injustice of this method of the distribution of the powers of the electorate in electing representatives is acknowledged by political thinkers, none of the various schemes which have been devised to correct it has met with general approval. These schemes may be divided into two general classes; the first class being com-

posed of those schemes which aim to give each party or group of the electorate representation in proportion to its voting strength, the second class being composed of those schemes which aim to give some representation to minorities although not necessarily a representation proportionate to voting strength. The first of these classes is commonly known as proportional representation, the second as minority representation.

Under Proportional or Minority Representation Schemes, Districts Must Not Be Single.—It may be said in advance of discussion that any scheme for proportional or minority representation requires the election of more than one representative from each district. Since the number of members in the legislative bodies is now as large as can well carry on business, such a change in the general system would probably best be accomplished by lessening the present number of districts and extending the limits of each district. It must be acknowledged, however, that this change would destroy one of the great advantages of the small-district system, in that the individual voters in the large district would in many cases be ignorant of the character of the candidates nominated, whereas in the small district such ignorance is unlikely.

The List System.—One of the schemes advanced to insure proportional representation is commonly known as the *list* or the *free list* system. By this system each political group in the electorate may nominate as many candidates as there are representatives to be elected. Each voter may cast as many votes as there are candidates to be elected, but is required to distribute his votes among the various candidates. Each vote cast is counted both for the individual candidate and for the political group by which he was nominated. Representation is then given to each political group in proportion to the number of votes given to its candidates. The individuals within the parties who are declared elected are determined by the total personal vote each has received.

To illustrate the operation of this system in its simplest

form, assume a district with an electorate of 10,000 and six representatives to choose. Three political groups, the Red, the Blue, and the Green, each nominate six candidates. Each voter casts six votes, distributing them among the various candidates, thus making a grand total of 60,000 votes cast in the district. When the count is made, it is found that the six candidates of the Blue party have collectively polled 30,000 votes, those of the Red party 20,000, those of the Green party 10,000. It is obvious with such results that Blue would elect three representatives, Red two, and Green one. The election returns might appear as follows:

Blue		Red		Green	
Mr. A	6,000	Mr. H	3,800	Mr. T	2,400
Mr. B	5,850	Mr. K	3,700	Mr. V	2,200
Mr. C	5,000	Mr. M	3,650	Mr. W	1,400
Mr. D	4,600	Mr. N	3,400	Mr. X	1,350
Mr. E	4,350	Mr. Q	2,800	Mr. Y	1,350
Mr. F	4,200	Mr. R	2,650	Mr. Z	1,300
	30,000		20,000		10,000
Elected		Elected		Elected	
Mr. A		Mr. H		Mr. T	
Mr. B		Mr. K			
Mr. C					

Use of the List System.—The above system was used in Cuba in 1908 to elect representatives to the national legislative body and is now used for various elections in Norway, Sweden, France, Germany, Ireland, and most of the cantons of Switzerland. Its many advantages have led to a consideration of its adoption in France, England, and Holland. Forms of this system, although differing in details from it, as described above, have been introduced in Belgium and Japan, and are being discussed in various of the commonwealths of the United States. It seems the simplest and most just of the many schemes that have been proposed.

The Hare System.—Another system proposed to insure pro-

portional representation is known as the *Hare* system, having been suggested by an Englishman named Hare.[1] According to this system each voter has but one vote, but he is allowed to indicate his first, second, and third or more choices on a single ballot. The number of votes necessary to elect a candidate is found by dividing the number of representatives to be elected plus one into the total number of votes cast, and taking the next whole number above the quotient. This whole number may be called the electoral quota. As soon as any candidate receives as first choice of the electorate a number of votes equal to the electoral quota, he is declared elected and no more votes are counted for him. The surplus ballots on which such elected candidate is first choice are counted for the second choice on those ballots. After the second choice is elected, the third choice is counted.

To make this clearer, assume again the district with 10,000 electorate and five representatives to be elected. Under the Hare system 10,000 ballots will be voted, each ballot containing three names in order of preference. The electoral quotient will be $\frac{10{,}000}{5+1} = 1666+$. As soon as any candidate receives 1667 votes as first choice, he is declared elected, and any other ballots on which he is first choice are counted for the candidate on those ballots indicated as second choice. In case after the distribution of the surplus votes of elected candidates it is found that only four men have received over 1667 votes and thus been elected, the candidate who has received the smallest number of votes is eliminated and the ballots on which he was first choice are transferred to the second choice until some candidate receives the requisite number.

Objections to Hare System.—This system has the advantage of practically insuring to each voter that one of his three choices will be elected, but its disadvantages outweigh this consideration. It is very complex in operation, and the results

[1] Thomas Hare (first edition of book 1859).

depend much upon chance. The order in which the ballots are taken and counted will materially change the result, inasmuch as the second choices upon the ballots counted for one man and the second choices upon the surplus ballots for that same man may materially differ. All ballots have to be brought to one central place for counting, and after they have been once counted, a recount is difficult.

Use of Hare System.—The system has been generally adopted in only one country of prominence; namely, Denmark. It is used in Tasmania, Finland, Scotland, and in a few cities in the United States. It is doubtful whether it would be successful in elections on a large scale and over a great area.

Minority Representation: Limited Vote Plan.—For insuring representation to minorities, although not necessarily in proportion to their voting strength, one scheme, known as the *limited vote* plan, has been adopted in some states. By this scheme each voter is allowed a number of votes, such number, however, being less than the number of representatives to be elected.

Thus in the hypothetical district with an electorate of 10,000, and six representatives, each voter under this system would have four votes to be distributed among the various candidates. By careful organization the minority can nearly always be certain of electing two of the six representatives by casting the minority vote solidly for a certain two of the candidates, the majority vote being split up among the four or more candidates of the majority party.

The defects of this system lie in the necessity for complete party control, with the evils which may attend, and in the fact that it allows representation only to a large, well-organized minority. Where three political groups are trying to elect, it is probable that under this system one minority group will be left entirely without representation.

Use of Limited Vote.—This system of the limited vote has been put in practice in a number of states with some success. Italy, Spain, and Portugal are among the most prominent

states which have adopted it. In the United States the system has been used in certain elections in Massachusetts and Pennsylvania.[1]

Cumulative Vote.—A second system intended to insure representation to a minority group of the electorate is known as the *cumulative vote* plan. By this plan each voter is given a number of votes equal to the number of representatives to be elected, and is allowed to distribute his votes in any way he wills, giving one to a candidate, all to one candidate, or otherwise.

This system, like the one mentioned just previously, requires for its successful operation careful party organization to provide against a great waste of votes. A popular candidate might otherwise receive the cumulative votes of his party far in excess of the number required to elect and other candidates of the same party fail to be elected in consequence. The political party machine must plan beforehand the most effective use of its votes.

Use of Cumulative Vote.—The most conspicuous trial of the cumulative vote plan has been made in the commonwealth of Illinois.[2] As a rule the scheme has in operation given the minority party at least one representative in a district. Occasionally, where the party organization of the majority has failed to plan the vote correctly, the minority has elected more representatives than the majority.

Defense of Present System.—Theoretically, some form of

[1] Pennsylvania Constitution, Art. V, Section XVI.

Whenever two judges of the supreme court are to be chosen for the same term of service, each voter shall vote for one only, and when three are to be chosen, he shall vote for no more than two; candidates highest in vote shall be declared elected.

[2] Illinois Constitution, Art. IV, Sections 7 and 8.

The house of representatives shall consist of three times the number of the members of the senate, and the term of office shall be two years. Three representatives shall be elected in each senatorial district at the general election in the year of our Lord one thousand eight hundred and seventy-two, and every two years thereafter. In all elections of representatives aforesaid, each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates, as he shall see fit; and the candidates highest in votes shall be declared elected. (House Documents, Vol. 2.)

proportional or minority representation, preferably the former, seems the only just system for a true democracy; practically, however, the simplicity of the present system has led to its retention in most of the great states up to the present day. Some defense may be offered for the present system. The minority in one district will nearly always be the majority party in another district, so that a minority in one district may be represented by the successful candidates from another district. For example, the democrats in the commonwealth of Kansas may feel that they are represented by the elected democratic representatives in the neighboring commonwealth of Missouri. It is argued, furthermore, that a system insuring representation to all minority political groups in the electorate will tend to disrupt the government, in that the legislative body will be composed not of representatives of one great majority party and one somewhat smaller minority party, but of representatives of a very large number of small and local political groups, unable to coalesce in opinion and policy, rendering the necessary coalition ministries short-lived and timid, and, in short, making parliamentary government impracticable. The experiments in minority and proportional representation have not yet been conducted long enough or on a sufficiently large scale to prove or disprove these arguments.

The Recall.—In connection with the appointive power of the electorate there has been suggested in very modern times a removal power. It is argued that the electorate in an ideal democracy should have the power to recall its elected official if at any time such official is in the opinion of the electorate not properly performing his functions. Ordinarily an official is elected for a certain number of years and during that period has a certainty of tenure of his office; the institution of the *recall* operates to make his tenure of office indeterminate, subject to immediate close at the will of the electorate.

The recall has not been used in the case of national representatives or officials of a state as yet; the device existed in a few of the small cantons of Switzerland and has found especial

favor in certain commonwealths and municipalities of the United States, particularly in the western portion. Its operation is simple: on petition of a certain proportion of the electorate, usually about twenty-five per cent, a new election is held, usually with the official in question as one of the candidates, at which it is determined whether the official shall continue in office or another be elected. Details of operation differ somewhat in the different localities, especially in the proportion of the electorate required in the petition.

The advantage of the recall as a club to hold over dishonest or inefficient officials is obvious. It is another and very radical step in the direction of complete control of the government by the electorate. Grave disadvantages also exist. The possibility is always present that an honest and efficient official may, in the exercise of his duties, arouse the hostility of a considerable proportion of the electorate and be subjected to recall. The effect of a threat of recall may be very bad upon an official disposed to be efficient, paralyzing his will and inclining him so to conduct his office as to meet with popular approval. The cost of the elections required by the recall may amount to considerable. In one instance, in Los Angeles, the cost was nine thousand dollars. In cities as large as New York and Chicago the cost would probably render the scheme inadvisable. One of the worst features of the recall is its operation in the cases of elected members of the judiciary in the various commonwealths of the United States. As has already been shown in the discussion of the judiciary, technical skill and security in the tenure of office are two prerequisites of a fair and impartial judiciary. The recall undermines these by destroying the security in the tenure of office and subjecting the question of technical skill to the judgment of the ill-informed mass of the electorate. In general, it may be said that the institution of the recall tends to lower the influence and subtract from the honor and dignity of public office. It is probable that its advantage could be equally well obtained by a proper use of impeachment provisions.

IV. Legislative Powers of the Electorate

With modern progress in democratic government the electorate has gained not only the power of appointing the officials but in some states a considerable degree of legislative power as well. Originally, of course, certain representatives of the people were elected to exercise the legislative function in the government. So distrustful has the electorate grown of its own chosen representatives, however, that provisions have been passed by which the electorate can itself *initiate* legislation, or can require that a legislative measure passed by its representatives be *referred* to it directly for its approval or disapproval. The provisions by which these ends are accomplished are popularly known respectively as the *initiative* and the *referendum*.

Initiative.—The initiative provides that a designated proportion of the electorate may frame a legislative measure, present it to the legislature, and, if it be not passed, require that such measure be submitted for approval or disapproval to the whole electorate. Usually the proportion of the electorate necessary to initiate legislation is fixed at about 15 per cent.

Referendum.—The referendum provides that under certain conditions a measure passed by the legislative body shall be submitted for final approval or disapproval to the whole electorate. The referendum provision may be compulsory for all measures, as in certain cantons of Switzerland, may be compulsory only for constitutional changes, as in other cantons of Switzerland and in some of the commonwealths of the United States, or may be dependent upon the demand of a designated proportion (usually between five and ten per cent) of the electorate.

Use of Initiative and Referendum.—The initiative and referendum provisions for measures for the whole state are found in Switzerland, the initiative applying to proposed constitutional amendments alone, the referendum being compulsory for amendments to the constitution and optional or on

demand for ordinary laws and statutes. The referendum, without the initiative, is provided by the constitution of the Australian Commonwealth. Both initiative and referendum are used in New Zealand for certain special questions, as of taxes or liquor license. A bill has been introduced in England to provide for the referendum to decide serious constitutional issues, and agitation exists at present in France and Norway to provide both initiative and referendum, especially for local issues. In the United States neither the initiative nor the referendum is provided for by the constitution for the whole state. Forms of the initiative and referendum have been known and used in purely local issues, however, for many years. In very recent times initiative and referendum provisions have been incorporated into the constitution of various commonwealths, as Oklahoma, Oregon, South Dakota, Utah, and Missouri, as a part of the regular legislative machinery.

Results of Direct Legislation in Switzerland.—Direct legislation (that is, the initiative and referendum) has been tried more fully and more successfully in Switzerland than in any other state. The results of the trial have on the whole been successful, giving Switzerland a more ideally democratic government than any other state has. The legislature in Switzerland has become more an advisory body than a legislative body; the attention of the Swiss electorate is concentrated on measures rather than on men, thus so minimizing the necessity for party politics that parties have feeble organization and no very definite program; and in general, it is argued that direct legislation has prevented bribery and corruption. Even with these manifest advantages, however, a decided disadvantage is to be noted in the indifference of the electorate. Rarely has more than 55 per cent of the electorate voted, and where compulsory voting exists, a notable proportion of the electorate cast blank ballots. This indifference undoubtedly arises from the large number of elections necessary, sometimes fifteen or twenty in a year.

Different Conditions in the United States Which Would Affect Operation of Initiative and Referendum.—In considering transplanting the initiative and referendum from Switzerland to the United States, allowance must be made for differences in conditions. The Swiss electorate is relatively small in numbers and high in intelligence and honesty. Few laws are offered and few passed, and the laws in general are brief and simply phrased, the executive being left to execute them by such measures as are deemed necessary. No executive or judicial veto upon the acts of the legislative body exists. In the United States the electorate is huge in number and scattered over a vast territory. With size and extent, the clumsiness and expense in the operation of direct legislation are enormously increased. In the United States we have made citizenship and the vote easy to acquire, with the result that a large proportion of the electorate is unintelligent and unused to our social and political conditions, and a certain proportion is open to purchase. In the United States, an enormous number of laws are considered and passed each year. The late Senator D. B. Hill computed that 14,000 laws were passed by the national and commonwealth governments during a single year. During a ten-year period the legislature of the commonwealth of New York averaged 550 laws a year. Also, the laws are commonly intended to be exhaustive, covering all possible contingencies of application and execution. Direct legislation in the United States would thus throw a great burden upon the electorate, necessitating a large number of elections with the presentation of many complex measures at each election. The electorate in the United States is accustomed to depute men to do its legislative work for the state, is really better qualified to vote upon men than upon measures. Direct legislation is contrary to our habits. It is doubtful whether direct legislation would, as some argue, destroy political parties. It is possible that the party out of power would use the initiative and referendum to harass the majority and delay constructive action. In the United States

we already have checks upon the legislative body in the shape of the executive veto and the judicial power to declare measures unconstitutional. Direct legislation would tend to destroy the value of these checks and thus change the whole character of the government. The responsibility of the legislative body would disappear. The legislature might become little more than a committee to draft legislation for the people, the executive would be powerless to veto, and the Supreme Court, after legislation had been passed by the people, would hesitate to declare it unconstitutional. The introduction of direct legislation in the national government of the United States under the present conditions is of doubtful expediency.

Possible Advantages of Direct Legislation under Good Conditions.—If the initiative and referendum could be considered and used, not as a means of legislation but as a check upon legislation, as a possible cure for bribery and corruption, as a club to be held in reserve over inefficient or stubborn legislatives, these provisions might be of great value. If, furthermore, the electorate could be elevated to a high degree of intelligence and honesty, so that votes might be given with judgment and we may be sure that the provisions would not be corruptly used for party purposes, direct legislation might be a blessing. Until such ideal conditions be established, however, the disadvantages of introducing the initiative and referendum in states with broad territory and large electorate of mixed character seem to outweigh the possible advantages.

STATISTICS AND ILLUSTRATIVE CITATIONS

I

STATISTICS SHOWING THE INJUSTICE OF ELECTION BY MAJORITIES

1

United States. Fifty-second Congress—Election, 1888

PARTIES	VOTE	ELECTED	PER CENT OF VOTE	PER CENT OF REPRESENTATION
Republican	4,217,266	88	42.9	26.5
Democrat	4,974,450	235	50.6	71.1
Populist	354,217	9	3.7	2.4
Prohibition	207,814		2.1	
Independent	76,788		.7	
	9,830,535	332	100	100

2

Ohio. Representation of the State in Congress from 1877–1897 [1]

CONGRESS	YEARS	CONGRESSIONAL VOTE		REPRESENTATIVES			
				Actual		Proportional	
		Rep.	*Dem.*	*Rep.*	*Dem.*	*Rep.*	*Dem.*
45th	1877–79	314,529	310,434	12	8	10	10
46th	1879–81	277,875	264,737	9	11	10	10
47th	1881–83	405,042	340,572	15	5	11	9
48th	1883–85	306,674	268,785	8	13	11	10
49th	1885–87	395,596	380,934	10	11	11	10
50th	1887–89	336,063	325,629	15	6	11	10
51st	1889–91	412,520	395,639	16	5	11	10
52d	1891–93	362,624	350,528	7	14	11	10 [3]
53d	1893–95	397,320	407,120	9	12	10	10
54th	1895–97	407,371	274,670	19	2	12	8 [2]

[1] Commons, *Proportional Representation.*
[2] One Prohibitionist.
[3] One Populist.

Votes for Congressmen in 1912, United States

STATE	REPRESENTED						UNREPRESENTED						
	DEMOCRATIC		REPUBLICAN		PROGRESSIVE		DEMOCRATIC	REPUBLICAN	PROGRESSIVE	SOCIALIST	PROHIBITION	SCATTERING	
	Vote	Members	Vote	Members	Vote	Members							
Alabama	93,483	10						8,372	8,522	458			1 Dem. at large
Arizona	11,389	1						3,110	5,819	3,034	193		
Arkansas	89,718	7						26,417					
California	72,041	3	121,655	4	120,725	4	124,569	33,579	31,604	104,122	14,347		
Colorado	117,775	4						65,877	58,097	12,635			
Connecticut	76,148	5						70,048	29,737				
Delaware	22,485	1						16,740	5,497		2,825		
Florida	36,092	4						2,475	1,624	3,878	255		1 Dem. at large
Georgia	116,192	12											
Idaho			53,342	2			30,178		12,066				2 Rep. at large
Illinois	338,724	20	86,780	4	37,362	3	89,787	275,981	167,218	81,940	14,896		
Indiana	291,288	13						166,698	127,041	38,457	17,349		
Iowa	59,139	3	151,138	8			112,811	31,962	43,228	4,058			
Kansas	108,712	5	43,951	2	17,955	1	55,237	97,153		26,588	900	505	
Kentucky	198,925	9	30,731	2			11,760	62,085	85,543	11,010			
Louisiana	62,776	8								2,841			
Maine	18,077	1	52,914				46,861	16,796	6,558	1,406	900		
Maryland	107,614	6						62,382	2,303	4,436	3,339		
Massachusetts	105,764	8	108,292	8			96,004	55,331	108,574	11,970			
Michigan	39,334	2	127,405	9	31,315	2	124,781	64,409	130,015	14,812	2,351	266	1 Rep. at large
Minnesota	14,718	1	165,900	9			61,283	13,093	8,574		13,987	32,207 [1]	1 Rep. at large
Mississippi	43,958	8								302			
Missouri	295,226	14	45,223	2			42,476	178,112	98,115	9,533			
Montana	25,891	2						23,505	16,644	10,271			2 Dem. at large

[1] Public ownership party vote.

Votes for Congressmen in 1912, United States (Continued)

STATE	REPRESENTED						UNREPRESENTED						
	DEMOCRATIC		REPUBLICAN		PROGRESSIVE		DEMOCRATIC	REPUBLICAN	PROGRESSIVE	SOCIALIST	PROHIBITION	SCATTERING	
	Vote	Members	Vote	Members	Vote	Members							
Nebraska	59,720	3	65,877	3			54,331	53,045		10,085	7,182		
Nevada			7,379	1			7,311			2,072			
New Hampshire	40,682	2						35,324	4,307	1,580	381		
New Jersey	149,686	11	14,472	1			13,170	85,348	58,296	85	259		
New Mexico	22,139	1						17,900	5,883	2,644			
New York	455,009	31	202,805	11	13,987	1	179,462	280,412	293,985	63,119	21,751	7,763	
North Carolina	149,569	10						2,697	73,440			181	
North Dakota			63,375	3			24,341			8,486			
Ohio	409,771	19	51,075	3			48,689	245,176	118,311	90,986	3,724		1 Dem. at large
Oklahoma	80,745	6	43,389	2			42,125	44,292		39,727			3 Dem. at large
Oregon			42,046	2	16,783	1	35,285		8,679	13,283	7,554	6,280	
Pennsylvania	207,740	12	266,673	18	39,088	6	190,217	203,090	97,621	82,876	18,223	5,125	3 Pro. 1 Rep. at large
Rhode Island	23,785	2	11,718	1			9,841	19,998	8,844		702		
South Carolina	46,298	7						190					
South Dakota			63,486	3			44,577			3,862	2,799		
Tennessee	111,928	8	29,417	2			42,286	36,391	4,203	2,104			
Texas	195,307	18						2,564	86	503	96		
Utah			43,133	2			37,192		22,358	8,971		742	2 Dem. at large
Vermont			28,865	2			23,649			1,220	1,329		
Virginia	85,196	9	14,868	1			13,857	8,988	6,895	3,870		1,147	
Washington			95,798	3			74,911		88,442	39,124			2 Pro. at large
West Virginia	48,163	2	81,366	4			73,434	47,798					1 Rep. at large
Wisconsin	54,250	3	146,883	8			72,092	61,257		23,937			
Wyoming			19,130	1			14,720		4,828	2,230	296		

4

Australia (Victoria). Election of Senators, 1910[1]

Successful		Unsuccessful	
Findley (Lab.)	217,573	Best (Fusionist)	213,976
Barker (Lab.)	216,199	Trenwith (Fusionist) ...	211,058
Blakey (Lab.)	215,117	M'Cay (Fusionist)	195,477
		Goldstein (Independent).	53,583
		Ronald (Independent) ..	18,380
	648,889		692,474

[1] Humphrey, *Proportional Representation.*

II

EXAMPLES OF PROVISIONS FOR INITIATIVE AND REFERENDUM

1

Switzerland

ART. 89. Federal laws, decrees, and resolutions shall be passed only by the agreement of the two councils.

Federal laws shall be submitted for acceptance or rejection by the people, if the demand is made by 30,000 voters or by eight cantons. The same principle applies to federal resolutions which have a general application, and which are not of an urgent nature.

Chapter III. Amendment of the Federal Constitution[1]

ART. 118. The federal constitution may at any time be amended, in whole or in part.

ART. 119. Total revision shall take place in the manner provided for passing federal laws.

ART. 120. When either council of the Federal Assembly resolves in favor of a total revision of the constitution and the other council does not consent thereto, or when fifty thousand Swiss voters demand a total revision, the question whether the federal constitution ought to be revised shall be in either case submitted to a vote of the Swiss people, voting yes or no.

[1] Chapter iii was revised on July 5, 1891, Arts. 118-123 being substituted for the original Arts. 118-221; the important change is in Art. 121, which extends popular initiative to partial revision of the constitution.

If in either case the majority of those voting pronounce in the affirmative, there shall be a new election of both councils for the purpose of undertaking the revision.

ART. 121. Partial revision may take place either by popular initiative or in the manner provided for the passage of federal laws.

The popular initiative shall consist of a petition of fifty thousand Swiss voters for the adoption of a new article or for the abrogation or amendment of specified articles of the constitution.

When several different subjects are proposed by popular initiative for revision or for adoption into the federal constitution, each one of them must be demanded by a separate initiative petition.

The initiative petition may be presented in general terms or as a completed proposal of amendment.

If the initiative petition is presented in general terms and the federal legislative bodies are in agreement with it, they shall draw up a project of partial revision in accordance with the sense of the petitioners, and shall submit it to the people and the cantons for acceptance or rejection. If, on the contrary, the Federal Assembly is not in agreement with the petition, the question of partial revision shall be submitted to a vote of the people, and if a majority of those voting pronounce in the affirmative, the Federal Assembly shall proceed with the revision in conformity with the popular decision.

If the petition is presented in the form of a completed project of amendment and the Federal Assembly is in agreement therewith, the project shall be submitted to the people and the cantons for acceptance or rejection. If the Federal Assembly is not in agreement with the project, it may prepare a project of its own, or recommend the rejection of the proposed amendment, and it may submit its own counter-project or its recommendation for rejection at the same time that the initiative petition is submitted to the vote of the people and cantons.

ART. 122. The details of procedure in cases of popular initiative and popular votes on amendments to the constitution shall be determined by federal law.

ART. 123. The amended federal constitution or the revised portion of it shall be in force when it has been adopted by a majority of Swiss citizens voting thereon and by a majority of the cantons.

In making up the majority of cantons the vote of a half-canton shall be counted as half a vote.

The result of the popular vote in each canton shall be considered as the vote of the canton.

2

United States

(COMMONWEALTH OF OREGON)
(JUNE 4, 1906)

Article IV of the Constitution of the State of Oregon shall be, and hereby is, amended by inserting the following section in said article IV after section 1, and before section 2, and it shall be designated in the Constitution as section 1*a* of article IV:

"SECTION 1*a*. The referendum may be demanded by the people against one or more items, sections, or parts of any act of the legislative assembly in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of that act from becoming operative. The initiative and referendum powers reserved to the people by this Constitution are hereby further reserved to the legal voters of every municipality and district, as to all local, special, and municipal legislation, of every character, in or for their respective municipalities and districts. The manner of exercising said powers shall be prescribed by general laws, except that cities and towns may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten per cent of the legal voters may be required to order the referendum nor more than fifteen per cent to propose any measure, by the initiative, in any city or town."

Sections 1 and 2 of article XVII of the Constitution of the State of Oregon shall be, and hereby are, amended to read as follows:

"SEC. 1. Any amendment or amendments to this Constitution may be proposed in either branch of the legislative assembly, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed

amendment or amendments shall, with the yeas and nays thereon, be entered in their journals and referred by the Secretary of State to the people for their approval or rejection at the next regular general election, except when the legislative assembly shall order a special election for that purpose. If a majority of the electors voting on any such amendment shall vote in favor thereof, it shall thereby become a part of this Constitution. The votes for and against such amendment or amendments, severally, whether proposed by the legislative assembly or by initiative petition, shall be canvassed by the Secretary of State in the presence of the Governor, and if it shall appear to the Governor that the majority of the votes cast at said election on said amendment or amendments, severally, are cast in favor thereof, it shall be his duty forthwith after such canvass, by his proclamation, to declare the said amendment or amendments, severally, having received said majority of votes to have been adopted by the people of Oregon as part of the Constitution thereof, and the same shall be in effect as a part of the Constitution from the date of such proclamation. When two or more amendments shall be submitted in the manner aforesaid to the voters of this State, at the same election, they shall be so submitted that each amendment shall be voted on separately. No convention shall be called to amend or propose amendments to this Constitution, or to propose a new Constitution, unless the law providing for such convention shall first be approved by the people on a referendum vote at a regular general election. This article shall not be construed to impair the right of the people to amend this Constitution by vote upon an initiative petition therefor."

NOTE.—Nine states have in one form or another adopted the initiative and referendum: Delaware, Idaho, Maine, Missouri, Montana, Oklahoma, Oregon, South Dakota, and Utah. The most complete test of the provisions has been made in Oregon.

3

Statistics on the Use of the Initiative and Referendum

The following is a list of the measures submitted to the people of Oregon at the election of 1910, with the results and percentage of total vote polled for each measure.[1]

[1] Given in Oberholtzer, *The Referendum, Initiative, and Recall in America.*

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote for Candidates
1910.—Total vote, 120,248:					
Woman suffrage amendment [1]	35,270	59,065	....	23,795	78
Act establishing branch insane asylum in eastern Oregon [2]	50,135	41,504	8,630	....	76
Act calling convention to revise State Constitution [3]	23,143	59,974	....	36,831	69
Amendment providing separate election districts for members of the General Assembly [3]	24,000	54,252	....	30,252	65
Amendment repealing requirement that all taxes shall be "equal and uniform" [3]	37,619	40,172	....	2,553	64
Amendment authorizing establishment of railroad districts and purchase and construction of railroads [3]	32,844	46,070	....	13,226	65
Amendment authorizing uniform taxation "except on property not specifically taxed," etc. [3]	31,629	41,692	....	10,063	61
Act increasing judge's salary in eighth judicial district [1]	13,161	71,503	....	58,342	70
Bill to create Nesmith County [1]	22,866	60,591	....	37,725	69
Bill to maintain state normal school at Monmouth [1]	50,191	40,044	10,147	....	75
Bill to create Otis County [1]	17,426	62,016	....	44,590	66
Bill changing boundaries of Clackamas and Multnomah Counties [1]	16,250	69,002	....	52,752	71
Bill to create Williams County [1]	14,508	64,090	....	49,582	65
Amendment abolishing poll tax [1]	44,171	42,127	2,044	....	72
Amendment giving cities and towns special rights under the local option law [1]	53,321	50,779	2,542	....	86
Bill to fix liability of employers [1]	56,258	33,943	22,315	....	75
Bill to create Orchard County [1]	15,664	62,712	....	47,048	65
Bill to create Clark County [1]	15,613	61,704	....	46,091	64

[1] Initiated by the people.
[2] Acts or constitutional amendments submitted in answer to petition of the people, i.e. referendum.
[3] Acts or constitutional amendments submitted by the legislature upon its own motion.

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote for Candidates
Bill to maintain normal school at Weston[1]	40,898	46,201	....	5,303	72
Bill to change boundaries of Washington and Multnomah Counties[1]	14,047	68,221	....	54,174	68
Bill to maintain normal school at Ashland[1]	38,473	48,655	....	10,182	72
Amendment prohibiting the liquor traffic in Oregon[1]	43,540	61,221	....	17,681	87
Bill to make prohibition amendment effective[1]	42,651	63,564	....	20,913	87
Bill creating a board to draft an employers' liability law[1]	32,224	51,719	....	19,495	69
Bill to prohibit seine, trap, or wheel fishing in Rogue River[1]	49,712	33,397	16,315	....	69
Bill to create Deschutes County[1]	17,592	60,486	....	42,894	65
Bill for general law under which new counties may be created, or county boundaries changed[1]	37,129	42,327	....	5,198	66
Amendment permitting counties to incur indebtedness beyond $5000 to build roads[1]	51,275	32,906	18,369	....	70
Bill extending the direct primary law to allow voters to express their choice for President and Vice President, presidential electors, and delegates to national conventions[1]	43,353	41,624	1,729	....	71
Bill to create the "Board of People's Inspectors of Government"[1]	29,955	52,538	....	22,583	68
Amendment extending initiative, referendum, and recall, making terms of members of legislature six years, etc.[1]	37,031	44,366	....	7,335	67
Amendment providing for verdict of three fourths of jury in civil cases[1]	44,538	39,399	5,139	....	69

[1] Initiated by the people.

4

Initiative and Referendum in Local Matters

Various commonwealths have adopted the initiative and referendum in local matters by general legislation. The percentages required for the operation of the provisions are as follows: [1]

	Initiative Per Cent	Referendum Per Cent
South Dakota	5	5
Nebraska	20	20
Oregon	15	10
Montana	8	5
Oklahoma		
In counties and districts	16	10
In cities	25	25
Maine	Facultative	
Arkansas	Facultative	
Colorado	15	10
Wisconsin		
General election	15	20
Special election	25	20
Ohio	30	15
California (counties)		
General election	10	20
Special election	20	20
California (cities)		
Regular election	15	25
Special election	30	25

[1] Given in Oberholtzer, *The Referendum, Initiative, and Recall in America.*

5

In various other states, cities have charters providing for the initiative and referendum. For example,

	Initiative at Regular Election	Initiative at Special Election	Referendum
Grand Rapids, Mich.	12%		12%
Wilmington, N. C.	10%	35%	35%
Greensboro, N. C.	10%	25%	25%
Dallas, Texas	5%	15%	15%
Fort Worth, Texas	15%		15%

	Initiative at Regular Election	Initiative at Special Election	Referendum
Amarillo, Texas	5%	15%	15%
Austin, Texas	25%		25%
Beaumont, Texas	8%	20%	20%
Marshall, Texas	25%		25%
Miami, Florida	10%	15%	10%
Reno, Nevada	15%	30%	
Haverhill, Mass.	10%	25%	25%
Gloucester, Mass.	10%	25%	25%

III

THE RECALL

1

Typical Provisions for the Operation of the Recall

Extract from the Iowa Law authorizing certain cities to establish government by commission, showing the recall provision.

"The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty-five per centum of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths that the statements therein made are true as he believes, and that each signature to the paper appended is the genuine signature of the person

whose name it purports to be. Within ten days from the date of filing such petition the city clerk shall examine and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of said examination. If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient, the council shall order and fix a date for holding the said election, not less than thirty days or more than forty days from the date of the clerk's certificate to the council that a sufficient petition is filed. The council shall make or cause to be made publication of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the result thereof declared, in all respects as are other city elections. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election if some other person than the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor. In case the party who receives the highest number of votes should fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant. If the incumbent receives the highest number of votes, he shall continue in office. The said method of removal shall be cumulative and additional to the methods heretofore provided by law."[1]

[1] Quoted in Beard, *Readings in American Government and Politics.*

2

Statistics on Use of the Recall

The percentage of names necessary to make effective a recall petition varies in different cities. For example,

Twenty per cent is required in the recall of any county elective officer of any county in California by a general law passed by the legislature in 1911, and of elective officers in the municipalities of Berkeley and Palo Alto in California; Fort Worth, Texas; Denison, Texas (provision is made for the recall of the mayor only); St. Joseph, Mo.; Grand Junction, Colo.

Twenty-five per cent is required in Los Angeles, San Diego, Pasadena, Alameda, Santa Cruz, Riverside, Santa Barbara, and Richmond, in California; Greensboro, N. C.; Austin, Palestine, in Texas; Lewiston, Idaho; Haverhill, Mass.; Gardiner, Maine; Seattle, Wash.

Thirty per cent is required in San Bernardino, Cal., and Colorado Springs, Colo.

Thirty-three and one-third per cent of the vote cast in the city for all candidates for governor at the last preceding general election is required in the Municipalities in Wisconsin.

Thirty-five per cent is required in Wilmington, N. C.; Dallas, Amarillo, and Marshall, Texas; Tulsa, Okla.

Forty per cent is required in Santa Monica and Long Beach, Cal.

Fifty-one per cent is required in Fresno, Cal.

Seventy-five per cent is required in municipalities in Illinois by a general law passed by the state legislature.

CHAPTER VIII

POLITICAL PARTIES

Definition and Application of Term.—A political party is a body of persons organized to support and further certain public policies and principles of government. The term is popularly applied to any body of persons organized for the above purpose, whether such persons are members of the electorate or not (as the suffragist "party," which may be composed wholly of women), but the political parties with which we are concerned are those which are made up of groups of the electorate, those which are groups of voters organized to support and further their respective policies.

Membership Voluntary.—Membership in a political party is an entirely voluntary act on the part of the voter. He is free, when qualified to exercise the suffrage, to join what party he will. He is free, if in time the principles of his party cease to represent satisfactorily his ideas, to leave one party and ally himself with another. If, again, no organized party suits his ideas, he is free to remain outside of party organization entirely, or he may try to organize a party of his own.

Political Parties are Extra-Judicial Bodies.—Not only is the individual free of restrictions in his choice of political party, but political parties themselves have occupied a peculiarly free position in respect to the law. Political parties have been considered as voluntary associations of citizens for their own purposes; the parties could make their own rules and regulations and could manage their own campaigns, all without state interference.[1] They have been extra-legal insti-

[1] In the United States, recent primary laws in the various commonwealths have amounted to a recognition of the existence and operation of parties.

tutions, growths not foreseen or provided for by the fundamental law of the state.

Parties Not Permitted in Autocracies, but Naturally Developed by Democracies.—In autocratic countries, such as France under the old régime, the mass of the people had no share in the government, their opinion with regard to the public policy was neither asked nor desired, and the public union and organization of groups of citizens to express hostility to the king's ideas would have been considered rebellion and would have been prevented by force.

Democracy changed all this state of affairs. The control of public policy was intrusted to representatives of the people. Liberty of thought and speech was the accompaniment of the ballot. With such control of public policy and such liberty of thought and speech it was speedily apparent that sincere men differed widely in their judgments of how their nation should be governed. They differed on questions of foreign policy; they differed on questions of internal policy, on matters of education, taxation, religion, or the like. And as strong, sincere men were licensed to write and speak their thoughts, each gained for himself a certain following of voters who were influenced by his arguments and were willing that the nation should be guided according to his ideas. The next step was simple. Inasmuch as government is always a government by persons, the followers of a strong, sincere man of outspoken political convictions banded together, organized, to put their spokesman in a position in the government where he might force a trial of his principles.

Such, sketched very briefly, is the natural development of political parties. The necessary premises are democracy with its accompanying freedom of thought and speech. Given democracy, the development of political parties was inevitable.

Political Parties Formed in the Presence of Great Issues.—The differences between the convictions with regard to public policy are naturally greater and more persistently evident in the presence of great and fundamental issues; hence, it is in

the time when such issues are presented for decision that great political parties commonly have their origin. The various individuals who oppose a policy tend to subordinate their minor differences for the common strength in opposition, and on the other hand those who support the policy are liable to combine for the same purpose.

Just this process is to be noted in the origin of the great parties in the history of England and the United States. In England the great issue involved in Parliament's disregard for the principle of legitimacy in calling William of Orange to the throne of England in 1688 was responsible for clearly defined parties, the Tory party (those who favored legitimacy and the recall of the Stuart house to the throne) and the Whig party (those who favored the supremacy of Parliament). In the United States, during the administration of our first President, the great issue between those who favored a strong central national government and those who emphasized the rights of the individual and opposed granting strong powers to the central government developed respectively the Federal and the Anti-federal (Republican) parties. Again, at a later period, the great issue of slavery caused a new cleavage and resulted in the Republican and Democratic parties.

Importance of the Nature of the Issues.—The nature of the issue on which political parties divide, and the relations which political parties bear to each other, have a great effect on peace and security within the state. In the early days of democracy statesmen bewailed "factions" (*i. e.* political parties), not realizing their inevitability and believing them certain to arouse civil war. Although democracy is yet young, men have come to regard political parties formed on certain lines and operating under certain conditions as not only inevitable but valuable.

In general, the line of cleavage between political parties should never be on racial, religious, or social grounds. Each party, if such line be drawn, believes that the success of its opponents means its own oppression or extinction, and under

such belief will fight to the death. If such lines do not result in actual armed rebellion, yet a rancor is excited which inevitably impedes the government in the exercise of its functions and is an ever present sore that may spread to the whole body politic. Again, the members of each political party must tacitly or avowedly recognize that their opponents are sincere in their beliefs, capable of conducting the government if successful, and as patriotically devoted to the true welfare of the state as themselves. Here, too, if the members of a political party do not have this tacit or acknowledged recognition of their opponents' good faith and patriotism, they may feel justified in secret intrigue or in open rebellion.

With the succeeding years in the development of democracy the conditions under which political parties strive for supremacy are becoming better and better. Elections are lost without bitterness, indeed with a philosophic acceptance of the will of the majority, and with a realization that the opposition has just as much at stake in attempting to further the prosperity of the country at large as any other party.

Issues on which Political Parties may Properly Divide.—There are many issues which are suitable as a line of cleavage between parties, after barring out racial, religious, and social issues. Economic questions, as the treatment of great corporations; financial questions, as the raising of money for the expenses of government by certain kinds of taxes; policy toward outlying possessions, as colonies or territories;—these are issues which allow honest differences of opinion and yet do not foster that bitterness which would surely be excited by racial, religious, or social questions. These are issues on which political parties may divide without prospect of destroying peace within the state.

Political Parties Continue to Exist after Great Issues Because of Value to State and to Individual.—Although political parties were unforeseen and unprovided for by the framers of modern democracies, were discountenanced and feared by democratic statesmen in the early days of democracy, they

are now commonly recognized as an essential element in the system of modern democratic government. Political parties, born of great national issues, have continued to exist after those issues have died away, because they have been found necessary for democratic government in modern states.

On the one hand, it is by means of party unity that the various separate departments of government are unified in their policy and operation. The party in power commonly controls the various branches of the government, so that men of the same political opinions, bound by allegiance to the same political group, are coöperating in the varied business of government. On the other hand, political party organization on a national scale, as in England and the United States, has accomplished more than any other agency to educate the voters and acquaint them with the questions of the time. In the United States the political parties have knit together the various sections of the vast extent of the country, doing a service no other agency could have done so efficiently. Further, the political parties have roused popular enthusiasm and inspired the people to register their votes at the polls, thus insuring an approximately accurate expression of the popular will. In these ways political parties have actually formed the machinery by which democracy has operated.

Not only has the political party system been valuable to the state, but it has also been valuable to the individual voter. Democracy assumes that government is to be conducted in accordance with the will of those governed: the political party system furnishes the means by which the will of the governed is made known and put into effect. The party system has furnished the individual voter with the means to make his opinions known and his vote count. The voters in a political party are as partners in a coöperative company. Each partner is expected to contribute his whole political ability to the company and to work in harmony with his colleagues. The political party is a combination of the political acumen and the voting strength of its members for the purpose of controlling the gov-

ernment and putting its political theories into practice. A voter can accomplish nothing single-handed, but associated with a party he may gain the influence to sway the policies of government by the election of representatives who support his views.

Thus political parties have continued to exist for the advantages cited above, even after the great issues which gave them birth have disappeared in history. Political parties persist because they have become necessary both to the state and to the individual.

Political Party Conditions in England and the United States Different from Those in Continental Democracies.—In considering the present status of political parties in various nations, a sharp division may be drawn between conditions in England and the United States, on the one hand, and the states of continental Europe, on the other. The share which political parties have in the governmental system is important in all modern states, but political parties have developed in two radically different ways, with resulting differences upon their relations with the governmental system.

In the states of continental Europe the various degrees of political opinion tend to be reflected in a bewildering number of different political parties; in England and the United States the voters have tended to rank themselves ordinarily in one or the other of two great parties of national scope. In the states of continental Europe each election is contested by candidates of eight or ten or a dozen opposing parties; in elections in England and the United States the prominent candidates stand as the nominees of two great nation-wide parties.

Effect of Continental Conditions on the Government.—The results of this difference in the development of the political party system affect fundamentally the operation of government. In the states of continental Europe the parties are often not national in character, but sectional or local. Men are elected for their own merits rather than for any national policies they may favor. Local issues are liable to determine

the election of a member to the national legislature. Representatives thus elected have no bonds of common policy with their fellow-representatives from other districts, so that, when they reach the national legislative house, they do not find any considerable number of fellow-members pledged to general policies similar to their own. In the legislature such members either gravitate to one of the several political groups they find there already loosely formed, or among themselves form a new group. Thus the legislative body consists at the very outset of a number of small groups composed of members loosely allied in political interest and bound by no strict party allegiance. Rarely does any one group hold an actual majority of votes in the legislature. Great difficulty of legislative action logically follows. All measures must be compromise measures, must be framed to please enough of the different groups to insure a majority vote.

In those states where the ministry which conducts the government is dependent upon a majority in the legislative body, as is the case in France and Italy, an added difficulty arises. Each ministry is a coalition ministry, a ministry whose members are drawn from several groups to insure a majority of votes for support. Experience has shown, however, that a ministry thus formed rarely coöperates harmoniously in the work of the government. The separate members act as rivals rather than as colleagues, each member being able to break up the coalition of parties in the legislative body by influencing the representatives of his own group and thus to destroy the parliamentary support for the whole ministry. Intense personal bitterness is often aroused. Ministries are commonly very short-lived, with the resultant weakening of governmental efficiency.

In those continental states where the ministry and the conduct of government are not directly under the control of the parliament, as was the case in Germany, the political party conditions do not disturb the course of the government so seriously. The minister is responsible to the monarch and

need not resign when he loses the support of the legislature. He often finds himself, however, at odds with his parliament, is indeed sometimes severely arraigned by its members. In important measures which must have parliamentary sanction the same necessity for compromise exists as in the other continental states.

Defense for Continental Conditions.—The conditions in continental European states, as outlined above, are by no means wholly bad. A strong argument can be advanced for the theory that these states present a more ideal form of democracy as such than the states in which only two parties contend for power. It may be argued that men do not naturally divide into two parties; that the many parties in these continental states most truly represent the various shades of political opinion throughout the electorate. In matters of legislation, compromise measures are more truly democratic than the measures forced upon a reluctant minority by the votes of the majority. A measure that has endured the critical scrutiny of the various elements of a coalition ministry, and is passed by the support of the parliamentary groups from which those elements come, must be a good measure, whereas it is conceivable that a very bad measure may be forced through the legislature by the majority in a two-party body.

Superior Efficiency of the Two-Party System.—For the actual continuous and efficient operation of government, however, the two-party system that has developed in England and the United States is better adapted. In the elections in each of these countries the candidates of two prominent parties of nation-wide organization contend for election, and the issues before the electorate are national issues. The representative elected finds in the legislature a united body of political brethren elected on the same issues, having the same general political bias as himself. In England, if the representative is of the majority party, he finds that the cabinet (the actual executive) is composed of the leaders of his own party, men who had a part in defining the very issue on which he him-

self was elected. He finds that the cabinet members coöperate harmoniously as colleagues in the conduct of their several departments, that each measure introduced by the cabinet has the united support of its members, and that his party in Parliament customarily supports its leaders in giving its sanction to such legislation as they introduce. Thus the party system provides for the election of men on national issues, unifies the various branches of government, and assures the actual executive of adequate legislative support for all ordinary business of government. When great crises arise and the ministry loses the support of its party in Parliament, it resigns to make way for a ministry of what was the opposition, or it has Parliament dissolved and a new election ordered in the hope that a new election may prove that a majority of the electorate favors its policy. In the United States the elected chief executive is allowed to choose his own cabinet, the members of which are, of course, of political convictions similar to his own. Thus it is insured that the main departments of the government will be carried on in accordance with one political policy. Furthermore, the chief executive will commonly find a majority of the members of the legislature of the same political party as himself, thus insuring a cordial coöperation between the executive and legislative branches of the government. Even if his party is in the minority, he will have a body of considerable numbers to support his policies in the legislature, and the force of public opinion is such that under such circumstances the majority party will almost always go halfway to meet the wishes of the chief executive. Thus, in the United States, the political party system serves to unify the various branches and departments, to create the connection between them necessary for the efficient functioning of government.

Necessity for Organization.—In the relatively early days of democracy, when it became evident that political parties were the inevitable agencies by which the popular will was to be made known, members of these parties saw the value of

efficient organization to accomplish their purposes. The more important the share the parties were to take in the government, the more necessary the organization and the more desirable an efficient organization.

Organization at the present day is recognized as inevitable. Where the state is vast in extent, where the number of offices under the control of the electorate is great, where the separation between the branches of government is sharply drawn and only to be bridged by the party allegiance, in such a state the political party can serve great ends, both for the state and for itself, by careful organization. These are the conditions to be noted in the United States, and, in consequence, it is in this country that party organization has most fully developed. In England, a relatively small country with comparatively few elective offices outside of the parliamentary seats, party organization did not begin so early and has not progressed so far. In recent times, however, political leaders have taken a leaf from American experience, and to-day each of the two great parties has a central committee with headquarters in London and hundreds of local committees in election districts throughout the country. In continental states national party organization is practically unknown. Candidates often conduct a personal rather than a party canvass, and seek election upon local issues and personal reputation rather than upon national issues and national party affiliations.

Purpose of Organization.—The primary purpose of party organization is to nominate and elect party candidates. The definition of a political party was: A political party is a body of persons organized to support and further certain public policies and principles of government. To further its policies a party must elect to office men who believe in such policies; an efficient organization will add much to a party's chances of success in thus electing its sympathizers. This desire to elect its partisans and thus influence the government is the source of the complex and efficient organization of the political party in the United States.

Functions of Organization.—How does the organization proceed in its effort to win elections?

First, it educates the voters. It presents the national issues to the people, instructs them with regard to the arguments for or against each question proposed. Naturally, a particular party emphasizes its own side of the question, but a voter is always free to listen to the speeches or to read the articles by men of both parties and thus get the arguments on each side. This education of the voter is a service to the party, on the one hand, and is a service to the state, on the other. The intelligence with which the average voter casts his ballot on election day is largely due to the amount of education he has gained from the orators or pamphleteers of the political parties in arguing for their respective policies and candidates.

Second, the political party makes it its business to arouse and maintain the enthusiasm of the electorate at the time of an election. By meetings, speeches, parades, it tries to inspire each voter with enthusiasm for its cause and its candidate. Here, again, the party is not only doing itself but doing the state a favor. The success of democracy depends upon the accuracy with which the public will is ascertained. In so far as the political party inspires men to go to the polls and register their will, it performs a real service to the state.

Third, the political party seeks to attract to its membership the new voters. Each year, with the coming of age or the attainment of citizenship, an appreciable number of new members is added to the electorate. Each political organization puts forth efforts to enroll these new voters under its standard.

Thus the political party instructs the electorate, inspires the electorate with enthusiasm, and proselytes among the members of the electorate, all with the fundamental end in view of electing its candidates to office and thus controlling the government.

Organization Most Complete in United States.—In completeness and efficiency of organization the political parties of the United States excel those of any other state. In general, the system may be likened to a huge pyramid whose base is

composed of the numerous "primaries" and whose apex is the "national convention."

Characteristics of Organization.—The primary is a meeting open to all the qualified voters of a specified political party in the smallest subdivision of the state (as the district, county, or precinct) in order to

(1) nominate the candidates of the party for offices in the district;

(2) choose a standing committee to manage the campaign for the district; and

(3) select delegates to the party meetings appointed for the larger area of which the district is a subdivision.

The delegates from the primaries meet in a convention of a larger area, as a congressional district, and proceed to

(1) nominate party candidates for offices in this larger area;

(2) appoint a committee to manage the campaign for this larger area; and

(3) select delegates to the state (commonwealth) convention of the party.

The state (commonwealth) convention in turn meets to

(1) nominate candidates for offices in the commonwealth, as governor, lieutenant governor, etc.;

(2) appoint a committee to take charge of the state (commonwealth) campaign; and

(3) select (once in each four-year period) delegates to the national convention.

The national convention, the apex of the system, meets to draw up a declaration of policies and principles (*platform*), to nominate candidates for President and Vice President, and to choose a committee (the *national committee*) to superintend the national campaign. This national committee consists of fifty-one persons, one for each state and territory and one for the District of Columbia, the members being proposed to the convention by the separate state and territorial delegations.

The above method is simple and provides a theoretically ideal method whereby the will of the rank and file of the party

shall be carried out. From the primary up to the national convention of the party each gradation of meeting is dependent upon and linked with each other gradation.

Nomination by Party Organization.—It will be at once noted that the most important duty of the primaries and conventions is the duty of nomination. Each party's primaries and conventions thus determine whom they consider to be best fitted to carry on the government. In other words, the party organizations completely control the selection of candidates for the various governmental offices.

This method of selection, so familiar to us, is a new development in politics. In England, until the present generation (when the party system as it exists in the United States is becoming installed), candidates commonly offered themselves for election, asking for support on the basis of merit or personal position in the community. Such is the practice in most of the democratic states on the continent now. Again, candidates have been put before the electorate by a group of men prominent in a community, acting secretly or openly in advocating their election. Such has been the practice in parts of England and Scotland, such is the practice now in districts of France, and, previous to the country-wide development of the party system, such was the practice in many communities of the United States. In the United States at present, however, public opinion condemns the practice of having a candidate proposed by a group of the electorate, being suspicious of the motives behind the candidacy, and commonly looks upon the man as presumptuous who without previous support declares himself a candidate. The people in this country feel that it is more truly democratic for them to pick out personally the candidates for office. The organization of the political parties is theoretically such as to give each member of the electorate an opportunity to have a voice in the selection of such candidates. After a candidate is selected, he becomes the representative of his party and is entitled to feel that he has the united support of the members of that party. Such, briefly outlined, is the

theory whereby the nomination of candidates by the political party organization is accepted by the electorate as a whole in the United States.

Importance of Character of Primaries in Carrying Out the Functions of Party Organization.—If the party primaries are openly and fairly conducted and each voter of the party does his share in the selection of candidates, committee, and delegates, it is certain that the candidates, committee, and delegates will be truly representative of the party of the district, county, or precinct. It is certain also that each convention of the larger areas will likewise be truly representative of the will of the party majority. The whole system relies for its truly representative nature upon the character of the primaries.

Former Evils in System.—Originally the control and operation of the primaries was left entirely in the hands of the political parties on the theory that the state or the commonwealth had no right to dictate how the parties should choose their candidates, but such grave abuses arose that a reform was necessary. Experience proved that in many districts, especially those of the cities, the voters of the party were too indifferent to attend the primaries. Thus the opportunity was given to a class of professional politicians and their followers to control these primaries, the key to the whole system. The primaries, being self-constituted bodies able to make their own rules for admission and procedure, rapidly fell under the complete control of a small clique of politicians who operated them to their own advantage. No such thing as a popular selection of candidates, committee, and delegates existed. This process of nomination consisted in the preparation of a list of names ("slate") by the district boss and its immediate adoption by his hangers-on. The best citizens were repulsed by the nature of the proceedings and by the character of the leaders, so that they remained away from the primaries in ever greater numbers. Responsible and efficient men refused to accept office at the dictation of the professional politician and boss, leaving the

offices to be filled by unscrupulous men of little ability, willing to repay by appointments, contracts, and the like the clique that had put them in office. Thus was created the political *ring*, an exclusive combination of politicians to traffic in offices and their emoluments, and hence resulted a large proportion of the *graft* evil.

The situation as described above was by no means universal, but did exist to a greater or less extent in most of the good-sized cities of the country. It became common enough to arouse a widespread demand for reform.

State Supervision of Primaries to Correct Evils.—The first step toward reform was taken when the commonwealths, abandoning the theory that the parties' methods of nomination were of no public concern, one after another passed laws regulating the primaries. The purpose of these laws was to insure a fair and open primary in which the candidate selected was the free choice of the members of the party. All of the commonwealths now have primary laws, usually providing for the dates of the primary elections, for rules similar to those which govern regular elections, for the method of nominating candidates and delegates, and for regular ballots printed at public cost. In general, practically the same measures are now taken to safeguard the primaries as are taken to safeguard the elections.

Direct Nominations.—With state regulation of the primaries and the removal of the most glaring abuses came a feeling on the part of the voters at large that the conventions of the larger units were not all that they should be. The voters argued logically that if they were competent to choose delegates to the conventions, they were also competent to do the chief work of those delegates, namely, the nominating of the party candidates for offices in the larger districts. As a result of this argument came the introduction of a system of *direct nominations* or *direct primaries*.

Under the direct primary or direct nomination system the members of the party, instead of selecting party delegates for

a convention, themselves vote for the candidates for the various offices in precinct, district, and commonwealth. The direct-primary or direct-nomination movement has spread rapidly, especially in the West and South. It has operated in some commonwealths to do away entirely with the convention and that system of nomination. In other commonwealths the convention has been retained, but its functions are much limited.

Nomination by Petition.—Another method of insuring to the electorate its choice in the matter of candidates is the method of *nomination by petition*. In a number of commonwealths the laws provide that a specified number of voters may, by signing a nomination paper or petition paper, constitute the person named in such paper a candidate for an office designated. Such procedure is in most cases intended to placate the independents, those who refuse to declare their allegiance to any political party, and those who disapprove of the existence and operations of organized political parties. This method of nomination is often used by candidates who have been disappointed in the primaries and who believe that a recourse to the whole electorate will elect them.

The Basis of True and Lasting Reform.—Only one reform will insure a thorough and beneficial change in the system, however, and that is a reform that is needed in all democratic countries to-day. The electorate must be further aroused to a sense of its duties and responsibilities. No system can be devised which will operate without the coöperation of the electorate. State regulation will not make the electorate attend the primaries, and direct nominations will be circumvented by the professional politicians and their allies if the mass of the electorate neglects to go to the polls. The indifference of the electorate is the root of the evils of the system. Reform waves sweep the country at times and show what an awakened electorate can accomplish, but reform waves are the exception. The class of professional politicians, always alert to the opportunities afforded by the system and concentrating

all attention on getting in controlling offices, continue even under the various regulations that have been introduced to use the primaries to achieve their ends. "Politics" and "politician" have come to have an evil significance which ought by no means to be attached to them. When the functions of the electorate are understood and regularly and intelligently exercised, we shall soon see the brood of petty politicians swept out of office and men of proved capacity called to places of responsibility and service in the state.

STATISTICS AND ILLUSTRATIVE CITATIONS

I

POLITICAL PARTIES

1

PRIMARY ELECTIONS ACT. MICHIGAN, JUNE 2, 1909

The people of the State of Michigan enact

When Candidates Nominated by Direct Vote

SECTION 1. Whenever any primary election shall be held in this State or in any city, county or district in this State, pursuant to the provisions of this act, the nomination of candidates for the offices herein named, by each political party, shall be made by direct vote of the enrolled voters of such political party in the State or in any district, county, or city in this State, as the case may be, in the manner hereinafter provided.

Primary Elections, How Conducted, etc.; Provisions Applicable; Expenses, How Defrayed

SEC. 2. All primary elections shall, except as herein otherwise provided, be conducted and regulated as near as may be in every particular as prescribed by law for the regulation and conduct of general elections. The provisions of the general election law shall apply to primary elections with respect to the giving of notices of enrollment and election, in fixing places for holding such elections, providing the ballot boxes with the necessary equipment and supplies, and all officers required to perform similar duties under the general election law shall be required to perform such duties under this act, with like power and compensation. All expenses of primary elections shall be

defrayed from the same funds from which are defrayed the expenses of an election.

"Primary," Term Defined

SEC. 3. The words "primary" or "primary election," as used in this act, shall be construed to mean an election for the purpose of deciding by ballot who shall be the nominess of political parties for the offices named in this act or for the election by ballot of delegates to political conventions. The words "qualified elector" shall be construed to mean an elector who is qualified under the general election law, to vote for a member of the legislature in this State.

Voter Must Be Enrolled; When Voters to Become Enrolled; Proviso, Cities

SEC. 4. No person shall be permitted to vote at any primary election held in this State unless he shall have been enrolled, in the manner herein provided, as a member of a particular political party, except in cases of new political parties as hereinafter provided. The voters in the various political parties shall be afforded an opportunity to become enrolled voters of the particular political party with which they are affiliated on the first Monday of April preceding the September primary election, whether they be registered or not: Provided, That in the year nineteen hundred and ten, in cities operating under the direct nomination system having an election in April, such opportunity to enroll shall be afforded, also, on the second Monday of January. It shall not be necessary for the electors who were enrolled under any previous act to again enroll under the provisions of this act. . . .

Change of Party Affiliation

SEC. 11. Whenever an enrolled voter has changed his party affiliation and desires to be enrolled as a member of another political party, he may personally make application only on enrollment day for reënrollment to the enrollment board, and said board shall thereupon reënroll the name of said enrolled voter, and at the same time draw a pen mark through the name of said enrolled voter as previously enrolled and opposite said name as previously enrolled, shall write the word "re-enrolled" and the date of said enrollment. . . .

General Primary Election, When Held, Officers, etc.

SEC. 16. A general primary election, for all political parties, shall be held in every election precinct in this State on the first Tuesday after the first Monday of September preceding every general November election, at which time the enrolled voters of each political party shall vote for party candidates for the office of Governor, Lieutenant Governor and United States Senator: Provided, That no nomination for the office of United States Senator shall be made unless such official is to be elected at the next session of the legislature.

Nomination of Officers

SEC. 17. In every congressional district, in this State there shall be nominated at the said September primary election, by direct vote of the enrolled voters of each political party within such district, a party candidate for representative in Congress. In every senatorial district in this State there shall be nominated at the said primary election, by direct vote of the enrolled voters of each political party within such district, a party candidate for State senator. In every representative district in this State there shall be nominated at the said primary election, by direct vote of the enrolled voters, of each political party within such district, a party candidate or candidates as the case may be, for representative in the State legislature. In every county in this State where nominations are made by direct vote there shall be nominated at the said primary election by direct vote of the enrolled voters of each political party within such county, party candidates for county offices to be voted for at the November election following. In every city of the State having a population of seventy thousand or more, there shall be nominated at said September primary election or on the third Tuesday preceding any April election, whenever the city election in said cities is held in April, by direct vote of the enrolled voters of each political party within such city, party candidates for city offices. In any city in this State having a population of less than seventy thousand in which the voters have decided in accordance with the provisions of this act, in favor of direct nominations of party candidates for city offices, when such offices are to be voted for at the November election following, there shall be nominated at the said primary election by direct

vote of the enrolled voters of each political party within such city, party candidates for city offices.

Delegates to County Convention

SEC. 18. There shall also be elected at the September primary, by direct vote of the enrolled voters of each political party in said county, as many delegates in each township, ward or precinct, as the case may be, as such political party in such township, ward or precinct shall be entitled to by the call issued by the county committee of such political party for the county convention thereafter to be held by such political party within said county in that year for the purpose of electing delegates to the State convention called for the purpose of nominating candidates for State offices. In case of any vacancy in any delegation from any election precinct, township, or ward, to the county convention, such vacancy shall be filled by the delegates present from the ward or township in which the vacancy occurs. The State central committee of each political party shall, at least thirty days before the September primary herein provided for, certify to the board of election commissioners of each county and to the chairman of the county committee of such party, the number of delegates to which such county shall be entitled in the State convention of such party, and the said State central committee shall apportion such delegates to the several counties in proportion and according to the number of votes cast for the candidates of such party for Secretary of State in each of said counties respectively at the last preceding November election. The name of any candidate for delegate to the county convention shall not be printed upon the official primary election ballot, but one or more of such names may be placed on such ballot by printed slips pasted thereon by the voter. . . .

Signatures Required for Certain Officers

SEC. 25. To obtain the printing of the name of any candidate of any political party for United States Senator or for Governor or Lieutenant Governor upon the official ballots of such political party for any primary election held in the State, pursuant to the provisions of this act, there shall be filed with the Secretary of State nomination petitions, signed by a number of enrolled voters residing in the State and who

are enrolled in the party enrollment of said party, equal to not less than two per centum nor more than four per centum of the number of votes that such party cast for Secretary of State at the last preceding November election.[1]

Nomination Petitions, Form of

SEC. 29. All nomination petitions shall be in the following form:

We, the undersigned, enrolled voters (or if a new party, qualified electors) of the..... party of the city of..... or the township of..... in the county of.....and State of Michigan, hereby nominate..... ....., who resides at No..... Street, city of....., or in the township of ....., in the county of ..... as a candidate of the ..... party for the office of ....., to be voted for at the primary election to be held on the .... day of ..... as representing the principles of said party, and we further declare that we intend to support the political party named herein.

Name. Residence. Street number (in cities having street nos.) Date of signing.

Primary Elections, How Held, etc.

SEC. 32. All primary elections for the nomination of party candidates for office shall be held by election precincts the same as general elections are held, and the polls thereof shall be kept open in the respective precincts for the same length of time: Provided, That in any city of five thousand population or over, the polls of the primary election shall be kept open until eight o'clock P.M. standard time, and in cities having

[1] In following sections, similar provisions are incorporated for nominations to state, city, county, and district offices.

a population of two hundred thousand or more the polls shall be kept open until ten o'clock P.M. standard time: Provided further, That the township board of any township or the common council of any city of less than five thousand population may direct that the polls be held open until eight o'clock P.M., standard time. . . .

Who Declared Nominee

SEC. 39. The candidate of each political party for nomination for any office who receives the greatest number of votes cast for candidates for any such office as set forth in the returns or as determined by the board of canvassers on the recount by it of said ballots, shall be declared the nominee of that political party for said office at the next ensuing November election, or at the next city election, or at the next election for United States Senator, as the case may be, and the board of canvassers shall forthwith certify such nominations to the respective boards of election commissioners affected thereby: Provided, That in the case of a candidate for the office of United States Senator, the Board of State Canvassers shall forthwith certify the result of the primary election to the Secretary of State, and the Secretary of State shall certify said result to the next succeeding legislature on the first day of the session. . . .

State Convention

SEC. 43. The State convention of all political parties for the nomination of candidates for State offices and the selection of State central committees, if such committees have not been selected by previous conventions held during the same year, shall be held within forty days after the September primary, but not less than ten days after the day appointed for the meeting of the Board of State Canvassers for the purpose of canvassing the primary election returns mentioned in this act. The particular day and the time and place of meeting shall be designated by the State central committees of the various political parties in the calls for said State conventions, which calls shall be issued at least thirty days prior to the first Wednesday in September preceding a November election. . . .

2

PRIMARY ELECTIONS

Presidential primaries are provided for, either by direct election of convention delegates or by presidential preference votes, in the following commonwealths:

Alabama [Permissive]
California
Florida [Permissive]
Georgia [Permissive]
Illinois
Indiana
Maryland
Massachusetts
Michigan
Montana
Nebraska
New Hampshire
New Jersey
North Carolina
North Dakota
Ohio
Oregon
Pennsylvania
South Dakota
West Virginia
Wisconsin

CHAPTER IX

LOCAL GOVERNMENT

Local Government.—In the preceding chapters we have dealt especially with the central government of a state. In none but the smallest state, however, as the republic of San Marino, does this central government directly administer the affairs of local areas. In states of any appreciable size the details of government of portions of the area of the state are administered by local governing bodies. This chapter deals with the government of these local areas.

Two Types of Local Government.—Considered from the viewpoint of their systems of local government, the prominent states may be divided into two main classes, (1) unitary governments and (2) federative governments.

Unitary Governments.—These are distinguished by the fact that all authority for local officials in local areas proceeds from and rests upon the central government. Local governing officials and bodies are not trusted with independent powers; their acts are always subject to the scrutiny of an agent or representative of the central government of the state; their very existence is in large measure determinable by the central government. New local boards or functionaries may be created by the central government for local areas designated by that government, or old local boards or functionaries may be arbitrarily abolished or displaced. All local government is subject to the will and action of the central government of the whole state. Such system, to be described in more detail later, is to be noted in France, Italy, and England.

Federative Governments.—These types are distinguished by the fact that under the constitution of the state certain powers

of independent organization and action are guaranteed to the local governments. In their own constituted province, local governing bodies in a federative government are free to act according to their best judgment without reference or appeal to the central government. In local affairs, the local governing bodies in general jealously protest against any encroachment on the part of the central government.

In a sense the local governing bodies do not consider themselves as subordinate bodies at all, but as free and independent governments operating without interference in all local matters. They are inclined to resent the term local government as applied to them, because such application implies a subordination to the wider central government, which subordination does not under the constitution exist. They argue that the same constitution which creates the central government in a federative state guarantees to the local areas governmental rights forever free from infringement or impairment, and hence in the exercise of their powers they are as free and untrammeled as the central government itself. This argument is well based, and yet the fact remains that the local government may be distinguished as such by the fact that it exercises control over only a portion of the territory and people of a state, whereas the central government exercises control over *all* the territory and people of a state. However independent the local government's powers as guaranteed by the state constitution, such powers extend to but a limited portion of the state as compared with the state-wide authority of the central government.

Prominent federative states in which local governments are thus constituted with independent powers are Switzerland, Germany, and the United States.

Areas of Local Government.—The determination of the boundaries and extent of the local areas within a state is (1) in unitary states commonly the result of the action of the central government, and (2) in federative states commonly a result of historical evolution.

In Unitary Governments.—Thus in France the largest subdivisions of the state are the *départements,* which are territorial areas arbitrarily marked out by the central government for administrative convenience. Thus likewise the *arrondissements* and *cantons* in France are arbitrary divisions. In England, boroughs, urban or rural districts, sanitary districts, etc., may be determined arbitrarily at the will of the central government.

In Federative Governments.—In federative governments the historical process by which the central government evolved is shown by the local areas. In Switzerland each of the cantons had a separate governmental existence before the union into one state. In former imperial Germany the mixture of kingdoms, principalities, duchies, and free cities in its local areas showed even more decidedly from what a heterogeneous collection was welded the German state. In the United States the thirteen colonies which revolted from England became thirteen commonwealths in the state, and the commonwealths which had been added since have in many cases had individual histories and organizations before their admission to the Union.

The Unitary-type System of Local Government

The Unitary-type System of Local Government in France.—The present French system of local government may be considered as typical of the unitary type. The territory of France is divided into 90 *départements* for administrative purposes. These *départements* are subdivided into *arrondissements* (385 in number all together), further subdivided into *cantons* (2915 in number all together), and further subdivided into *communes* (37,963 in number all together).

The *Departement.*—At the head of each of the 90 *départements* is a *prefect,* an official appointed by the president of France upon the nomination of the minister of the interior in the national cabinet. He is in effect a political official. Owing his appointment to national political influence, his tenure of office is apt to end with a change in the central government.

This prefect exercises a double function; on the one hand he is the representative of the central government of the state, appointed by and responsible to the officials of that central government, and on the other hand he is at the head of the government of the *département*. In his capacity as agent of the central government it devolves upon him to supervise the execution of the laws of the state, to transmit the instructions and orders of the central government to his subordinates, and to oversee the actions of such subordinates. In his capacity as head of the government of the *département* he is the executive officer of an elected *general council* and has extensive police powers, great authority in sanitary regulations, the nomination of various important subordinate officials, the distribution of the amount of taxes proportionally among the *arrondissements*, and the charge of the construction and maintenance of roads, railways, and canals.

In the exercise of these broad powers the prefect is assisted on the one hand by an *advisory council*, the members of which are appointed by the president of France, and on the other hand by a *general council*, the members of which are elected by universal suffrage from the *cantons* (each canton contributing one member). The advisory council is at the prefect's hand in cases involving the central government; the general council acts as a check upon the prefect in his administration of the government of the *département*.

Arrondissement.—The features of government for the *département* are in the main duplicated in the official bodies of the *arrondissements*. The *subprefect*, who is at the head, is both representative of the central government and executive officer of the local government. A district council, elected (like the general council of the *département*) by the *cantons*, assists him in local matters. The chief business of the local government is to divide among the communes in proper proportion the amount of the direct taxes levied by the prefect and general council of the *département*.

Canton.—The *canton* is of little importance for our purposes.

It is not strictly an administrative unit, but rather an electoral and judicial unit. It usually contains about a dozen communes, and is the seat of a justice of the peace. Each canton sends one member to the district council of the *arrondissement* in which it is situated, and one member to the general council of the *département* in which it is situated. There are 2915 of these *cantons* in France.

Commune.—The commune, the ultimate administrative unit of the French system, duplicates in the main the features of the *département.* The *maire,* who is at the head, is on the one hand a direct representative of the central government, under orders of the prefect of the *département,* and charged with the duty of promulgating and executing the laws of the central government, and on the other hand is the executive officer of the town or city, in which capacity he has authority over the local police, public works and revenue, acts as registrar of births, deaths, and marriages, and represents the municipality in all ceremonial occasions. The mayor usually is assisted by one or more deputy mayors. Both mayor and deputy mayors are elected by the municipal council from among its own members for four-year terms.

The municipal council is a body elected for four years and consisting of from 10 to 36 members, according to the size of the commune. It has wide powers in matters of strictly local interest.

Thus the typical system of local government in France resembles a series of concentric circles. The commune is the smallest circle, around it extends the canton, around the canton extends the *arrondissement,* around the *arrondissement* extends the *département,* and embracing the *département* is the central government. Through every series of circles extends the authority of the central government, jealously guarded by the agents of that government. The general council of a *département* may have its vote annulled by the president of France, and must have its annual budget approved by him. The general council furthermore is much in the power of the

prefect appointed by the central government, for he is the executive head who carries out its votes, signs all requisitions and vouchers, and prepares the budget and all business submitted to it for consideration and action. In the lowest circle of administration we find the same facts: the *maire,* so far as he is agent of the central government, is under the control of the prefect of the *département,* can even be suspended from office for a month by the prefect, for three months by the minister of the interior, permanently by the president of France. The communal council has much less power of final action than might be thought, for on all important matters (such as financial measures, roads, communal property, etc.) the approval of a superior administrative official is necessary. Furthermore, the prefect of the *département* has the power to suspend the council for a month, and the president of France may dissolve it entirely and order a new election. Local autonomy, as we are familiar with it in this country, is unknown in France. All power is concentrated in the central government.

Local Government System in Italy.—The local government system in Italy is in the main copied from that in France. The concentric circles corresponding to *départements, arrondissements, cantons,* and *communes* are in Italy the *provinces, circondari, mandamenti,* and *communes.* Of these divisions, only the province and the commune possess political vitality, distinct interests, and a measure of autonomy. The officials in these various areas closely correspond to those of similar areas in France. Furthermore, the *syndics* (French *maires*) of the communes are elected by the communal council for a term of only three years. The authority of the central government penetrates each degree of local government in Italy as it does in France.

Local Government in England.—England, however, though rightly classed with France and Italy as a unitary government, differs radically in the features of its local government. In the general overhauling of institutions, which

began with the reform bill of 1832, local government was reformed.

The Various Areas.—Under the present system the various areas of local government are the following: first grade, *counties* and *county boroughs;* second grade, *rural districts, urban districts,* and *boroughs;* third grade, *parishes.*

Primary Areas.—The first division under the central government is composed of two different kinds of units; namely, *counties* and *county boroughs.* The counties may roughly be compared with the French *départements,* but the county borough is unique. The county borough is a city of such size (over 50,000) as to be granted by royal charter, or up to 1919 by an order of the Local Government Board, the local government of a county.[1] Territorially, a county borough may be and commonly is entirely within the territorial area of a county, but for purposes of local government it is not a part of the county. Thus a county may be large in extent but not include the greater part of the wealth and population within its territorial boundaries, for the reason that the populous and wealthy sections are organized as *county boroughs.* Sixty-one such county boroughs were enumerated in the Local Government Act of 1888, and twenty-one have been constituted since that time, the total population of these eighty-two county boroughs being now approximately 11,000,000.

Secondary Areas.—The counties are further subdivided into *rural districts, urban districts,* and *boroughs.* Each of these areas is under the control of the county.

The boroughs are incorporated towns, differing from the county boroughs in being to some extent subordinate to the county and in being considered territorially as a part of the county. The boroughs are of great importance in the English system. The town and city population is constantly on the increase at the expense of the rural population, so that at present the 400 and more boroughs of England and Wales

[1] The term "borough" in English law is used for a town incorporated for purposes of self-government. The word "city" has no place in English law (outside of the city of London).

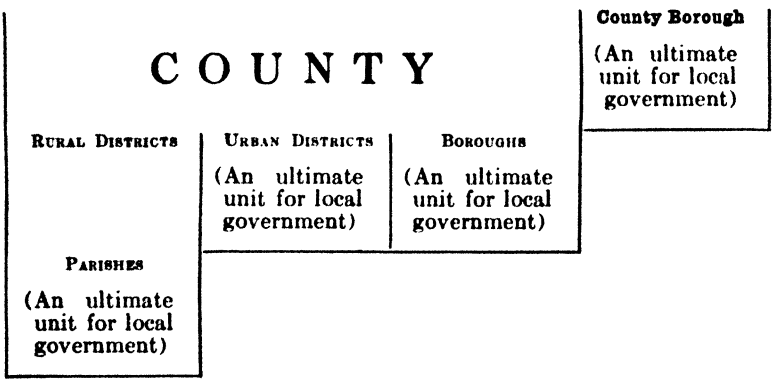
contain one half the total population of the kingdom (outside of London).

The urban district is commonly a borough on a smaller scale. As the name implies, it is a local government area in a somewhat thickly populated district. It differs from a borough mainly in not having a charter of incorporation granting a greater degree of independence in local matters and thus in being more under the control of the county organization.

Rural districts—672 in England and Wales—are, as the name implies, areas in which the population is more scanty. In these the county authorities wield more power than in either the urban district or the borough.

Lowest Areas in the Scale.—Rural districts are further divided into *parishes*—approximately 15,000 in England and Wales. These parishes are the weakest and least active elements in the system. They are merely subdivisions of the rural districts, made for convenience in local government.

Diagram of Areas Showing Grades.—The following diagram may illustrate graphically the various grades of local government and the mutual exclusiveness of the units in each grade:



Typical Local Government for the Various Areas.—The organization of the government for each of these areas is along the same general lines. The government is in the hands

of a council composed of members elected by a wide popular suffrage in the area. The council elects its own executive head, but this executive head has no powers distinct from those of other members of the council, and has no extra salary. The headship of the council is thus to a large extent an honorary office, the holder of which represents the area on ceremonial occasions. In most of the various areas the council also elects, usually from among its own members, aldermen to a number equal to one third of the council. Here again, however, except for a superior dignity and a longer term of office, the powers of the aldermen do not differ from those of members of the council. The aldermen form a part of the council, and vote and act with them.

Powers of the Council and Methods of Operation.—The various councils exercise both legislative and executive powers for their respective areas. Their powers and functions differ naturally according to the area which they govern. In general, the councils of the various areas have a certain control over the finances by having the right to levy, collect, and appropriate taxes ("rates"), over the police, over highways, sanitary arrangements, municipal businesses and properties, and the like, and over the appointments of a number of subordinate officials. Their important acts are, however, as will be explained, subject to the inspection and approval of authorities of the central government.

Most of the work of these councils is done by means of a series of committees. Inasmuch as there is no separate executive head these committees act as executives in their several assigned fields, and the business of the council as a whole is largely a matter of accepting and approving the reports of the committees. In the county boroughs and the boroughs certain committees occupy the place of managing directors of huge businesses, as where the borough owns and runs a gas plant, a water works, a street railway system, or the like.

Central Control of Local Government.—The control of the central government over local governing bodies is exercised

mainly through the Ministry of Public Health, which by parliamentary act in 1919 absorbed the former Local Government Board. It audits the accounts of local authorities, except those of boroughs, and can disallow any expenditure. It can demand reports on any subject connected with its work, has special powers in case of epidemic disease, has inspectors who have the right to be present at the meetings of local bodies (except borough councils). Its approval is necessary for the raising of loans by any local body (including borough councils), for the purchase or establishment of electric supply plants, gas works, or the like.

In addition to the many and important matters in which the Ministry of Public Health has control over the organs of local government, a number of other matters must be referred to authorities of the central government. For example, in all matters affecting police regulation, the Home Secretary must be consulted; for orders to supply electric light, the Board of Trade's permission must be gained; in the issue of orders providing for the suppression of disease among cattle, sheep, or other animals, the Board of Agriculture's approval must be had.

Thus the system, though not so accurately symmetrical as that of the French, has such definite provisions for central control that it must be characterized as unitary. The authority of the central government does extend through the various degrees of local government. However free and independent the local authorities may seem in many affairs, those decisions which affect most vitally the people of the area must be sanctioned by authorities of the central government.

Federative Local Government Contrasted with Unitary.—In federative governments the relations between the governments of the primary areas, *i.e.* the largest and most comprehensive area next to the state as a whole, and the central government are very different from the relations between such areas and the central government in unitary states. These large areas are not organs of the central government, as the

French *départements* and Italian *provinces* may be said to be, and they are not in all important matters of local interest under the control of a branch of the central government, as are the local areas in England; on the contrary, these primary areas manage their local affairs, determine their local government, lay taxes, incur indebtedness, and make appropriations, free from the interference of the central government of the state.

Federative States.—Three states of prominence present the federative type of local government: Switzerland, Germany, and the United States. In all of these the principle is the same —autonomy for the primary areas in local affairs. The nature of the primary areas and the organization of the governments in these areas, however, differ in the various states.

Primary Areas in Switzerland.—The primary areas in Switzerland are the cantons. Subject to the approval of the central government—approval is always given where no conflict with the national constitution is evident—the cantons are free to organize their governments as they please and to amend their constitutions as they see fit.

Local Government in the Primary Areas.—Two varieties of organization are found. In two of the cantons (Uri and Glarus) and four half-cantons (the two Unterwaldens and the two Appenzells) the governing body is the *Landsgemeinde,* an assembly composed of *all* the citizens of the area. This assembly considers and passes or rejects bills, fixes taxes, votes the appropriations, and elects the important officials. In addition to the *Landsgemeinde,* a council (the *Landrath* or *Kantonsrath*), elected by wide suffrage in the canton, administers the ordinary routine business, prepares bills for introduction in the *Landsgemeinde,* votes smaller appropriations, audits accounts, and appoints minor officials. A third body, the administrative council (*Regierungsrath* or *Standeskommission*), usually of seven members, is elected directly by the *Landsgemeinde* and acts as the executive head of the canton.

Thus in these cantons one ultimate body, composed of all the

citizens of the canton, decides directly upon measures of first importance; an elected council attends to details of administration; and a small elected council acts as executive head.

The Great Council.—Of course only a few of the smallest cantons can have a system like the above, for it is impossible in cantons with a large population to have an efficient assembly composed of all the citizens; most of the cantons have a single legislative chamber called the *great council*, elected on universal manhood suffrage for a term of three years (in some cantons four years). In several of the chief cantons (Geneva, Neuchâtel, Ticino, Zug, and Soleure) a scheme of proportional representation is in effect in the elections of members of the great council.

The Duties of the Great Council.—The duties of this great council are those of the ordinary legislative body: it considers and passes laws, fixes and apportions taxes, makes appropriations, appoints a number of officials, and has the general supervision of the administration.

The Executive Council.—Together with this great council exists a small *executive council*, usually of five or seven members, variously called the *conseil d'état*, *Kleine Rath*, or *Regierungsrath*. The members of this council are chosen in the majority of cantons by the direct vote of the people. Eight cantons have a system by which the members are chosen by the great council. The work of this executive council is divided into separate departments, one member of the council being at the head of each department. Its duties are largely of an advisory and administrative nature: it administers the government, renders reports and proposes measures to the great council, and consults with the great council on matters affecting the government. The executive council has no power to veto the acts of the great council or to influence them except by its advice.

Lower Areas of Local Government in Switzerland.—The areas of local government below the cantons are the *districts* and the *communes*.

The District.—The chief official of the district is elected by popular vote and represents the cantonal government in his area. He executes the laws of the canton and carries out the orders of the council. In some cantons he is assisted by an advisory council.

The Commune.—The commune is the ultimate unit of local government area and, as the name implies, resembles somewhat the French town. The chief issues and policies are commonly decided in full public assembly of qualified citizens. This assembly elects the chief officials and a single executive council of small size to conduct current affairs. In some communes, especially in French Switzerland, the type of the cantonal government is more closely followed and the commune has both an executive council and a larger communal council.

Democratic Nature of Swiss Local Government.—It is worth while to consider the local government in Switzerland thus in detail, for the reason that, in all states to-day where questions of government are discussed at all, the government in Switzerland, both national and local, is cited as an example of the nearest approach to the ideal democracy in the world. The *Landsgemeinde* in the small cantons has been especially praised, but it may be noted that in all the cantons the system is so arranged that the government is never out of the control of the electorate. Add to the elements of government as we have outlined them in the preceding pages the initiative and referendum as they have developed both in the national government and throughout all the local areas, and an appreciation of the thoroughly popular character can be gained.

Germany: Primary Areas.—The federative principle is equally noticeable in a consideration of the primary areas for local government in the German Empire. Germany before the revolution of 1918 was composed of twenty-six units, comprising four kingdoms, six grand duchies, five duchies, seven principalities, three free towns, and an imperial territory (Alsace-Lorraine). The new Germany has left the old state boundaries in the main intact, except, of course, where affected

by territorial losses following Germany's defeat in the war. The number of "states" in the German Republic is eighteen, as follows: Anhalt, Baden, Bavaria, Bremen, Brunswick, Hamburg, Hesse, Lippe, Lübeck, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Oldenburg, Prussia, Saxony, Schaumburg-Lippe, Thuringia, Waldeck, Würtemburg.

The constitution distinctly provides (Section I, Article 18) for the form of government in the constituent "states":

"Every State must have a republican constitution. The representatives of the People must be elected by the universal, equal, direct and secret suffrage of all German citizens, both men and women, according to the principles of proportional representation. The State Cabinet shall require the confidence of the representatives of the People.

And the constitution further provides (Section I, Article 12): "So long and in so far as the Commonwealth (national government) does not exercise its jurisdiction, such jurisdiction remains with the 'states.'" And again (Section I, Article 5): "Political authority is exercised in national affairs by the national government in accordance with the constitution of the Commonwealth, and in 'state' affairs by the 'state' governments in accordance with the 'state' constitutions." The system is, therefore, on paper comparable with that in the United States, in so far as residual powers of government rest with the constituent units.

In this connection it is necessary to realize, however, that the powers assigned to the central government in Germany are far greater in number and extent than those similarly assigned in the United States. Section I, Articles 6-11 inclusive, contain the definition of the jurisdiction of the German central government, as follows: [1]

ARTICLE 6

The Commonwealth has exclusive jurisdiction over:

1. Foreign relations; 2. Colonial affairs; 3. Citizenship, freedom of travel and residence, immigration and emigration, and extra-

[1] From: The Constitution of the German Commonwealth. Transl. by Munro and Holcombe. League of Nations, Vol. II, No. 6.

dition; 4. Organization for national defense; 5. Coinage; 6. Customs, including the consolidation of customs and trade districts and the free interchange of goods; 7. Posts and telegraphs, including telephones.

Article 7

The Commonwealth has jurisdiction over:

1. Civil law; 2. Criminal law; 3. Judicial procedure, including penal administration, and official co-operation between the administrative authorities; 4. Passports and the supervision of aliens; 5. Poor relief and vagrancy; 6. The press, associations and public meetings; 7. Problems of population; protection of maternity, infancy, childhood and adolescence; 8. Public health, veterinary practice, protection of plants from disease and pests; 9. The rights of labor, social insurance, the protection of wage-earners and other employees, and employment bureaus; 10. The establishment of national organizations for vocational representation; 11. Provision for war-veterans and their surviving dependents; 12. The law of expropriation; 13. The socialization of natural resources and business enterprises, as well as the production, fabrication, distribution, and price-fixing of economic goods for the use of the community; 14. Trade, weights and measures, the issue of paper money, banking, and stock and produce exchanges; 15. Commerce in foodstuffs and in other necessaries of daily life, and in luxuries; 16. Industry and mining; 17. Insurance; 18. Ocean navigation, and deep-sea and coast fisheries; 19. Railroads, internal navigation, communication by power-driven vehicles on land, on sea, and in the air; the construction of highways, in so far as pertains to general intercommunication and the national defense; 20. Theaters and cinematographs.

Article 8

The Commonwealth also has jurisdiction over taxation and other sources of income, in so far as they may be claimed in whole or in part for its purposes. If the Commonwealth claims any source of revenue which formerly belonged to the States, it must have consideration for the financial requirements of the States.

Article 9

Whenever it is necessary to establish uniform rules, the Commonwealth has jurisdiction over;

1. The promotion of social welfare; 2. The protection of public order and safety.

ARTICLE 10

The Commonwealth may prescribe by law fundamental principles concerning:

1. The rights and duties of religious associations; 2. Education, including higher education and libraries for scientific use; 3. The law of officers of all public bodies; 4. The land law, the distribution of land, settlements and homesteads, restrictions on landed property, housing, and the distribution of population; 5. Disposal of the dead.

ARTICLE 11

The Commonwealth may prescribe by law fundamental principles concerning the validity and mode of collection of State taxes, in order to prevent:

1. Injury to the revenues or to the trade relations of the Commonwealth; 2. Double taxation; 3. The imposition of excessive burdens, or burdens in restraint of trade on the use of the means and agencies of public communication; 4. Tax discriminations against the products of other States in favor of domestic products in interstate and local commerce; or 5. Export bounties; or in order to protect important social interests.

Functions of the Legislative Bodies in Primary Areas.—With the limitations mentioned, the legislatures do yet have a considerable share in their own government. As a general rule, they approve the budget, levy and apportion local taxes, vote appropriations, have the power to initiate legislation, and have the right to interpellate ministers.

The Influence of Prussia on Local Government.—The preponderating size and power of Prussia among the German units have naturally operated to influence the other units in their systems of local government. An outline of the main features of the Prussian system will, therefore, serve to give an idea of the system throughout nearly all Germany.

The Provinces of Prussia.—The size of Prussia, and the fact that Prussia has in its history absorbed a number of areas

formerly independent, has led to one grade of division of its territory for local administration which is not found in the other units. This division is a division of Prussia into provinces, these provinces usually corresponding in their boundaries to the boundaries of former territories absorbed. The government of the province is in the hands of a provincial legislative assembly, a provincial executive council of seven members, and a president (*Oberpräsident*) appointed by and representing the central government of Prussia.

Important Areas of Local Government in Prussia below the Province.—The important degrees of local government in Prussia below the province, which are similar to those subdivisions in other units of Germany, are (1) the administrative district (*Regierungsbezirke*), (2) the circle (*Kreise*), (3) the commune (*Gemeinde*).

Administrative District.—The administrative district is a division for the purpose of the administration of the central government's affairs over the various local areas. Its officials are a president and committee of advisers, all being appointed by the central government of Prussia. These officials have a general supervision over the administration of the circles and communes in the area, have charge of state taxes, education, public lands, churches, and other general matters except the police. It has been the intention to keep the police strictly under local management.

The Circle.—The circle, a division next below the administrative district, has as officials a *Landrath*, who is the chief executive, an assembly (*Kreistag*), and an *executive committee* composed of the *Landrath* and six members elected by the assembly. The *Landrath*, or chief executive, is appointed by the central government, usually from among a number of persons recommended by the assembly (*Kreistag*). He is both the representative of the central government of Prussia and the chief executive of the local government. He is usually a professional governmental officer, trained in the duties of his position. The chief function of the executive committee, is,

as its name implies, to carry into effect the measures of the assembly (*Kreistag*).

The assembly of the circle, the *Kreistag*, is a very important element in the system. The members of the *Kreistag* are elected by a complicated form of indirect election so arranged that no class of the people within the circle (as landowners, city people, rural inhabitants) shall gain a decided preponderance in the assembly. The system is not democratic, in that it does not give each man a direct vote for his representative; it is rather intended to balance the various interests in the area so that none can oppress another. Interests, as landowning interests, or city interests, or rural interests, are represented in the *Kreistag*, rather than individuals. The members of the *Kreistag* are elected for six years, one half retiring every three years. The important powers of this assembly are appointive and financial in nature. It chooses, directly or indirectly, all the elective officers of the circle, and has the power to create local offices. In financial matters, it raises revenue for the expenses of its government by direct taxation. In addition to these important powers, it may make rules for administering local affairs, and may establish various charitable institutions for the good of the circle.

The Commune.—The communes are the lowest areas of local government. The cities in Germany are not included under the commune form of government, so that this area is composed of small rural communities. The communes are restricted in size, the local government is simple in organization and weak in powers. In the smaller communes a mass meeting of the citizens regulates the common pasturage of the commune, makes provision for the care and maintenance of the highways, has a measure of control over schools and churches, and elects the mayor and his assistants. In the larger communes an elected representative assembly has similar powers. The method of voting, either for measures or for elections, is commonly by the three-class system, whereby the voters are divided according to wealth into three classes, each class having

an equal voting weight. This system destroys the apparent democracy of the communal government.

City Government in Germany.—City government in Germany is in a way distinct from any of the various subdivisions we have outlined above. The city council, elected by the three-class system just described, elects the executive officials and has the control of the city administration and business. The powers of this council are very broad. In many cases its powers have been used to establish municipal gas plants, electric supply plants, savings banks, etc. In addition to the city council is an executive board, consisting of a *burgomaster* and a small number of citizens. The burgomaster, the only member of the board who receives a salary, is a person who has made a profession of city management. His influence in the community is great, he is appointed for not less than twelve years at a time, and his salary is large. The executive board has double functions, being the local organ of the central government on the one hand and the executive head of the city administration on the other. As an agent of the central government the executive board is under the supervision of the officials of the administrative district. As the executive head of the city administration the executive board puts into effect the measures of the city council.

Federative Principle in Local Government in the United States

In the United States the federative principle in local government lies at the very foundation of the government system. The United States is at present composed of forty-eight commonwealths; the constitution specifically outlines the organization and powers of the central government and names a few things which the States may not do, and then in the tenth amendment declares: "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."

Each Commonwealth has Its Own Constitution.—As the United States has its constitution outlining its framework of

government, so each commonwealth in the United States likewise has a constitution outlining the framework of government. As a matter of fact, the history of the constitutions in the older commonwealths antedates that of the constitution of the United Sates.

A new commonwealth seeking admission to the Union must first submit a draft of its proposed constitution for the approval of Congress. Congress has the right to refuse admission if such proposed constitution contains features regarded as objectionable. Once a commonwealth is admitted, however, Congress has no further control over any action which the commonwealth may take in revising or amending its constitution, so long as such revision or amendment is not in conflict with the national constitution. For example, Arizona was at first denied admission to the Union because its proposed constitution provided for the recall of judges by popular vote. This provision then being withdrawn, Arizona was duly admitted; whereupon the new commonwealth at once restored the provision to its constitution.

Typical Commonwealth Organization.—Although the constitutions of the different commonwealths differ radically in details, such as length, amount of detail, etc., the main principles on which the governments in the various commonwealths are organized are the same. Each commonwealth has a governor who serves as the executive head, a legislature of two chambers, and a judiciary of various grades. The resemblance between the organization of the governments of the several commonwealths and the central government is at once manifest, but it is not to be assumed that our commonwealth forms of government are copied from the form of the central government. The example of the federal constitution has, of course, served in many cases as a model for new commonwealth constitutions, and has influenced certain modifications in the constitutions of the thirteen original commonwealths. It should be remembered, however, that the main features of our commonweaith governments existed in the colonial govern-

ments and in the commonwealth governments which antedated the adoption of our federal constitution, and that our central governmental organization was evolved from the experience of the original commonwealths.

Commonwealth Legislatures.—The legislatures of all the commonwealths are divided into two houses or chambers, known as the *senate* and the *house of representatives* (or in six commonwealths the "Assembly" and in three the "House of Delegates"). The members of both houses are chosen by direct vote of the electorate. The senators are fewer in number than the representatives, are chosen from larger districts, in two thirds of the states have a longer tenure of office, and only a certain number (usually one half) are renewed at each election. Both senators and representatives must be resident in the districts from which they are elected; both senators and representatives are paid by the commonwealth, in many cases such pay being computed according to the number of days of the legislative session. In most of the commonwealths the constitution provides for biennial sessions of the legislature; New York, Massachusetts, Rhode Island, New Jersey, South Carolina, and Georgia, however, have annual sessions, and Alabama has quadrennial sessions. Extraordinary sessions may be summoned by the governor of the State.

Powers of the Legislatures.—In general, the powers of the legislature of the commonwealth include everything not distinctly prohibited by the constitution of the United States or the constitution of the commonwealth. The distrust of the people in their legislators has led many commonwealths in their constitutions to prohibit or restrict legislative action in certain matters; thus in most commonwealths a limit is placed upon the public indebtedness which may be incurred, and certain restrictions are put on the power to lay taxes and make appropriations. Among important powers which the legislatures commonly exercise are the following: the power to regulate by law the ownership and disposition of property; the power to draw up a criminal code for the commonwealth and

to provide for the system of courts; the power to regulate education, the conduct of elections, the granting of franchises; the power to make provisions for the subordinate areas of local government, as counties, townships, cities, etc.; the power to pass general statutes for the public good, as in matters affecting public sanitation and health, public charitable institutions, and the like; and the power to regulate businesses, corporations, and the membership in certain professions, as of medicine, or of law, by requiring registration, certificate of incorporation, examination, or the like. The variety and complexity of matters in which the legislature has power to act render it impossible to include even in general classes all the subjects.

Organization and Procedure.—The organization and procedure in the two legislative chambers are in the hands of the chambers themselves. In the senate the lieutenant governor of the commonwealth is usually the presiding officer; in the house a speaker is elected by the members. Each chamber has a clerk to record proceedings, call the roll, and keep the calendar of the bills under consideration. The members of each chamber are, for convenience in handling the large number of bills presented, divided into a number of committees, after the manner of the houses of the national legislature, as the committee on appropriations, on ways and means, on banks, etc.

Bills may be initiated in either chamber, but in most commonwealths the money bills must originate in the house. The procedure in the consideration of bills is similar to that in the national legislature: each bill, at its introduction and first reading, is referred to a committee; when reported out of the committee, it is read (usually by title only) a second and third time, debated, voted upon, and, if passed, duly enrolled and presented to the governor for his signature. The procedure in each chamber is practically the same.

The Commonwealth Executive.—The *governor* of a commonwealth is chosen directly by the same electorate that chooses the members of the legislature. The term of office is, with very few exceptions, either two or four years. He is a

paid official, but the salary in most States seems incommensurate with the dignity and importance of his position, varying from $1,500 in Vermont to $12,000 in Illinois.

His Functions.—The governor is the official representative and executive head of the commonwealth. He is charged with carrying into effect the laws passed by the legislature. In case of emergency he has the power to call the legislature in special session, the legislature under such circumstances being prohibited from considering any measures other than those for which it was summoned. In his message to the legislature, commonly required by the commonwealth constitution, he can outline the measures he recommends for the public good, the force of his recommendation depending, of course, as well upon his personal influence with the legislators as upon the wisdom of the measures proposed. He has the power to veto any measure passed by the legislature, provision being made that such veto can be overridden by the legislature by an extraordinary majority in both houses. He has the right of appointment and of removal of a number of commonwealth officials, as members of various boards and commissions, but his power of appointment is naturally not comparable with that of the President. He is at the head of the military forces of the State and may call out the militia to preserve public order. He has in many commonwealths the power to pardon offenders against the laws of the commonwealth.

Commonwealth Government and Central Government; a Difference.—An important difference between the commonwealth government and the central government is to be noted in the relations between the executive head and the heads of various executive departments. In the central government, as has been explained, the heads of the various executive departments, as the secretary of war, secretary of state, etc., are chosen by and are responsible to the President. In the commonwealth government the corresponding officials are elected by the people and have no responsibility to the governor. These officials are rather colleagues than subordinates. The

governor is usually without power to control or direct the executive heads of the various departments; these officials acknowledge responsibility only to the electorate by whom they were elected.

Lieutenant Governor.—In most States a *lieutenant governor* is elected at the same time as the governor. His office corresponds to that of Vice President in the central government; *i.e.* he presides over the sessions of the senate and succeeds the governor in case the latter's office is vacated.

Commonwealth Judiciary.—Each commonwealth has a judiciary and a judicial system of its own. Inasmuch as the jurisdiction of the federal courts is strictly limited under the constitution of the United States, most cases at law are brought in the courts of the commonwealth.

Hierarchy of courts: Courts of Justice of the Peace.—In each commonwealth the judicial system presents a regular series of graded courts from lowest to highest. At the foot of the series are the courts of the justices of the peace, in which are brought cases involving small amounts (commonly less than $150.00) or petty offenses. In the cities the courts of the corresponding grade are commonly divided into two kinds: (1) the police courts for the trial of petty offenses, and (2) the municipal civil courts for cases involving small amounts.

County Courts.—The county courts (in some commonwealths called district courts or courts of common pleas), so called because their jurisdiction includes the territorial area known as the county, are the courts of the next higher grade. This grade of courts has original jurisdiction in more grave criminal offenses and in civil cases involving considerable amounts, and may hear appeals from the courts of the justice of the peace.

Circuit Courts.—In many commonwealths the next higher grade of courts is the superior or circuit court, whose jurisdiction often includes a number of counties. The judges of these courts usually travel (hence the name "circuit") from county to county in their area, holding court in each county. The

courts have wide original jurisdiction in both civil and criminal cases.

Supreme Court.—In all commonwealths there is a highest court, known variously as the supreme court, court of appeals, or court of errors and appeals. Its jurisdiction includes the whole commonwealth, and its most important function consists in hearing and deciding appeals from the lower courts and in passing upon the constitutionality of the laws. Its decisions are final except where the nature of the case allows an appeal to the federal Supreme Court.

Special Courts.—In addition to this graduated series of courts are commonly a number of special courts for special purposes, as probate (or surrogates') courts for settling the estates of persons deceased, children's courts for dealing with children's offenses, courts of claims for settling claims against the commonwealth, etc.

Prosecuting Attorney.—The prosecuting attorney (also known as district attorney, state's attorney, attorney for the commonwealth, and county attorney) is an important feature in the judicial system. He represents the commonwealth and conducts the prosecution in criminal cases. He resembles after a fashion the complainant in civil cases, but his effort should be to reveal the truth rather than to win his case at any cost.

Choice of Judges.—In most commonwealths the judges of the various courts are elected by the people, the choice thus being on a different status from the judges in the federal courts. The arguments urged against this method of choosing the judges were previously cited in the discussion of the choice of the federal judges. It is doubtful whether the people at large are fitted to estimate the technical qualifications of a candidate for a judgeship; it is certain that it is unfortunate to force candidates for judgeships to enter the partisan struggle of party politics for election to such a position; dependence upon party nomination and popular election may influence a judge to render his decisions according to party and popular demands rather than according to strictest justice. Opponents

urge that judges should be appointed by the chief executive of the commonwealth or by the legislature. Choice by the legislature, however, too often leads to political bargains for these important positions, and choice by the governor, it is said, renders the judges too arbitrary and independent of the popular will.

Tenure of Office and Salaries.—Closely connected with the choice of judges is their tenure of office and their salary. In treating the federal judiciary it was pointed out that, in order to insure an impartial and incorruptible judiciary, the tenure of office should be secure for judges during good behavior, and the salaries ample. It can hardly be said that the commonwealths have complied with these requirements. The judges are elected for definite terms, comparatively short for judges of the lower grade of courts and comparatively long for judges of the higher courts. In only three commonwealths, Massachusetts, New Hampshire, and Rhode Island, do the judges of the highest court serve for life or during good behavior. In many commonwealths these judges of the highest court are chosen for six years, in some for nine, in a few for twelve, in New York for fourteen, in Maryland for fifteen, in Pennsylvania for twenty-one. The salaries, too, compared with what an able lawyer can earn, are meager. In Vermont the judges of the highest court receive but $2500 a year, and less than twelve States pay the judges of the higher courts over $5000 a year.

With the above outline of the structure of government in the primary areas of the United States in mind, we pass to a consideration of the subordinate areas within the commonwealths.

Subordinate Areas Within the Commonwealths.—Two areas for local government are found within the commonwealth; namely, the *county* and the *town*. The commonwealths are divided into counties and the counties are divided into towns (or townships or districts).

Relations Between Subordinate Areas and Commonwealths.—The relations between these subordinate areas and the com-

monwealth are very different from the relations between the commonwealth and the federal state. These counties and towns are wholly controlled by the legislature of the commonwealth; the legislature can by law create or abolish offices, has the right to dictate absolutely how the government in these areas shall be carried on. However, each of these areas—the county and the town—is in itself a unit of local government, has officials elected by its citizens, and is actually seldom hindered by legislative interference. Thus we have practical self-government for the area, although theoretically the commonwealth has wide and absolute powers.

County Government.—The counties, of which there are approximately 3,000 in the United States, differ widely in area and population, the county of Bristol in Rhode Island containing 25 square miles as compared with Custer County in Montana with 20,000, and some counties in Texas with less than 400 inhabitants as compared with New York County with 2,800,000.

The county (called *parish* in Louisiana) is a division within the commonwealth used for the convenience of administration of the commonwealth government and for certain purposes of local government. The chief officials of the county government are commonly elected by the people for short terms, and comprise the following: (1) The County Board, or Board of Supervisors, or County Commission, a Board consisting of from three to twenty-five members according to the population of the county, and charged with county finance and administration, the levy of taxes and the appropriation of funds, the maintenance of highways and county buildings and the control of the elections; (2) the County Judge, who holds the county courts; (3) the prosecuting attorney, who conducts cases on behalf of the county; (4) The sheriff, who serves as representative of the police power in the area, acting as guardian of life and property, policeman, jailer, and agent to carry out the orders of the court; (5) the coroner, whose duty it is to view the bodies of persons who die as a result of accident or

crime; (6) the treasurer, who collects the taxes, remits to the commonwealth authorities their portion, and takes care of the county funds; (7) and in many commonwealths, the county superintendent of education, the county clerk in charge of the records, and the county assessor who makes and keeps the record of the property assessments of the area.

Town Government.—The subdivision of the county is the town (or township or district). The position and functions of the town as a unit of local government are uniformly much more important in the northern and eastern commonwealths than in the southern tier of commonwealths. The town was evolved as a unit of self-government in New England before the county, and the New England pioneers spread the town system with their progress through the northern States. In the South, on the other hand, the county was the first unit of government, and the later division of the county into towns or townships (usually in this section known as districts or precincts) did not give much vitality to the smaller units.

The town, or township, is in the New England states the most vital unit of local government. It is not incorporated, and is not to be confused with the incorporated town or village which is so familiar a unit of local government outside of the New England district. The New England town or township is not always a thickly settled community, but more often a rural community covering twenty or thirty square miles. The government of the typical New England town is vested in the town meeting, which is an annual assembly of all the electors of the town at which the town officers are elected and general policies discussed. The executive officers of the town are known as the Selectmen and together compose a small board intrusted with the power to put into effect the decisions of the town meeting, to appropriate town funds, to fix assessments, and to control the manner and details of elections. The town treasurer cares for the funds of the town, the town constable guards the lives and property and keeps the peace, the justice of the peace has his court, and the town clerk keeps the town

record—all these officers, as said before, being elected by the people at the town meeting.

The intense interest in local affairs which has kept the vitality of the New England town organization did not survive the transplanting process, so that the town system in the northern tier of states outside of New England is somewhat different. In the group of states from Pennsylvania to the Dakotas we find towns and townships as areas of local government, but nowhere do they assume such important functions as in New England. In the older states of the northern group, the towns or townships vary greatly in area, but in the newer states the territory has been divided into uniform blocks six miles square which are called townships. In some of these states both old and new the town meeting has survived, but its functions are restricted. In the majority of the states, however, the town meeting has entirely disappeared and its functions are exercised by elected officials.

In the southern states the town areas, commonly known as districts, are often merely election units for justices of the peace, constables, and for school supervision and administration.

The importance of the town or township in local government has been diminished greatly by the custom of incorporating as a separate unit portions of the area which become urban in character. Such portions become known as villages, boroughs, incorporated towns, or cities. When thus incorporated, the unit passes from the jurisdiction of the town or township officers and sets up a local government of its own.

In the case of a village, the government commonly consists of a council or board of trustees, and a chief executive officer known as a mayor or village president. In the case of a borough or incorporated town, the organization is similar but the mechanism of government is more elaborate to correspond with the greater population. There are over ten thousand of these small incorporated units in the United States, each representing the lowest area of local government for its population.

City Government Presents Different Problems.—The problems presented by the dense population in cities have required more complex governmental organization. Cities, therefore, have commonly applied to the commonwealth legislatures for special charters of incorporation conferring wider privileges and the right to establish a special form of government. Notice that in the case of cities, as in the case of counties and towns, the units are theoretically and legally under the absolute and complete control of the commonwealth government; the powers which the city exercises are granted by the commonwealth legislature and may be changed, annulled, or increased at the latter's will.

The Charter of Incorporation.—It is a common practice at present for commonwealth legislatures to pass one general law for city government throughout the commonwealth, thus allowing any community which fulfills the provisions of the general law to obtain its charter, and thus insuring precisely the same organization and powers to all the cities within the area. In some commonwealths, however (notably Missouri, Minnesota, Michigan, Oklahoma, Colorado, Washington, Oregon, and California), a greater liberty is allowed the cities in forming their organization by clauses in the commonwealth constitutions, whereby the electors of each large city may prepare their own charter, provided such charter is consistent with the laws of the commonwealth. The charter of incorporation commonly has (1) the name of the place, (2) its boundaries, (3) an outline of its organization, and (4) a detailed statement of its powers.

Typical City Government.—From the diversity of city charters results great diversity in city government, yet certain typical characteristics of such government in the United States may be presented.

Cities in general reproduce in their governmental system the prominent features of the commonwealth system and of the state system. Cities have a legislative body (the city *council*), an executive head (the *mayor*), and a group of administrative

officers upon whose efficiency the success of the city government largely depends.

The Council.—The city council is in most cities to-day composed of a single chamber, but some important places (Kansas City, for example) still cling to the bicameral organization. In unicameral councils the members are popularly elected by districts or wards, usually one from each ward; in bicameral councils the members of the lower chamber usually are elected by wards, and members of the upper chamber from the city at large. The term of office is commonly two years.

Powers of Council.—The powers of the city council are specifically set forth in the charter of incorporation. In general, the council has power to enact by ordinary legislative procedure ordinances regulating such matters of local importance as the public streets, sanitation, protection against fire, suppression of vice, sale of liquor, granting of franchises for street railways, gas and water pipes, electric lights, and the like, control of markets and amusement resorts, and peace and order throughout the city.

The Mayor.—The mayor, who is the executive head of the city government, is an official elected by the people at large. His term of office varies: in many New England cities it is one year; in New York, Chicago, and Boston, it is four years; in most cities of the country it is two years. He has the power of appointment to a number of local offices; he is charged with enforcing the ordinances of the city council; he has the power of veto over the city council, provision being usual that such a veto may be overridden only by an extraordinary majority in the council; he submits annual and special messages to the council regarding the condition of the city, and suggests ordinances; he is *ex officio* member of many of the important boards.

The City Departments.—The administrative work of the typical city is divided among a number of departments, as the law department, the fire department, the water department, the finance department, the police department, the street depart-

ment, the health department, and the like. Two systems of managing these departments exist in common use in cities today: the first is the system of boards, by which a fire board, a street board, a water board, etc., consisting of members appointed by the mayor, administer the affairs which come respectively within their province; the second is the system of commissioners, by which single commissioners, usually appointed by the mayor, manage the respective departments. The latter system is more favorably regarded at present for the reason that responsibility is thus concentrated and quick action in emergencies is assured.

Evils in City Government.—Severe criticism has been directed against city governments in recent years. The power to grant franchises often worth millions of dollars to corporations has in some instances proved a source of corruption in the council; the rapid and enormous increase of population in many cities made huge undertakings indispensable for public health and welfare, necessitating large municipal debts, in incurring which the council in some cases was unwise or corrupt, or both; the numerous paid officials in the employ of the city made the control of the city government an object to the lowest species of politicians, with the result that the members of the city government deteriorated in quality with successive elections; and in cases of grave public emergency the government failed in case after case to act resolutely and efficiently for the public interest. These evils were not confined to one city, but were general throughout the cities in the various commonwealths.

Reform: 1. Limitation of Powers.—The realization of these evils induced various attempts at reform. One method was to limit the powers of the city council by the city charter. Thus the city council has been restricted in its power to impose taxes or to incur debts for the city; thus, again, the city council no longer exercises the wide powers it once had in granting franchises; thus, further, the council has little power of appointment or removal of city officials or of superinten-

dence of city administration. The powers taken from the council have in many cases been vested in separate boards appointed by the mayor, as, in New York, the board of estimate and apportionment.

2. Commission Government.—The most conspicuous of the several schemes for municipal reform is what is known as the *commission form of government.* This form was first adopted in Galveston, Texas, after the storm and flood of 1900 created an emergency before which the city government became utterly paralyzed.

The chief features of the Galveston plan are as follows: (*a*) the entire legislative and executive powers of the city are vested in a commission of five men, a mayor and four commissioners, elected by the city at large; (*b*) the administrative work of the city is divided among four departments: (1) police and fire, (2) streets and public property, (3) water works and sewers, (4) finance; (*c*) one commissioner has the headship of each department, leaving the mayor as a member of the commission without a special department but with general supervision over all departments. The commission is expected to administer the business of a city in the same way that managing directors manage the business of a corporation.

The sensational circumstances under which this government was established and the degree of success it achieved led many cities to seek charters embodying similar principles of organization. The city of Des Moines, Iowa, instituted a refinement of the Galveston plan by adding articles providing for the initiative, referendum, and recall.

3. City-Manager Plan.—A further innovation in municipal government was introduced by Dayton, Ohio. Influenced by suspicions of inefficiency in the city government, a group of leading citizens advocated during the first decade of the century radical reforms in the organization of local administration. September 3, 1912, the Ohio state legislature adopted a constitutional amendment allowing such cities as desired "to exercise all powers of local self-government, and to adopt and

enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws." This amendment provided the authority for municipal self-government, but the greatest impetus was given to the movement by the practical demonstration of the existing government's inefficiency during the disastrous floods of March, 1913. In the elections of May, 1913, a commission was elected pledged to a charter revision which would provide——

1. A commission of five members.
2. A city manager selected by the commission, who would have charge of all administrative duties relating to the government of the city.
3. Provisions for a referendum and protest on proposed municipal legislation.

At the end of June, the commission submitted its charter; and by an election August 12, 1913, the charter was adopted by a vote of 13,318 to 6,010.

The announced purpose of the agitators in Dayton was to establish a government for the city which would function like the management of a business. As one of the leaders of the movement expressed it:

> "A city is a great enterprise whose stockholders are the people. . . . Our municipal affairs would be placed on a strict business basis, and directed, not by partisans either Republican or Democratic, but by men who are skilled in business management and social science."

Under the charter adopted in 1913, the following administration was provided to insure this result: (a) A commission of five, elected at large for a four-year term, to control all municipal powers, except those relating to the schools and the public library; (b) a city manager, selected by the commission, and entrusted with the control and supervision of all the administrative functions of the city; (c) five administrative departments under the city manager's supervision—Law, Finance, Public Safety, Public Service, Public Welfare; (d)

Provisions for recall of any of the officers of the city, including the city manager; and (e) careful provisions for handling the money affairs of the city, including budget-making, accounting, and municipal borrowing.

The city manager plan has spread rapidly since its adoption by Dayton. Over seventy-five cities now have it in operation, including cities of such size as San Antonio (Texas), Springfield (Ohio), and Wheeling (West Virginia). Most of the cities which have adopted it up to the present time, however, are relatively small, i. e., less than ten thousand inhabitants.

In general, the advantages of the city manager plan are appealing more and more to municipalities throughout the country. A skilled and trained man may be secured under this plan for the head of the administrative service of the city; municipal financing methods have been notably improved; and adequate personal supervision of public works and of public employees has been insured. In spite of the fact that the system places heavy responsibilities upon the shoulders ultimately of a few men—the commissioners and the city manager—representative citizens have been selected and have served with marked efficiency. The best evidence of its success as compared with older forms of local government is its general popularity with the people of the cities which have adopted it.

STATISTICS AND ILLUSTRATIVE CITATIONS

I

THREE-CLASS SYSTEM OF INDIRECT ELECTIONS IN PRUSSIA

Prussia is divided into electoral districts, from each of which a certain number (ranging from 1 to 33) of representatives to the *Abgeordenetenhaus* are chosen. These representatives are elected by electors who are in turn elected by the voters in smaller electoral precincts (known as *Urwahlbezirke*, or original electoral precincts). Each electoral precinct is entitled to one elector to each 250 souls in the precinct.[1] For the purpose of choosing these electors from the precincts, the voters in the precinct are divided into the following classes:

1st Class	2d Class	3d Class
Those who pay an amount equal to ⅓ the total taxes, counting from the largest taxpayer down. The number seldom equals more than 5% of the voters.	Those who, individually paying taxes of an amount less than the voters in the first class, collectively pay an amount equal to the second third of the total taxes, counting from the large taxpayers down. The number equals about 12% or 15% of the voters.	Those who, individually paying taxes of an amount less than the voters of the class above, collectively contribute an amount equal to ⅓ of the total taxes. In this class is the great majority of voters, from 80% to 83% of the population.
The voters in this class elect one third of the total number of electors from the precinct.	The voters in this class elect one third of the total number of electors from the precinct.	The voters in this class elect one third of the total number of electors from the precinct.

The electors chosen by these three classes in the precincts meet together and themselves choose the representative or representatives of the *district* to the *Abgeordenetenhaus* (or house of representatives).[2]

[1] Where the number of inhabitants is not a multiple of three, an extra elector is allotted to the district, or two extra electors, to make up the proper proportion. If one extra elector is allotted, he is chosen by the 2d class of voters; if two extra electors are allotted, they are chosen by the 1st and 3d classes of voters respectively. For example, if a precinct (*Urwahlbezirke*) contained 1000 souls, it would be entitled to 4 electors, one chosen by each of the 3 classes of voters, and one extra chosen by the 2d class of voters; if a district had 2000 souls, it would be entitled to 8 electors, two chosen by each of the three classes, and one additional by class 1 and one by class 3.

[2] As in all cases where electors have no function except to elect, the electors in Prussian precincts are chosen in the name of the candidate whom they are pledged to support for a seat in the *Abgeordenetenhaus*.

II

Commission Form of Government for Cities

Law (The Des Moines Act) passed by the Iowa legislature, March 29, 1907, "to provide for the government of certain cities."

Cities Affected by the Act

Section 1. That any city of the first or second class, or with special charter, now or hereafter having a population of seven [1] thousand or over, as shown by the last preceding state census, may become organized as a city under the provisions of this act by proceeding as hereinafter provided.

Provision for the Submission of the Question of Commission Government to the Electors

Sec. 2. Upon petition of electors equal in number to twenty-five per centum of the votes cast for all candidates for mayor at the last preceding city election of any such city, the mayor shall, by proclamation, submit the question of organizing as a city under this act at a special election to be held at a time specified therein, and within two months after said petition is filed; provided, however, that in case any city is located in two or more townships said petition shall be signed by twenty-five per centum of the qualified electors of said city residing in each of said townships. . . . If the majority of the votes cast shall be in favor thereof, cities having a population of twenty-five thousand and over shall thereupon proceed to the election of a mayor and four councilmen, and cities having a population of seven thousand, and less than twenty-five thousand, shall proceed to the election of a mayor and two councilmen, as hereinafter provided. Immediately after such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county auditor, each a certificate stating that such proposition was adopted. At the next regular city election after the adoption of such proposition there shall be elected a mayor and councilmen. In the event, however, that the next regular city election does not occur within one

[1] Originally this figure was 25,000. It was amended March 30, 1909.

year after such special election the mayor shall, within ten days after such special election, by proclamation call a special election for the election of a mayor and councilmen, sixty days' notice thereof being given in such call; such election in either case to be conducted as hereinafter provided.[1]

SEC. 3. [Provides for applying the law and existing ordinances to commission-governed cities.]

Elective Offices. Terms of Office and Vacancies

SEC. 4. In every city having a population of twenty-five thousand and over there shall be elected at the regular biennial municipal election a mayor and four councilmen, and in every city having a population of seven thousand and less than twenty-five thousand, there shall be elected at such election a mayor and two councilmen.[1]

If any vacancy occurs in any such office the remaining members of said council shall appoint a person to fill such vacancy during the balance of the unexpired term.

Said officers shall be nominated and elected at large. Said officers shall qualify and their terms of office shall begin on the first Monday after their election. The terms of office of the mayor and councilmen or aldermen in such city in office at the beginning of the terms of office of the mayor and councilmen first elected under the provisions of this act shall then cease and determine, and the terms of office of all other appointive officers in force in such city, except as hereinafter provided, shall cease and determine as soon as the council shall by resolution declare.

Nomination and Election of Candidates

SEC. 5. Candidates to be voted for at all general municipal elections at which a mayor and councilmen are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nomination shall be held on the second Monday preceding the general municipal election. . . .

[1] As amended by the Act of March 30, 1909.

Constitution of the Council

SEC. 6. Every city having a population of twenty-five thousand and over shall be governed by a council consisting of the mayor and four councilmen, and every city having a population of seven thousand and less than twenty-five thousand shall be governed by a council consisting of the mayor and two councilmen, chosen as provided in this act, each of whom shall have the right to vote on all questions coming before the council. In cities having four councilmen three members of the council shall constitute a quorum, and in cities having two councilmen, two members of the council shall constitute a quorum, and in cities having four councilmen the affirmative vote of three members, and in cities having two councilmen the affirmative vote of two members shall be necessary to adopt any motion, resolution or ordinance, or pass any measure unless a greater number is provided for in this act.[1]

Powers and Duties of the Council

SEC. 7. The council shall have and possess, and the council and its members shall exercise all executive, legislative and judicial powers and duties now had, possessed and exercised by the mayor, city council, solicitor, assessor, treasurer, auditor, city engineer and other executive and administrative officers in cities of the first and second class, and in cities under special charter, and shall also possess and exercise all executive, legislative and judicial powers and duties now had and exercised by the board of public works, park commissioners, the board of police and fire commissioners, board of water works trustees, and board of library trustees in all cities wherein a board of public works, park commissioners, board of police and fire commissioners, board of water works trustees, and board of library trustees now exist or may be hereafter created.[1]

The executive and administrative powers, authority and duties in such cities shall be distributed into and among five departments, as follows:

1. DEPARTMENT OF PUBLIC AFFAIRS.
2. DEPARTMENT OF ACCOUNTS AND FINANCE.

[1] As amended by the Act of March 30, 1909.

3. Department of Public Safety.
4. Department of Streets and Public Improvements.
5. Department of Parks and Public Property.

The council shall determine the powers and duties to be performed by, and assign them to the appropriate departments; shall prescribe the powers and duties of officers and employees; may assign particular officers and employees to one or more of the departments; may require an officer or employee to perform duties in two or more departments; and may make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city.

Organization of Departments

Sec. 8. The mayor shall be superintendent of the department of public affairs, and the council shall at the first regular meeting after election of its members designate by majority vote one councilman to be superintendent of the department of accounts and finances; one to be superintendent of the department of public safety; one to be superintendent of the department of street and public improvements; and one to be superintendent of the department of parks and public property; provided, however, that in cities having a population of less than twenty-five thousand there shall be designated to each councilman two of said departments. Such designation shall be changed whenever it appears that the public service would be benefited thereby. The council shall, at said first meeting, or as soon as practicable thereafter, elect by majority vote the following officers: A city clerk, solicitor, assessor, treasurer, auditor, civil engineer, city physician, marshal, chief of fire department, market master, street commissioner, three library trustees, and such other officers and assistants as shall be provided for by ordinance and necessary to the proper and efficient conduct of the affairs of the city; provided, however, that in cities having a population of less than twenty-five thousand such only of the above-named officers shall be appointed as may, in the judgment of the mayor and councilmen, be necessary for the proper and efficient transaction of the affairs of the city. In those cities of the first class not having a superior court, the council shall appoint a police judge. In cities of the second class not having a superior court the

mayor shall hold police court, as now provided by law. Any officer or assistant elected or appointed by the council may be removed from office at any time by vote of a majority of the members of the council, except as otherwise provided for in this act.[1]

Creation and Abolition of Offices

SEC. 9. The council shall have power from time to time to create, fill and discontinue offices and employments other than herein prescribed, according to their judgment of the needs of the city; and may by majority vote of all the members remove any such officer or employee, except as otherwise provided for in this act; and may by resolution or otherwise prescribe, limit or change the compensation of such officers or employees.

SEC. 10. [Provides for Salaries.]

SEC. 11. [Provides for Meetings of the Council.]

Ordinances, Resolutions and Franchises

SEC. 12. Every ordinance or resolution appropriating money or ordering any street improvement or sewer, or making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges or public places in the city for any purpose, shall be complete in the form in which it is finally passed, and remain on file with the city clerk for public inspection at least one week, before the final passage or adoption thereof. No franchise or right to occupy or use the streets, highways, bridges or public places in any city shall be granted, renewed or extended, except by ordinance, and every franchise or grant for interurban or street railways, gas or water works, electric light or power plants, heating plants, telegraph or telephone systems, or other public service utilities within said city, must be authorized or approved by a majority of the electors voting thereon at a general or special election, as provided in section 776 of the Code.

SEC. 13. [Provides for Restrictions on Officers and Employees.]

SEC. 14. [Provides for a Civil Service System.]

[1] As amended by the Act of March 30, 1909.

Monthly Itemized Statements

SEC. 15. The council shall each month print in pamphlet form a detailed itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies thereof to the state library, the city library, the daily newspapers of the city, and to persons who shall apply therefor at the office of the city clerk. At the end of each year the council shall cause a full and complete examination of all the books and accounts of the city to be made by competent accountants, and shall publish the result of such examination in the manner above provided for publication of statements of monthly expenditures.

Appropriations

SEC. 16. If, at the beginning of the term of office of the first council elected in such city under the provisions of this act, the appropriations for the expenditures of the city government for the current fiscal year have been made, said council shall have power, by ordinance, to revise, to repeal or change said appropriations and to make additional appropriations.

SEC. 18. [Provides for the Recall.]

SEC. 19. [Provides for the Initiative and Referendum.]

SEC. 20. [Provides for the "going into effect of Ordinances."]

Procedure for the Abandonment of the Commission Form

SEC. 21. Any city which shall have operated for more than six years under the provisions of this act may abandon such organization hereunder, and accept the provisions of the general law of the state then applicable to cities of its population, or if now organized under special charter, may resume said special charter, by proceeding as follows:

Upon the petition of not less than twenty-five per centum of the electors of such city a special election shall be called, at which the following proposition only shall be submitted: "Shall the city of (name the city) abandon its organization under chapter —— of the acts of the Thirty-second General Assembly and become a city under the general law governing cities of like population, or if now organized under special charter shall resume said special charter?

If a majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next suc-

ceeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of such officers such city shall become a city under such general law of state; but such change shall not in any manner or degree affect the property, right or liabilities of any nature of such city, but shall merely extend to such change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, generally as provided by section 18 of this act, in so far as the provisions thereof are applicable.

Requirements about Petitions

SEC. 22. Petitions provided for in this act shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides, his age and length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city stating that the signers thereof were, at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made.

Act in Effect

SEC 23.[1] This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in The Register and Leader and Des Moines Capital, newspapers published in Des Moines, Iowa.[2]

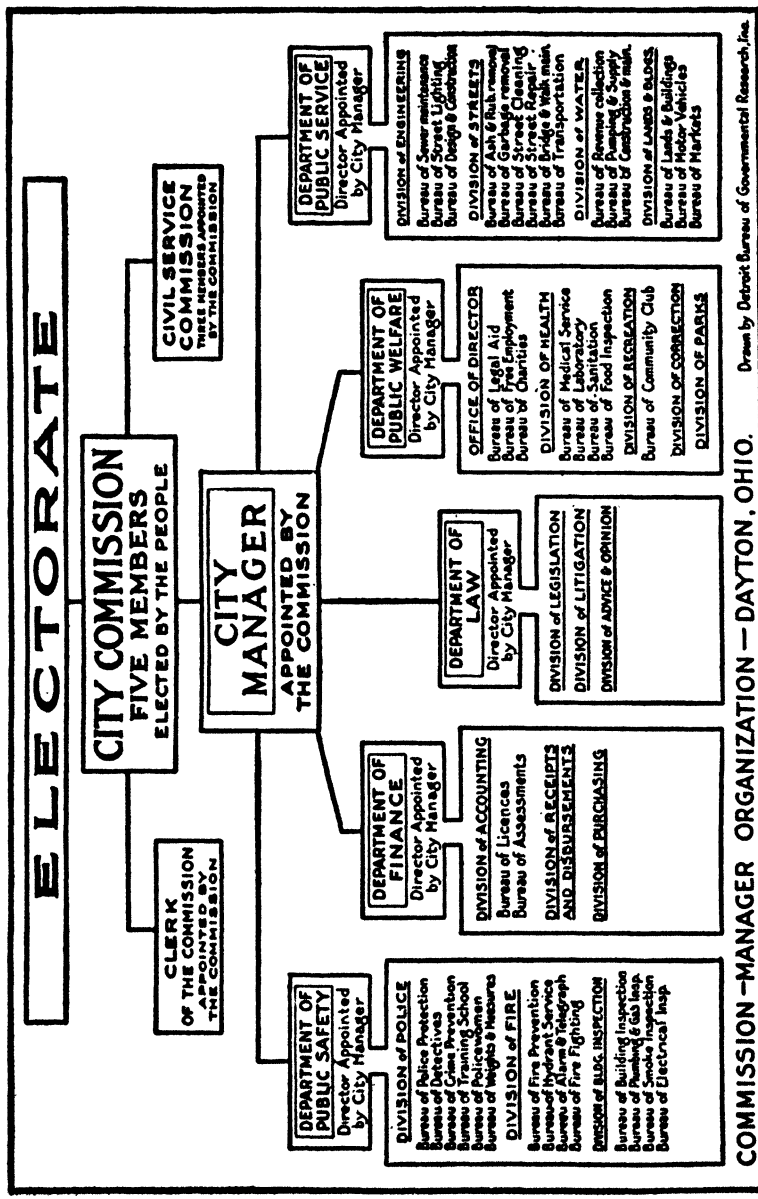
IV

EXCERPTS FROM THE CITY MANAGER CHARTER OF SPRINGFIELD, OHIO

We, the people of the city of Springfield, Ohio, in order to obtain the benefits of local self-government, to encourage more direct and business-like methods in the transaction of our municipal affairs, and otherwise to promote our common welfare, do adopt the following charter of our city:

[1] Cited with omissions, from Woodruff, *City Government by Commission*.

[2] Approved March 29, 1907; amended by Act of March 30, 1909, as indicated.


ELECTORATE
CITY COMMISSION
FIVE MEMBERS
ELECTED BY THE PEOPLE
CLERK
OF THE COMMISSION
APPOINTED BY
THE COMMISSION
CIVIL SERVICE
COMMISSION
THREE MEMBERS APPOINTED
BY THE COMMISSION
CITY
MANAGER
APPOINTED BY
THE COMMISSION
DEPARTMENT OF
PUBLIC SAFETY
Director Appointed
by City Manager
DIVISION of POLICE
Bureau of Police Protection
Bureau of Detectives
Bureau of Crime Prevention
Bureau of Training School
Bureau of Police Signal
Bureau of Weights & Measures
DIVISION of FIRE
Bureau of Fire Prevention
Bureau of Marine Service
Bureau of Alarm Telegraph
Bureau of Fire Fighting
DIVISION of BLDG. INSPECTION
Bureau of Building Inspection
Bureau of Plumbing & Gas Insp.
Bureau of Smoke Inspection
Bureau of Electrical Insp.
DEPARTMENT OF
FINANCE
Director Appointed
by City Manager
DIVISION of ACCOUNTING
Bureau of Licences
Bureau of Assessments
DIVISION of RECEIPTS
AND DISBURSEMENTS
DIVISION of PURCHASING
DEPARTMENT OF
LAW
Director Appointed
by City Manager
DIVISION of LEGISLATION
DIVISION of LITIGATION
DIVISION of ADVICE & OPINION
DEPARTMENT OF
PUBLIC WELFARE
Director Appointed
by City Manager
OFFICE of DIRECTOR
Bureau of Legal Aid
Bureau of Free Employment
Bureau of Charities
DIVISION of HEALTH
Bureau of Medical Service
Bureau of Laboratory
Bureau of Sanitation
Bureau of Food Inspection
DIVISION of RECREATION
Bureau of Community Club
DIVISION of CORRECTION
DIVISION of PARKS
DEPARTMENT OF
PUBLIC SERVICE
Director Appointed
by City Manager
DIVISION of ENGINEERING
Bureau of Sewer maintenance
Bureau of Street Lighting
Bureau of Design & Construction
DIVISION of STREETS
Bureau of Ash & Rubbish removal
Bureau of Garbage removal
Bureau of Street Cleaning
Bureau of Street Repair
Bureau of Bridge & Veh. maint.
Bureau of Transportation
DIVISION of WATER
Bureau of Revenue collection
Bureau of Pumping & Supply
Bureau of Construction & maint.
DIVISION of LANDS & BLDGS
Bureau of Lands & Buildings
Bureau of Motor Vehicles
Bureau of Markets
COMMISSION-MANAGER ORGANIZATION — DAYTON, OHIO.
Drawn by Detroit Bureau of Governmental Research, Inc.

The City Commission

SEC. 2. *Creation and Powers.*—There is hereby created a City Commission to consist of five electors of the city elected at large, who shall hold office for a term of four years beginning January first after their election, excepting that the two members elected at the first election by the lowest vote shall hold office for the term of two years only.

All the powers of the city, except such as are invested in the Board of Education and in the Judge of the Police Court, and except as otherwise provided by this charter or by the constitution of the state, are hereby vested in the city commission; and, except as otherwise prescribed by this charter or by the constitution of the state, the city commission may by ordinance or resolution prescribe the manner on which any power of the city shall be exercised. In the absence of such provision as to any power, such power shall be exercised in the manner now or hereafter prescribed by the general laws of the state applicable to municipalities.

SEC. 6. *President*—The city commission shall at the time of organizing elect one of its members as president and another as vice-president for terms of two years. In case the members of the city commission, within five days after the time herein fixed for their organization meeting, are unable to agree upon a president or a vice-president of such commission, then a president, or a vice-president, or both, as the occasion may require, shall be selected from all the members of such commission by lot conducted by the city solicitor; who shall certify the result of such lot upon the journal of the commission.

The president shall preside at all meetings of the commission and perform such other duties consistent with his office as may be imposed by it; and he shall have a voice and vote in its proceedings, but no veto. He may use the title of mayor in any case in which the execution of legal instruments of writing or other necessity arising from the general law of the state so requires but this shall not be construed as conferring upon him the administrative or judicial functions of a mayor under the general laws of the state.

The president of the city commission shall be recognized as the official head of the city by the courts for the purpose of serving civil process, by the governor for the purpose of military law, and for all ceremonial purposes. He may take

command of the police and govern the city by proclamation during times of public danger or emergency, and he shall himself be the judge of what constitutes such public danger or emergency. The powers and duties of the president shall be such as are conferred upon him by this charter, together with such others as are conferred by the city commission in pursuance of the provisions of this charter, and no others.

City Manager

SEC. 5. *Appointment.*—The city commission shall appoint a city manager who shall be the administrative head of the municipal government under the direction and supervision of the city commission, and who shall hold office at the pleasure of the city commission. He shall be appointed without regard to his political beliefs and need not be a resident of the city at the time of his appointment. During the absence or disability of the city manager the city commission may designate some properly qualified person to execute the functions of the office.

SEC. 16. *Powers and Duties.*—The powers and duties of the city manager shall be:

(a) To see that the laws and ordinances are enforced.

(b) Except as herein provided, to appoint and remove all heads of departments, and all subordinate officers and employees of the city; all appointments to be upon merit and fitness alone, and in the classified service all appointments are removals to be subject to the civil service provisions of this charter.

(c) To exercise control over all departments and divisions created herein or that hereafter may be created by the commission.

(d) To see that all terms and conditions imposed in favor of the city or its inhabitants in any public utility franchise are faithfully kept and performed; and upon knowledge of any violation thereof to call the same to the attention of the city solicitor, who is hereby required to take such steps as are necessary to enforce the same.

(e) To attend all meetings of the commission, with the right to take part in the discussions but having no vote.

(f) To recommend to the commission for adoption such measures as he may deem necessary or expedient.

(g) To act as budget commissioner and to keep the city

commission fully advised as to the financial condition and needs of the city; and

(h) To perform such other duties as may be prescribed by this charter or be required of him by ordinance or resolution of the commission.

SEC. 17. *Head of Departments.*—Excepting the departments of city solicitor, auditor, treasurer, sinking fund and civil service, and until otherwise provided by the city commission, any existing department now under the control of a special board, such as library, hospital and park, the city manager shall be the acting head of each and every department of the city until otherwise directed by the commission; but with the consent and approval of the commission, he may appoint a deputy or chief clerk to represent him in any department of which he is the acting head. No member of the city commission shall directly interfere with the conduct of any department, except at the express direction of the commission.

SEC. 18. *Platting Commission.*—The city manager shall also be the platting commissioner of the city and he shall exercise the authority and discharge the duties of that office under the provisions of the general law of the state applicable thereto, except as the same may be modified by the city commission.

Administrative Officers and Departments

SEC. 19. *City Solicitor.*—The city commission shall appoint a city solicitor who shall hold office at the pleasure of the commission. The city solicitor shall act as the legal adviser to, and attorney and counsel for, the municipality and all its officers in matters relating to their official duties.

SEC. 20. *City Auditor.*—The city commission shall appoint a city auditor who shall hold office at the pleasure of the commission. The city auditor shall issue all warrants of money by the city. He shall keep an accurate account of all taxes and assessments, of all money due to, and all receipts and disbursements by, the municipality, of all its assets and liabilities, and of all appropriations made by the city commission.

SEC. 21. *City Treasurer.*—The city commission shall appoint a city treasurer who shall hold office at the pleasure of the city commission. The office of city treasurer may be combined with that of clerk of the city commission or with any other office not inconsistent therewith. The city treasurer shall be the custodian of all moneys of the municipality, and shall keep

and preserve the same in such manner and in such place or places as shall be determined by the city commission. He shall pay out money only on warrants issued by the city auditor.

SEC. 22. *Purchasing Agent.*—The city commission shall designate some officer of the city, other than the auditor or treasurer, to act as its purchasing agent, by whom all purchases of supplies for the city shall be made, and who shall approve all vouchers for the payment of the same. Such purchasing agent shall also conduct all sales of personal property which the commission may authorize to be sold as having become unnecessary or unfit for the city's use.

SEC. 26. *Advisory Boards.*—The city commission at any time may appoint an advisory board or boards composed of citizens qualified to act in an advisory capacity to the city commission, the city manager or the head of any department, with respect to the conduct and management of any property, institution or public function of the city.

Appropriations

SEC. 31. *The Estimate.*—The fiscal year of the city shall begin on the first day of January. On or before the first day of November of each year the city manager shall submit to the city commission an estimate of the expenditures and revenues of the city departments for the ensuing year. This estimate shall be compiled from detailed information obtained from the several departments on uniform blanks to be furnished by the city manager. The classification of the estimate of expenditures shall be as nearly uniform as possible for the main functional divisions of all departments, and shall give in parallel columns the following information:

(a) A detailed estimate of the expense of conducting each department as submitted by the department.

(b) Expenditures for corresponding items for the last two fiscal years.

(c) Expenditures for corresponding items for the current fiscal year, including adjustments due to transfers between appropriations plus an estimate of expenditures necessary to complete the current fiscal year.

(d) Amount of supplies and material on hand at the date of the preparation of the invoice,

(e) Increase or decrease of requests compared with the corresponding appropriations for the current year.

(f) Such information as is required by the city commission or that the city manager may deem advisable to submit.

(g) The recommendation of the city manager as to the amounts to be appropriated with reasons therefor in such detail as the city commission may direct.

Sufficient copies of such estimate shall be prepared and submitted, that there may be copies on file in the office of the city commission for inspection by the public.

The Initiative

SEC. 53. *Proposed Petition.*—Any proposed ordinances, including ordinances for the repeal or amendment of an ordinance then in effect, may be submitted to the city commission by petition signed by at least five per cent of the total number of registered voters in the municipality.

The Referendum

SEC. 60. *Petition for Referendum.*—No ordinance passed by the city commission, unless it be an emergency measure or the annual appropriation ordinance, shall go into effect until thirty days after its final passage. If, at any time within said thirty days, a petition signed by fifteen percent of the total number of registered voters in the municipality be filed with the clerk of the city commission, requesting that any such ordinance be repealed or amended as stated in the petition, it shall not become operative until the steps indicated herein have been taken. Such petition shall have stated therein the names and addresses of at least five electors as a committee to represent the petitions.

SEC. 61. *Proceedings Thereunder.*—The clerk of the city commission shall at its next meeting, present the petition to the city commission, which shall proceed to reconsider the ordinance. If within thirty days after the filing of such petition, the ordinance be not repealed or amended as requested, the city commission shall provide for submitting the proposed repeal or amendment to a vote of the electors, provided a majority of the committee named in the petition to represent the petitioners shall, by writing filed with the clerk of the city commission within twenty days after the expiration of the said thirty days, so require.

The Recall

SEC. 65. *Recall Petition.*—Any or all members of the city commission may be removed from office by the electors by the following procedure.

A petition for the recall of the commissioner or commissioners designated, signed by at least five hundred of the electors of the city, and containing a statement in not more than two hundred words of the grounds of the recall, shall be filed with the city auditor, who shall forthwith notify the commissioner or commissioners sought to be removed, and he or they, within five days after such notice, may file with such auditor a defensive statement in not exceeding two hundred words. The city auditor shall at once upon the expiration of said five days cause sufficient printed or typewritten copies of such petition, without the signatures, to be made, and to each of them he shall attach a printed or typewritten copy of such defensive statement, if one is furnished him within the time provided. He shall cause one copy of such petition to be placed on file in his office, and provide facilities for there signing the same, and he shall also cause one copy to be placed in each of the several fire engine houses of the city, where the same shall be in the custody of the captain of the house, who shall provide facilities for there signing the same. The city auditor shall immediately cause notice to be published in some newspaper of general circulation in the city of the placing of such copies of such petition.

Such copies of such petition shall remain on file in the several places designated for the period of thirty days, during which time any of them may be signed by any elector of the city in person; but not by agent or attorney. Each signer of any of such copies shall sign his name in ink or indelible pencil, and shall place thereafter his residence by voting precinct, and by street and number.

SEC. 66. *Notice.*—At the expiration of the said period of thirty days the city auditor shall assemble all of said copies in his office as one instrument, and shall examine the same and ascertain and certify thereon whether the signatures thereto amount to at least fifteen per cent of the registered voters of the city. If such signatures do amount to such per cent, he shall at once serve notice of that fact upon the commissioner or commissioners designated in the petition, and also deliver to

the election authorities a copy of the original petition with his certificate as to the percentage of registered voters who signed the same, and a certificate as to the date of his last mentioned notice to the commissioner or commissioners designated in the petition.

SEC. 67. *Recall Election.*—If the commissioner or commissioners, or any of them, designated in the petition, file with the clerk of the city commission within five days after the last mentioned notice from the city solicitor, his or their written resignation, the clerk of the city commission shall at once notify the election authorities of that fact; and such resignation shall be irrevocable, and the city commission shall proceed to fill the vacancy. In the absence of any such resignation the election authorities shall forthwith order and fix a day for holding a recall election for the removal of those not resigning. Any such election shall be held not less than thirty nor more than sixty days after the expiration of the period of five days last mentioned, and at the same time as any other general or special election held within such period; but if no such election be held within such period the election authorities shall call a special recall election to be held within the period aforesaid.

SEC. 88. *Investigations.*—The city commission, or any committee thereof, the city manager and any advisory board appointed by the commission for such purpose, shall have power at any time to cause the affairs of any department or the conduct of any officer or employee to be investigated; and for such purpose shall have the power to compel the attendance of witnesses and the production of books, papers, and other evidence; and for that purpose may issue subpoenas or attachments which shall be signed by the president or chairman of the body or by the officer making the investigation, and shall be served by any officer authorized by law to serve such process. The authority making such investigation shall also have power to cause the testimony to be given under oath to be administered by some officer authorized by general law to administer oaths; and shall also have power to punish as for contempt any person refusing to testify to any fact within his knowledge, or to produce any books, or papers under his control, relating to the matter under investigation.

SEC. 92. *Amendment of Charter.*—Amendments to this charter may be submitted to the electors of the city by a two-thirds vote of the city commission, and, upon petition signed

by ten percent of the electors of the city setting forth any such proposed amendment, shall be submitted by such city commission. The ordinance providing for the submission of any such amendment shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the amendment at a special election to be called and held within the time aforesaid. Not less than thirty days prior to such election the clerk of the city commission shall mail a copy of the proposed amendment to each elector whose name appears upon the poll or registration books of the last regular municipal or general election. If such proposed amendment is approved by a majority of the electors voting thereon it shall become a part of the charter at the time fixed therein.

SEC. 93. *Saving Clause.*—If any section or part of a section of this charter proves to be invalid or unconstitutional, the same shall not be held to invalidate or impair the validity, force or effect of any other section or part of a section of this charter, unless it clearly appears that such other section or part of a section is wholly or necessarily dependent for its operation upon the section or part of a section so held unconstitutional or invalid.

SEC. 94. *When Charter Takes Effect.*—For the purpose of nominating and electing officers and all purposes connected therewith and for the purpose of exercising the powers of the city as provided therein, this charter shall take effect from the time of its approval by the electors of the city. For the purpose of establishing departments, divisions and officers, and distributing the functions thereof, and for all other purposes it shall take effect on the first day of January, 1914.

City-Manager Municipalities Corrected to June 1, 1922.*

State	City	1920 Pop.	In Effect
Ariz.	Phoenix	29,053	Apr. 1914
Cal.	Alameda	28,806	May 1917
	Alhambra	9,096	July 1915
	Bakersfield	18,638	Apr. 1915
	Chico	9,339	Apr. 1923
	Glendale	13,536	July 1921
	Long Beach	55,593	July 1921
	Pasadena	45,334	May 1921
	Sacramento	65,857	July 1921
	San Jose	39,604	July 1916
	Santa Barbara	19,441	Jan. 1918
Colo.	Boulder	10,989	Jan. 1918
	Colorado Springs	29,572	Apr. 1921
	Durango	5,300	Mar. 1915
	Grand Junction	8,665	Jan. 1922
	Montrose	3,581	Feb. 1914
Conn.	New London	25,688	Oct. 1921
	Stratford	12,347	Oct. 1921
	W. Hartford	8,854	Apr. 1921
Fla.	Bartow	5,000	Jan. 1922
	Fort Myers	3,678	June 1921
	Lake City	3,341	June 1921
	Miami	29,549	June 1921
	New Smyrna	3,000	Jan. 1921
	Ocala	5,610	Feb. 1918
	Punta Gorda	1,295	July 1921
	St. Augustine	6,192	July 1915
	Sanford	5,588	Jan. 1920
	Tallahassee	5,637	Feb. 1920
	Tampa	51,252	Jan. 1921
	W. Palm Beach	8,659	Dec. 1919
Ga.	Brunswick	14,413	Jan. 1921
	Cartersville	5,810	Aug. 1917
	Columbus	31,125	Jan. 1922
	Decatur	6,150	Jan. 1921
Ga.	Griffin	8,240	Dec. 1918
	Quitman	4,393	Dec. 1921
	Rome	13,252	Apr. 1919
	Tifton	3,500	Jan. 1921
Ind.	Michigan City	10,457	Jan. 1922
Iowa	Dubuque	39,141	June 1920
	Webster City	6,000	Oct. 1916
Kans.	Atchison	12,360	Apr. 1921
	Belleville	2,500	Apr. 1921
	El Dorado	10,995	July 1917
	Hays	2,339	May 1919
	Kinsley	1,885	Apr. 1922
	McCracken	371	May 1919
	St. Mary's	1,321	May 1921
	Salina	15,085	Apr. 1922
	Stockton	1,324	Apr. 1921
	Wichita	72,128	Apr. 1917
	Winfield	7,933	Apr. 1921
Maine	Auburn	16,985	Jan. 1918
Mass.	Mansfield	6,255	Feb. 1921
	Middleboro	8,543	Jan. 1921
	Norwood	12,627	Jan. 1915
	Stoughton	6,865	Jan. 1922
	Waltham	30,891	Jan. 1918
Mich.	Albion	8,354	Jan. 1918
	Alma	7,542	May 1919
	Alpena	11,101	Apr. 1916
	Bay City	47,554	Apr. 1921
	Benton Harbor	12,227	July 1921
	Big Rapids	5,100	Apr. 1914
	Birmingham	3,694	Apr. 1918
	Cadillac	9,734	Mar. 1914
	Crystal Falls	3,394	Apr. 1918
	Escanaba	13,103	Apr. 1922
	Grand Haven	7,224	Apr. 1915

* From *The Story of the City-Manager Plan*, published by the National Municipal League.

City-Manager Municipalities Corrected to June 1, 1922. (*Continued.*)

State	City	1920 Pop.	In Effect
Mich.	Grand Rapids	137,634	Mar. 1917
	Grosse Pte. Shores	400	June 1916
	Jackson	48,374	Jan. 1915
	Kalamazoo	48,487	June 1918
	Lapeer	4,500	May 1919
	Manistee	9,690	May 1914
	Maryville	3,000	Jan. 1921
	Mt. Pleasant	4,880	Mar. 1921
	Muskegon	36,570	Jan. 1920
	Muskegon Heights	12,000	Apr. 1922
	Onaway	2,789	Apr. 1920
	Otsego	4,000	May 1918
	Petoskey	5,064	Apr. 1916
	Plymouth	2,500	Dec. 1917
	Pontiac	34,273	Nov. 1920
	Portland	2,747	Jan. 1919
	Royal Oak	6,000	May 1918
	St. Johns	4,035	Aug. 1918
	Sault Ste. Marie	12,096	Dec. 1917
	Sturgis	5,995	Apr. 1921
	Three Rivers	5,209	Apr. 1918
Minn.	Anoka	4,287	Apr. 1914
	Columbus Heights	4,000	Aug. 1921
	Morris	3,500	Jan. 1914
	White Bear Lake	2,022	Oct. 1921
Mo.	Excelsior Springs	4,167	Apr. 1922
Mont.	Bozeman	6,183	Aug. 1921
Nebraska	Alliance	3,737	Apr. 1921
N. Mex.	Albuquerque	15,157	Jan. 1918
N. Y.	Auburn	36,142	Jan. 1920
	Newburgh	30,272	Jan. 1916
	Niagara Falls	50,760	Jan. 1916
	Sherrill	1,500	June 1916
N. Y.	Watertown	31,263	Jan. 1920
N. C.	Durham	21,000	May 1921
	Elizabeth City	8,925	Apr. 1915
	Gastonia	12,871	Aug. 1919
	Goldsboro	11,296	July 1917
	Greensboro	19,746	May 1921
	Hickory	5,076	May 1913
	High Point	14,302	May 1915
	Morganton	2,867	May 1913
	Reidsville	5,333	May 1922
	Thomasville	5,676	May 1915
Ohio	Akron	208,435	Jan. 1920
	Ashtabula	22,082	Jan. 1916
	Cleveland	796,836	Jan. 1924
	Cleveland Heights	15,236	Jan. 1922
	Dayton	152,559	Jan. 1914
	E. Cleveland	27,292	Jan. 1918
	Gallipolis	6,070	Jan. 1918
	Lima	41,306	Jan. 1922
	Painesville	6,886	Jan. 1920
	Sandusky	22,897	Jan. 1916
	S. Charleston	1,500	Jan. 1918
	Springfield	60,840	Jan. 1914
	Westerville	3,500	Jan. 1918
	Xenia	9,110	Jan. 1918
Okla.	Ardmore	14,181	May 1921
	Cherokee	3,100	Oct. 1920
	Coalgate	4,000	July 1914
	Collinsville	3,500	Feb. 1914
	Duncan	3,463	Nov. 1920
	Grandfield	2,000	Apr. 1921
	Lawton	9,000	Apr. 1921

CHAPTER X

GOVERNMENT OF DEPENDENCIES

Definition and Nature of a Dependency.—A dependency is any country, province, or territory subject to the sovereignty of a state but not forming *territorially* a constituent part of that state. Thus India is a dependency of Great Britain, Angola is a dependency of Portugal, the Philippine Islands are a dependency of the United States. These territories may be considered an integral part of the sovereign states to which they owe allegiance; yet the fact of actual separation by intervening land or water has invariably operated to make their form of government different from the government as exercised within the strict territorial confines of the state. Such separated territories have been treated as dependent upon the will of the sovereign state; their people have not possessed the rights of citizens of the home state in the central government of that state, except where such rights have been expressly accorded them; their governments have been subject to the will of the central government of the state.

I. Types of Dependencies

Various Types of Dependencies.—The extension of the sovereign power of great states over detached territories has sprung from a variety of causes and has resulted in radically different types of dependencies.

Colonial Dependencies.—In some cases these detached and perhaps distant territories have been populated by citizens of the parent state, who for one reason or another have left that state to establish their fortunes in a new land. Such citizens

in the new land are willing to acknowledge the sovereignty of the state from which they have emigrated; and such a state on its part is glad to accept as its possession the land which its citizens have settled. Dependencies of this character are more properly called *colonies*, from the Latin word *colonia*, meaning a planting place or a group who plant or settle.

Examples of colonial dependencies are numerous. The Puritans who fled from England to escape religious persecution in the seventeenth century and established themselves in the new world developed into one of the American colonies. The Englishmen who, employed by a great English trading company, emigrated to the new world and established the beginnings of Virginia did in actual fact start a colony. The convicts who were transported by judicial sentence to the wilds of Australia formed there the beginnings of an English colony. The French men and women who were bribed or forced to go to North America settled the French colony in what is now Canada. Various reasons caused the emigration from the parent country and the settlement in the new, but the vital character of the colony is due to the fact that in all instances the settlers did establish themselves permanently in their new surroundings, and that a recognized bond of allegiance to the country from which they came was maintained.

Direct Dependencies.—In contrast to these colonial dependencies are detached territories of savage or semi-savage races which by one means or another have been brought into subjection to a great power. Thus in many cases states have by force of arms brought a country into subjection, as England conquered large sections of India. Again, states have inveigled half-civilized chieftains into signing away their independence, as agents of Germany and agents of England did for their respective states throughout parts of Africa. Again, a state may be the first to assert a legal claim to a relatively vacant and idle territory, as France did to a large portion of the Desert of Sahara. A characteristic feature of all dependencies of this class is that they are mainly inhabited by a people for-

eign in blood and in habits from the people of the sovereign state.

Transitory Stages Toward Direct Dependence.—Two transitory stages which in some cases have marked the progress of these direct dependencies from their primitive freedom to their position of direct dependence may be noted. These stages are called, respectively, *spheres of influence* and *protectorates.*

Sphere of Influence.—The sphere of influence is a relatively new development in history, being the result of the disgraceful land-grabbing ambitions which led the great powers of Europe during the nineteenth century to preëmpt much more territory than they could at the moment absorb. England, France, and Belgium, especially, pushing ahead to lay claim to great sections of barbarous Africa on slight grounds of discovery and prior assertion of right, soon realized that the forcible assumption of such territories was certain to result in serious misunderstandings and war. By international conferences of the land-grabbing powers, therefore, it was agreed that any single power might, by giving due notice to the other land-grabbing powers (dignifiedly called "colonial powers"), and by a reasonable definition of claims and boundaries, preëmpt territory not belonging to another civilized power. Disputed claims at the time were adjusted by agreement and solemn treaty, and the agreeing nations extended their claims by all conceivable methods. Such preëmption, thus guaranteed by agreements among the land-grabbing powers, simply means that no great power other than the one claiming such preëmption shall exercise or attempt to exercise any measure of political control over the territory in question. The territory need not be actually occupied by the great state which claims it, need not be actually governed by the said great state, but by international agreement no other great state may assert or exercise control therein. "A sphere of influence may be defined as a tract of territory within which a state, on the basis of treaties with neighboring colonial powers, enjoys the exclusive privilege of exercising political influence, of concluding treaties of pro-

tectorate, of obtaining industrial concessions, and of eventually bringing the region under its direct political control. The dominant idea, however, is the exclusion of the political activities of other powers and the consequent reservation by the privileged state of a free hand." (Reinsch, "Colonial Government.")

The sphere of influence is a transitory condition, as has been said. The next step may be to open the territory in the sphere of influence to trading companies chartered by the great state, and to gradual settlement; or it may be definitely to occupy the territory with military force, conquer it, and annex it; or it may be (and often is) the establishment of a *protectorate*.

Protectorate.—As the word implies, a protectorate is a territory which is under the protection of a powerful state. The protectorate is the result of treaty obligations supposed to have been in all cases voluntarily accepted by the peoples of the dependent territory. Under the provisions of a treaty of protectorate the protecting state is given the right to dictate all questions of relations with outside (foreign) powers, is guaranteed to be the only state with which the peoples or tribes of the protected territory shall have political relations, and is allowed to have a resident agent in the protected territory. In general, the local government is left undisturbed.

If a protectorate were merely what the name implies, it might be administered in a way that would be a decided advantage to the people in the protected territory, but the protectorate is commonly a transitional status leading to direct dependency. The protectorate is only a temporary expedient designed to disguise to the minds of the protected territory the ultimate object of the protecting state. Thus most of the African territories originally acquired by treaties of protection have already been converted by the land-hungry states into actual possessions, into direct dependencies.

Two Classes of Dependencies: Colonial and Direct.—For the purposes of our study of government, then, dependencies may be divided into two main classes, *colonial dependencies*

and *direct dependencies.* In colonial dependencies the colonies have been largely settled by citizens of the ruling state, or by people of a similar degree of political experience, and the population is mainly homogeneous with the population of the ruling state. In direct dependencies the territories have been brought into subjection by force or by treaty, either directly or through the gentler gradations of sphere of influence and protectorate, and the population is mainly of a different blood and race from that of the ruling state, is in fact often savage or semi-savage in character.

II. Government in Colonial Dependencies

Government in Colonial Dependencies.—Government in colonial dependencies of modern democratic states does not in modern times present great difficulties. Inasmuch as the people of the colonies are chiefly of the same race and familiar with the same institutions as the people of the governing state or are of a similar degree of political experience, modern liberalism has more and more tended to extend to the former the same general political privileges as are granted to the latter. Thus in states with liberal suffrage and representative government, we may expect to find the colonial dependencies likewise enjoying the privileges of liberal suffrage and representative government. Such colonial dependencies may not incorrectly be called *self-governing colonies.*

The three most prominent examples of such self-governing colonies are Canada, Australia, and South Africa, all three being members of the British Commonwealth of Nations.

The system of government provided for these colonial dominions closely resembles the English system in its main features. The chief executive is a governor or governor-general appointed by the English monarch and serving both as the direct representative of England and as the head of the colonial government. As the direct representative of England it is his function to prevent by the exercise of his veto power any measures inimical to the interests of the British Empire

as a whole. As the head of the colonial government, he is wholly in the hands of a ministry responsible to the popular chamber of the legislature.

The governor-general seldom finds it necessary to exercise his veto power. His position is such that he can, and usually does, wield an enormous influence upon political affairs. An experienced and tactful governor can by the force of his personality so direct the policies of the ministry that his veto power will not have to be used.

Each of the self-governing dominions has a legislative body, the members of which are elected by the people on a liberal suffrage. The ministry is appointed by the governor-general from the leaders of the majority party in the legislature. The ministry can be dismissed and the legislature dissolved by the governor-general, but new elections must at once take place for a new government.

The powers of the legislature are very nearly as great as those of an independent state. The ruling state makes no attempt to interfere with the internal affairs of the self-governing dominion; it has given over to the management of the dominion legislature the public lands of the territory; it even allows an astonishing amount of freedom in the tariff and trade relations which the dominion may make with foreign states, so that the world to-day beholds England with a free trade system and her self-governing dominions with a protective tariff system.

The self-governing dominions are no longer bound to England by force, for any one of the three is large and powerful enough to carry through a successful revolt, but rather by ties of interest and national pride. Before England takes any measures liable to affect the interests of these dominions, the government consults the dominions themselves; and the dominions on their part tend to respect the interests of England and to adjust their legislation accordingly. What the future of these dominions will be as they continue to develop in wealth, strength, and importance cannot be foretold. Some

persons dream of new states created by simple declarations of independence on the part of the various self-governing dominions; others dream of a new and marvelous imperial federation in the legislature of which England, Canada, Australia, and South Africa shall have equal or proportionate weight, while the English Parliament shall legislate only for matters in the British Isles.

III. Government in Direct Dependencies

Government in Direct Dependencies.—To give an adequate conception of the variety of governmental forms by which the powers have endeavored to foster the mutual advantages of their own states and of their direct dependencies is a difficult problem. From the absolute monarchy type of the Belgian Congo, through the Dutch, English, and French varieties of direct control, the gradations are numerous. To any classification that may be made certain exceptions should be noted and certain objections may be urged.

Most Liberal Type: French Dependencies.—The general statement may be made that none of the direct dependencies of any state enjoys the degree of self-government that is enjoyed by the English colonial dependencies. The nearest approach to this is to be found in certain dependencies of France. In the early history of the acquisition of dependencies the French theory was that such dependencies should be conquered and assimilated to the civilization and laws of France as soon as possible; but in time statesmen saw the futility of trying to force French habits of thought, French tastes and customs, French laws and civilization, upon great masses of different races, some of which (as in Indo-China) had an ancient and complex civilization of their own. For the policy of conquest and assimilation, therefore, France deliberately substituted the more enlightened policy of "association," by which the ancient laws, customs, and civilization of each dependency are respected, a degree of local self-government is

granted, and development of each dependency along its own characteristic lines is encouraged.

The legislative body of France has the ultimate power to fix the government and make the laws for each dependency. In this legislative body, however, the more important dependencies (as Algeria, Martinique, Guadeloupe, Réunion, French India, French Guiana, Senegal, and Cochin China) are represented by delegates elected by a wide suffrage in the dependencies and given equal rights with the delegates from French constituencies. The general supervision of affairs pertaining to the dependencies is vested in a minister of the colonies, assisted by a council composed of elected representatives of all the dependencies. The minister of the colonies and the council have supervision over such important matters as the fixing of tariffs and the approval of the separate budgets. In the dependencies the head of the government is a governor, who is both the representative of the home country and the chief executive of the dependency. *Councils general,* partly or wholly elected by the citizens, have in the more important dependencies a considerable degree of control over local affairs. In addition to the council general the governor has a small advisory privy council, partly appointed by him and partly elected. In none of the dependencies is the governor or his advisory privy council directly responsible to the more representative council general.

English Direct Dependencies.—The typical government of the direct dependencies of England is theoretically less liberal than that just outlined, in that such dependencies are not allowed the privilege of representation in the English Parliament; but in practice, under a number of great administrators the system has tended to give these dependencies all the powers they could wisely exercise. The laws are typically decrees issued by the governor or commissioner with the concurrence of a privy council. Both governor and privy council are appointed by the crown. Usually there is also a Legislative Council which acts in a purely advisory capacity, and whose

members are appointed by the crown. The finances are directly under the control of the crown. Such colonies, of which the Straits Settlement is an example, are in the English system designated as "crown colonies." In England the general supervision of affairs pertaining to these dependencies is under the colonial office, whose head is the colonial secretary, a member of the English cabinet.

India.—Because of its immense size and special importance, as well as because of the peculiar conditions due to the small English population contrasted with the enormous native population, the government of the dependency of India is organized on a system separate from that of other crown colonies. Radical innovations have been introduced within the last few years by the government of India Act of 1915, as amended by acts in 1916 and 1919, innovations apparently intended to give to native Indians a greater share in the responsibilities of their government. The system in existence at present (1922) provides for the representation of India's interests and administration in Great Britain by a Secretary of State for India, who is a member of the British cabinet. He is assisted in England by a council appointed by him, at least half of whose members must have resided ten years or more in India and must not have returned to England from India over five years before the date of their appointment. In India itself, the source of both executive and legislative power is the Governor General in council. The Governor General is appointed by the Crown. His Executive Council consists of eight members appointed by the Crown for a term of five years, of whom at least two must be natives, and at least three must have had ten years or more of service in India. In addition to the Governor General and his council, India is provided with a legislative body of two chambers, the Council of State, and the Legislative Assembly. The Council of State is composed of sixty members, not more than twenty of whom may be nominated officials. The Legislative Assembly is composed of one hundred and forty-four members, of whom twenty-six are nominated by the Governor

General and one hundred and three are elected. The Council's term is five years; the Legislative Assembly's is three years. This legislative body of the two chambers has the power, under certain restrictions, to make laws throughout British India for all persons whether native or British. In addition to the above bodies, a chamber of Princes is constituted with advisory powers covering the interests of the native states in India.

The above framework of government for India is, as stated, the result of legislation passed by the British parliament within the last few years. Its changes from the former more autocratic form are undoubtedly due to widespread agitation among native Indians for a greater degree of self-government. It may be considered as representing the degree to which Great Britain is at present willing to yield to this agitation, but it is after all a temporary form, subject to change by British legislative enactment at any time such change seems advisable.

The Belgian Congo.—A most remarkable example in modern times of a government of a dependency organized and operated for the sole advantage of its ruler is to be noted in the case of the Belgian Congo. Leopold II, king of Belgium, personally financed explorations into Africa in the region of the Congo River, and finally, by virtue of these explorations and of various treaties arranged by his agents, managed, about 1885, to have recognized as a new state what is commonly called the Congo Free State. The main boundaries of the new state, to include about 900,000 square miles of territory, were determined by a series of treaties with other powers between 1885 and 1895. The Belgian parliament in 1885 authorized Leopold to be the chief of the new state and declared that the union between Belgium and the Congo Free State should be exclusively personal. This authority and declaration left Leopold at liberty to organize the government as he wished. He proceeded to create an absolute monarchy with himself as king, empowered to decree arbitrarily the civil and criminal codes of laws. The king and all the high officials of the new state resided at Brussels; a governor-general appointed by,

and responsible to, the king resided in the African state and had absolute control over all the civil and military administration. As enormous wealth in rubber and ivory was revealed in the state, a system of forced labor was decreed by the king, and natives were required to dispose of the rubber and ivory they obtained to the king's agents at the king's price. Such decrees opened the way to inhuman treatment of the natives by Leopold's agents, until conditions made continuance of such a government impossible. In 1908 the Belgian parliament annexed the Congo, making it a direct dependency, organizing a government in which the final authority was held by the Belgian government, and at once taking steps to correct the worst abuses under the old administration.

Mandates.—A new experiment in the government of dependencies was inaugurated in the allied policy toward the Central Powers' surrendered colonies after the World War. Article twenty-two in the Covenant of the League of Nations explains the nature and purposes of *Mandates* and *mandatory government.*

ARTICLE 22. To those colonies and territories which, as a consequence of the late war, have ceased to be under the sovereignty of the states which formerly governed them, and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be intrusted to advanced nations who, by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic, and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defense of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as Southwest Africa and certain South Pacific islands, which, owing to the sparseness of their population or their small size, or their remoteness from the centers of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can best be administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards mentioned above in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories, and to advise the Council on all matters relating to the observance of the mandates.

It is impossible yet to decide whether this mandatory system is going to be administered in the spirit and with the high ideals indicated in the above article. Under the terms of the Treaty of Versailles, the German overseas dependencies were

allotted among the allies, important assignments being as follows:—German Southwest Africa to the (British) Union of South Africa; German East Africa divided between Belgium and Great Britain; Togoland and the Cameroons divided between France and Great Britain; the Islands of the Pacific divided between Japan (to the north) and Great Britain (to the south). Parts of the former territory of Turkey were similarly allotted: Mesopotamia and Palestine to Great Britain; Syria to France. A mandate over Armenia was offered to the United States but was refused by this government. The undoubted weakness of the League of Nations machinery has made it questionable whether the supervision exercised by it over the allotted mandates will be effective. Apparently the mandates will rapidly become direct dependencies.

IV. The United States and its Dependencies

Policy of the United States toward Dependencies.—The policy of the United States toward its dependent possessions hardly permits such possessions to be classified strictly under any one of the aforementioned categories.

Constitutional Power.—Under the constitution (Art. 4, Section 3, clause 2) the Congress of the United States is given "power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States." This clause has been subject to interpretation as changing conditions demanded. Congress has assumed under it the right to acquire new territory, to govern territory, to admit territory to statehood, and to sell, lease, or otherwise dispose of, public lands.

The Northwest Ordinance.—The Northwest Ordinance of 1787, confirmed by the Congress of 1789, which was an ordinance to provide an organized government for the vast region west of Pennsylvania, east of the Mississippi River, north of the Ohio River, and south of Canada, served as the basis of the territorial policy of the United States from its inception to the Spanish War.

This ordinance provided: (1) in territories having less than five thousand free men, for a governor, chosen by Congress, and a council composed of the governor and three appointed judges (the judges likewise being chosen by Congress) and possessed of certain legislative powers; (2) in territories containing five thousand free men, for a governor appointed by Congress, for an assembly, the upper house of such assembly to be appointed by Congress and the lower house to be elective; (3) for the admission of a territory to statehood when its population reached 60,000; and (4) for freedom of worship, the benefits of the writ of habeas corpus, exemption from cruel and unusual punishments, and the prohibition of slavery. In its main provisions this ordinance was reënacted in 1790 for the territory south of the Ohio River. The later legislation on the matter of territorial government, however, has generally provided for the appointment of the governor by the President and Senate, a legislature of two houses (one or both of which may be elective) and a judiciary appointed by the President and Senate, all important territorial officers thus being appointed by the national government.

The above ordinance, and subsequent laws based upon it, are obviously intended to provide an organization of government to territories which are prospective States. As a matter of fact, nearly all of the States outside of the original thirteen have gone through the two stages of territorial government provided by the above ordinance; *i.e.* first, government by an appointed governor and council, and second, government by an appointed governor and a legislature of which the upper house has been appointed and the lower elected.

Alaska.—The purchase of Alaska from Russia in 1867 had no material effect at the time upon the policy of the United States respecting its dependent territories. Alaska was considered valuable only for its fisheries, it was sparsely inhabited, and it did not require a complex organization of government. It was not until the discovery of gold caused the great influx of Americans that territorial government was demanded

by Alaska and considered by Congress. Territorial organization was conferred by Congress in 1912.

New Policy toward Dependencies.—The great break between the old policy and the new dates from the time of the Spanish War. Since 1898 the United States has faced the problem of organizing varieties of government for types of dependencies radically different from its former territories. The dependencies acquired about this time were the following: Hawaii (annexed by joint resolution of Congress, 1898) and Porto Rico and the Philippines (ceded by Spain under the treaty of peace at the close of the Spanish War.)

Hawaii.—The government for the Hawaiian Islands did not present special difficulties; there was a liberal admixture of Americans and Europeans in the population, and the country had regularly been annexed by act of Congress and was thus to be considered legally a part of the United States. There existed no reason why Hawaii should not be treated as the territories had previously been. A regular territorial government was, therefore, organized and established.

Porto Rico and the Philippines.—The status of Porto Rico and the Philippines, however, was different. They had been acquired, not by deliberate annexation, but as a result of conquest; their peoples were in the main alien in blood and customs from our own, and in the Philippine Islands included a considerable number of barbarous or semi-barbarous tribes. It seemed inconceivable that the United States should extend the privileges of representative government and American citizenship to the people of such dependencies.

On a technical question relative to the power of Congress over the tariffs in the dependencies, the matter was brought before the Supreme Court of the United States. In 1901 its decision in what is called the *Insular Cases* was handed down. By this opinion the court declared that Congress had the power to decide when territory was completely incorporated into the United States, and that Congress might make for territory not thus completely incorporated a code of laws different from the

laws applying to the commonwealths. The practical effect of this decision was that Congress has the right to distinguish between dependencies of radically different characteristics, to allow to one kind of dependency a representative democratic government and to withhold such government from another kind, and to organize a government of a special kind suited to the peculiar conditions in any dependency.

Under the powers thus interpreted to be in its hands, Congress organized a government for Porto Rico and the Philippines. A special form of territorial government was provided for Porto Rico, in which the executive power resides in a Governor appointed by the President of the United States. The legislative functions are vested in a legislature which consists of two elective houses: the Senate, composed of nineteen members, and the House of Representatives, composed of thirty-nine members. The territory is represented in Congress by a "resident commissioner" with the power of debate but not of vote.

An act establishing civil government in the Philippine Islands was passed by Congress July 1, 1902, and was later modified by the "Jones Act" of August 29, 1916. Under these acts the government is composed of a civil governor (governor-general) and a vice-governor, each appointed by the President of the United States. Under the Governor are the secretaries of six executive departments. There is a legislature consisting of a Senate and a House of Representatives, the members of both houses being elected by popular vote. In addition a Council of State created by executive order subsequent to the present organic act forms the connecting link between the executive and legislative branches of government. The Council of State is composed of the Governor, the presidents of the two chambers and the executive secretaries. It is the apparent desire of Congress to elevate the people of these islands to such a degree of political intelligence that full independence may be granted them.

Government authority in Guam and Samoa, and in the

Virgin Islands (purchased from Denmark in 1917), is in the hands of the Navy Department.

The United States, unlike other countries which possess important oversea dependencies, does not maintain a Colonial Department. The general supervision of affairs in the Philippines, Porto Rico and the Canal Zone is entrusted to the War Department. In the case of the Philippines this supervision is exercised by the Bureau of Insular Affairs, which is one of the Bureaus under the War Department.

Other Dependencies of the United States.—Outside of the dependencies mentioned above, the United States stands in the relation of protector, or guarantor, to some other territories, including the following:

Canal Zone.—By the Isthmian Canal Convention of Nov. 18, 1903, concluded between the Republic of Panama and the United States, the latter obtained a perpetual right of occupation, use, and control, of and over a zone of land ten miles wide across the Isthmus of Panama, paying for this right the sum of $10,000,000 and (from 1913) $250,000 a year. The United States has guaranteed the independence of the Republic of Panama. For the government of the Canal Zone Congress provided that the President shall appoint a governor and such officers as may be necessary.

Liberia.—Liberia, a republic on the west shore of Africa, was founded in 1820 by the American Colonization Society for the purpose of providing for the return to Africa of the negroes. This republic is under the protection of the United States, but the United States has no desire to change the status, as by annexing the country.

Cuba.—Cuba is at the present time virtually a protectorate of the United States. The Cuban constitution provides that the government shall enter into no foreign relations without the consent of the government of the United States and that the Cuban government must permit the United States to intervene in its affairs if such intervention seems necessary to prevent internal disturbance.

V. Effects of Acquisition of Dependencies upon Great States

Acquisition of Dependencies has Affected Great States.—The above outline of the forms of the growth and character of dependencies and the governmental policies pursued by the controlling nations toward them does not take into account the effect of dependencies upon the great nations themselves. As a matter of fact, the acquisition by the great nations of the world of dependencies has had marked effects upon the nations themselves. Internal politics, foreign relations, even the manner of thought of the people, have been radically reconstructed during this era of territorial aggrandizement, an era beginning with the latter half of the nineteenth century.

Nullification of Principle of Nationality.—One great principle evolved from the French Revolution era was the principle of nationality, meaning in effect that a people allied by race, religion, and habits should ordinarily compose one homogeneous independent state. It is obvious that the acquisition of dependencies occupied by people widely different in race, religion, and habits from those of the controlling state has largely nullified the force of this principle. France and Italy with their North African Mohammedans, England with its huge Indian territory, and the United States with its semi-savage Philippine tribes, are no longer homogeneous in population. The principle of nationality as a force in world politics is no longer considered a factor.

Chances for Misunderstandings between Great States.—International relations, again, have been profoundly affected. Whenever the dependencies of one power border upon those of another, especially where the boundaries are but vaguely indicated, chances for continual friction are present. Thus France and England formerly collided in India. Thus Russia and England have in the past been mutually suspicious of each other's acts in Persia and along the northernmost boundaries of Indian territories. Thus Japan and Russia came in conflict in

eastern Asia. Such chances for international misunderstanding are ever present, with the possibility of a devastating war.

Effect upon Internal Policies and Politics.—The effect of the acquisition of dependencies upon internal issues is no less marked. Italian ministries have fallen and the government changed as a result of colonial policies in Africa. The English Parliament has ceased to legislate solely for the British Isles, but has become the legislative center for a vast empire whose ramifications extend around the world. In the United States the effect of the decision in the Insular Cases and the action subsequently taken by Congress has enormously increased the power and prestige of the central government as contrasted with the several commonwealth governments.

Problems with Respect to Dependencies.—Important and difficult problems for the controlling powers have resulted from the acquisition of dependencies inhabited by alien peoples of a low degree of civilization. The education and civilization of savage or semi-savage peoples brought under their control, the protection of such peoples from exploitation, the equitable adjustment of the laws of a higher civilization to the customs and habits of a lower—these broadly are problems which have tasked the best statesmanship of the period.

Broadening of View and Deepening of Patriotism among People of Great States.—Perhaps the best result of the acquisition of dependencies has been the result upon the mental and political attitude of the people in the great colonial powers. A general broadening of view with a simultaneous deepening of patriotism is noticeable. The Englishman is no longer interested only in the affairs of his own small group of islands: he is interested also in Persia, Afghanistan, Australia, and the uttermost bounds of the globe. His pride in and love of the English flag is increased as he realizes that it is the flag of the sovereign power of one sixth part of the earth's surface. Similarly the Italians and the French look beyond the strict confines of their territory in Europe to their possessions abroad. In our own country the acquisition of Hawaii, Porto Rico, and

the Philippines, the lease of the Canal Zone, the virtual protectorate over Cuba, and the attitude toward the whole hemisphere implied in the Monroe Doctrine have widened our political horizon enormously. We feel that the United States definitely occupies a place among the great nations of the world; we desire to uphold its dignity and increase its prestige.

STATISTICS AND ILLUSTRATIVE CITATIONS

I

TREATY TO ILLUSTRATE THE SPHERE OF INFLUENCE

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, etc., etc., and His Most Faithful Majesty the King of Portugal and Algarves, etc., etc., with a view to settle definitely the boundaries of their respective sphere of influence in Africa, and being animated with the desire to confirm the friendly relations between the two Powers, have determined to conclude a Treaty to this effect and have named . . . their respective Plenipotentiaries. . . .

Who, having communicated to each other their respective full powers, found in good and due order, have agreed upon and concluded the following articles:

ARTICLE I. Great Britain agrees to recognize, as within the dominion of Portugal in East Africa, the territories bounded: [boundaries given.]

ART. III. Great Britain engages not to make any objection to the extension of the sphere of influence of Portugal south of Delagoa Bay, as far as a line following the parallel of the confluence of the river Pongolo with the river Maputo to the seacoast.

ART. IV. It is agreed that the western line of division separating the British from the Portuguese sphere of influence in Central Africa shall follow the centre of the channel of the upper Zambesi, starting from the Katima Rapids up to the point where it reaches the territory of the Barotse kingdom. . . .

ART. V. Portugal agrees to recognize, as within the sphere of influence of Great Britain on the north of the Zambesi, the territories extending from the line to be settled by the Joint Commission mentioned in the preceding Article to lake Nyassa, including the islands in that lake south of parallel 11° 30′, south latitude, and to territories reserved to Portugal by the line described in article I.

ART. VI. Portugal agrees to recognize, as within the sphere of influence of Great Britain to the south of the Zambesi, the territories bounded on the east and north-east by the line described in article II.

ART. VII. All the lines of demarcation traced in articles I to VI shall be subject to rectification by agreement between the two Powers, in accordance with local requirements. . . .

ART. VIII. The two Powers engage that neither will interfere with any sphere of influence assigned to the other by articles I to VI. One Power will not, in the sphere of the other, make acquisitions, conclude treaties, or accept sovereign rights or protectorates. It is understood that no companies nor individuals subject to one Power can exercise sovereign rights in a sphere assigned to the other, except with the assent of the latter.

ART. IX. Commercial or mineral concessions and rights to real property possessed by Companies or individuals belonging to either Power shall, if their validity is duly proved, be recognized in the sphere of the other Power. For deciding on the validity of mineral concessions given by the legitimate authority, within 30 miles of either side of the frontier south of the Zambesi, a Tribunal of Arbitration is to be named by common agreement.

It is understood that such Concessions must be worked according to local Regulations and Laws. . . .

ART. XVI. The present Convention shall be ratified and the ratification shall be exchanged at London or Lisbon as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the present Convention, and have affixed thereto the seal of their arms.

Done in duplicate at Lisbon the eleventh day of June, in the year of our Lord one thousand eight hundred and ninety-one.

(L. S.) (*a*) GEORGE G. PETRE.

II

THE ORDINANCE OF 1787

An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio

Be it ordained by the United States in Congress assembled, that the said territory, for the purpose of temporary govern-

ment, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Be it ordained by the authority aforesaid, that the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children, and the descendants of a deceased child in equal parts; the descendants of a deceased child or grandchild, to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have in equal parts among them their deceased parent's share; and there shall in no case be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be (being of full age) and attested by three witnesses; and real estates may be conveyed by lease and release or bargain and sale signed, sealed and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Be it ordained by the authority aforesaid that there shall be appointed from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the

district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months, to the Secretary of Congress. There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common-law jurisdiction, and reside in the district, and have each therein a freehold estate of five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress, from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the gov-

ernor shall make proper divisions thereof—and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: Provided, That for every five hundred free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the legislature; Provided, That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years, and in either case, shall likewise hold in his own right, in fee-simple, two hundred acres of land within the same: Provided also, That a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district; or the like freehold and two years' residence in the district shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years, and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term. The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress, any three of whom to be a quorum, and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and, when met, they shall nominate ten persons, resident in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall

appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of the council the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases for good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bills or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue and dissolve the general assembly when, in his opinion, it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office, the governor before the President of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house, assembled in one room, shall have authority by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government.

And for extending the fundamental principles of civil and religious liberty, which forms the basis whereon these republics, their laws and constitutions are elected; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory; to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the Federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest.

It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles

of compact between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE I. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments in the said territory.

ART. II. The inhabitants of the said territory shall always be entitled to the benefits of the writs of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law; all persons shall be bailable unless for capital offenses where the proof shall be evident or the presumption great; all fines shall be moderate, and no cruel or unusual punishment shall be inflicted; no man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary for the common preservation to take any person's property, or to demand his particular services, full compensation shall be made for the same; and in the just preservation of rights and property it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever interfere with, or affect private contracts, or engagements, *bona fide* and without fraud previously formed.

ART. III. Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. IV. The said territory, and the States which may be formed therein shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory, shall be

subject to pay a part of the Federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new states as in the original states, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil of the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the titles in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and Saint Lawrence, and carrying places between the same shall be common highways, and forever free, as well to the inhabitants of the said Territory as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ART. V. There shall be formed in the said Territory, not less than three nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western State, in the said Territory, shall be bounded by the Mississippi, the Ohio, and the Wabash Rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio; by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by said territorial line. The eastern State shall be bounded by the last-mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: Provided, however, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which

lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan: and whenever any of the said states shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the original states, in all respects whatsoever; and shall be at liberty to form a permanent Constitution and State government: provided, the Constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles and so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ART. VI. There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: provided, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or services as aforesaid.

Be it ordained by the authority aforesaid, that the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void.

DONE by the United States in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the 12th.

CHA. THOMSON, *Secy.*

III

THE DECISION IN THE INSULAR CASES (EXTRACTS)

SUPREME COURT OF THE UNITED STATES

Samuel B. Downes, doing business under the firm name of S. B. Downes & Company, Plaintiffs in Error, *vs.* George R. Bidwell.	In error to the Circuit Court of the United States for the Southern District of New York.

(May 27, 1901)

This was an action begun in the Circuit Court by Downes, doing business under the firm name of S. B. Downes & Co., against the collector of the port of New York, to recover back duties to the amount of $659.35 exacted and paid under protest upon certain oranges consigned to the plaintiff at New York, and brought thither from the port of San Juan in the Island of Porto Rico during the month of November, 1900, after the passage of the act temporarily providing a civil government and revenues for the Island of Porto Rico, known as the Foraker act.

The District Attorney demurred to the complaint for the want of jurisdiction in the court, and for insufficiency of its averments. The demurrer was sustained, and the complaint dismissed. Whereupon plaintiff sued out this writ of error.

Mr. Justice BROWN announced the conclusion and judgment of the Court. . . .

2. In the case of *De Lima* v. *Bidwell*, just decided, we held that upon the ratification of the treaty of peace with Spain, Porto Rico ceased to be a foreign country, and became a territory of the United States, and that duties were no longer collectible upon merchandise brought from that island. We are now asked to hold that it became a part of the *United States* within that provision of the Constitution which declares that "all duties, imposts and excises shall be uniform throughout the United States." (Art I, sec. 8.) If Porto Rico be part of the United States, the Foraker act imposing duties upon its products is unconstitutional, not only by reason of a violation of the uniformity clause, but because by sec. 9 "vessels bound to or from one State" cannot "be obliged to enter, clear or pay duties in another."

The case also involves the broader question whether the revenue clauses of the Constitution extend of their own force to our newly acquired territories. The Constitution itself does not answer the question. Its solution must be found in the nature of the government created by that instrument, in the opinion of its contemporaries, in the practical construction put upon it by Congress and in the decisions of this court.

The Federal government was created in 1777 by the union of thirteen colonies of Great Britain in "certain articles of confederation and perpetual union," the first one of which

declared that "the stile of this confederacy shall be the United States of America." Each member of the confederacy was denominated a State. Provision was made for the representation of each State by not less than two nor more than seven delegates; but no mention was made of territories or other lands, except in Art. XI, which authorized the admission of Canada, upon its "acceding to this confederation," and of other colonies if such admission were agreed to by nine States. At this time several States made claims to large tracts of land in the unsettled West, which they were at first indisposed to relinquish. Disputes over these lands became so acrid as nearly to defeat the confederacy, before it was fairly put in operation. Several of the States refused to ratify the articles, because the convention had taken no steps to settle the titles to these lands upon principles of equity and sound policy; but all of them, through fear of being accused of disloyalty, finally yielded their claims, though Maryland held out until 1781. Most of the States in the meantime having ceded their interests in these lands, the confederate Congress, in 1787, created the first territorial government northwest of the Ohio River, provided for local self-government, a bill of rights, a representation in Congress by a delegate, who should have a seat "with a right of debating, but not of voting," and for the ultimate formation of States therefrom, and their admission into the Union on an equal footing with the original States.

The confederacy, owing to well-known historical reasons, having proven a failure, a new Constitution was formed in 1787 by "the people of the United States" "for the United States of America," as its preamble declares. All legislative powers were vested in a Congress consisting of representatives from the several States, but no provision was made for the admission of delegates from the territories, and no mention was made of territories as separate portions of the Union, except that Congress was empowered "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." At this time all of the States had ceded their unappropriated lands except North Carolina and Georgia. It was thought by Chief Justice Taney in the *Dred Scott* case, (19 How. 393, 436,) that the sole object of the territorial clause was "to transfer to the new government the property then held in common by the States, and to give to that government power to apply it to the objects

for which it had been destined by mutual agreement among the States before their league was dissolved"; that the power "to make needful rules and regulations" was not intended to give the powers of sovereignty, or to authorize the establishment of territorial governments—in short, that these words were used in a proprietary and not in a political sense. But, as we observed in *De Lima* v. *Bidwell,* the power to establish territorial governments has been too long exercised by Congress and acquiesced in by this court to be deemed an unsettled question. Indeed, in the *Dred Scott* case it was admitted to be the inevitable consequence of the right to acquire territory.

It is sufficient to observe in relation to these three fundamental instruments that it can nowhere be inferred that the territories were considered a part of the United States. The Constitution was created by the people of the *United States,* as a union of *States,* to be governed solely by representatives of the *States;* and even the provision relied upon here, that all duties, imposts and excises shall be uniform "throughout the United States," is explained by subsequent provisions of the Constitution, that "no tax or duty shall be laid on articles exported from any *State,*" and "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." In short, the Constitution deals with *States,* their people and their representatives.

The Thirteenth Amendment to the Constitution, prohibiting slavery and involuntary servitude "within the United States, or in any place subject to their jurisdiction," is also significant as showing that there may be places within the jurisdiction of the United States that are not part of the Union. To say that the phraseology of this amendment was due to the fact that it was intended to prohibit slavery in the seceded States, under a possible interpretation that those States were no longer a part of the Union, is to confess the very point in issue, since it involves an admission that, if these States were not a part of the Union, they were still subject to the jurisdiction of the United States.

Upon the other hand, the Fourteenth Amendment, upon the subject of citizenship, declares only that "all persons born or naturalized in *the United States,* and subject to the jurisdiction thereof, are citizens of the United States, and of the *State*

wherein they reside." Here there is a limitation to persons born or naturalized in the United States which is not extended to persons born in any place "subject to their jurisdiction."

The question of the legal relations between the States and the newly acquired territories first became the subject of public discussion in connection with the purchase of Louisiana in 1803. This purchase arose primarily from the fixed policy of Spain to exclude all foreign commerce from the Mississippi. This restriction became intolerable to the large number of immigrants who were leaving the Eastern States to settle in the fertile valley of that river and its tributaries. After several futile attempts to secure the free navigation of that river by treaty, advantage was taken of the exhaustion of Spain in her war with France, and a provision inserted in the treaty of October 27, 1795, by which the Mississippi River was opened to the commerce of the United States. (8 Stat. 138, 140, Art. IV.) In October, 1800, by the secret treaty of San Ildefonso, Spain retroceded to France the territory of Louisiana. This treaty created such a ferment in this country that James Monroe was sent as minister extraordinary with discretionary powers to coöperate with Livingston, then minister to France, in the purchase of New Orleans, for which Congress appropriated $2,000,000. To the surprise of the negotiators, Bonaparte invited them to make an offer for the whole of Louisiana at a price finally fixed at $15,000,000. It is well known that Mr. Jefferson entertained grave doubts as to his power to make the purchase, or, rather, as to his right to annex the territory and make it part of the United States, and had instructed Mr. Livingston to make no agreement to that effect in the treaty, as he believed it could not be legally done. Owing to a new war between England and France being upon the point of breaking out, there was need for haste in the negotiations, and Mr. Livingston took the responsibility of disobeying his instructions, and, probably owing to the insistence of Bonaparte, consented to the third article of the treaty, which provided that "the inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which

they profess." This evidently committed the government to the ultimate, but not to the immediate, admission of Louisiana as a State, and postponed its incorporation into the Union to the pleasure of Congress. In regard to this, Mr. Jefferson, in a letter to Senator Breckinridge of Kentucky, of August 12, 1803, used the following language: "This treaty must, of course, be laid before both houses, because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying and paying for it, so as to secure a good which would otherwise probably be never again in their power. But I suppose they must then appeal to the nation for an additional article to the Constitution approving and confirming an act which the nation had not previously authorized. The Constitution has made no provision for holding foreign territory, still less for incorporating foreign nations into our Union. The Executive, in seizing the fugitive occurrence which so much advances the good of their country, have done an act beyond the Constitution."

To cover the questions raised by this purchase Mr. Jefferson prepared two amendments to the Constitution, the first of which declared that "the province of Louisiana is incorporated with the United States and made part thereof"; and the second of which was couched in a little different language, viz.: "Louisiana, as ceded by France to the United States, is made a part of the United States. Its white inhabitants shall be citizens, and stand, as to their rights and obligations, on the same footing as other citizens in analogous situations." But by the time Congress assembled, October 17, 1803, either the argument of his friends or the pressing necessity of the situation seems to have dispelled his doubts regarding his power under the Constitution, since in his message to Congress he referred the whole matter to that body, saying that "with the wisdom of Congress it will rest to take those ulterior measures which may be necessary for the immediate occupation and temporary government of the country; for its incorporation into the Union." (*"Jefferson's Writings,"* vol. 8, p. 269.)

To sustain the judgment in the case under consideration it by no means becomes necessary to show that none of the articles of the Constitution apply to the Island of Porto Rico. There is a clear distinction between such prohibitions as go to the very root of the power of Congress to act at all, irrespective

of time or place, and such as are operative only "throughout the United States" or among the several States.

Thus, when the Constitution declares that "no bill of attainder or *ex post facto* law shall be passed," and that "no title of nobility shall be granted by the United States," it goes to the competency of Congress to pass a bill *of that description.* Perhaps, the same remark may apply to the First Amendment, that "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 to peacefully assemble, and to petition the government for a redress of grievances." We do not wish, however, to be understood as expressing an opinion how far the bill of rights contained in the first eight amendments is of general and how far of local application.

Upon the other hand, when the Constitution declares that all duties shall be uniform "throughout the United States," it becomes necessary to inquire whether there be any territory over which Congress has jurisdiction which is not a part of the "United States," by which term we understand the *States* whose people *united* to form the Constitution, and such as have since been admitted to the Union upon equality with them. Not only did the people in adopting the Thirteenth Amendment thus recognize a distinction between the United States and "any place subject to their jurisdiction," but Congress itself, in the act of March 27, 1804, (2 Stat. 298,) providing for the proof of public records, applied the provisions of the act not only to "every court and office within the United States," but to the "courts and offices of the respective territories of the United States and countries subject to the jurisdiction of the United States," as to the courts and offices of the several States. This classification, adopted by the Eighth Congress, is carried into the Revised Statutes as follows:

"SEC. 905. The acts of the legislature of any State or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated," &c.

"SEC. 906. All records and exemplifications of books which may be kept in any public office of any State or territory, or any country subject to the jurisdiction of the United States," &c.

Unless these words are to be rejected as meaningless, we must treat them as a recognition by Congress of the fact that

there may be territories subject to the jurisdiction of the United States, which are not *of* the United States.

In determining the meaning of the words of Article I, section 6, "uniform throughout the United States," we are bound to consider not only the provisions forbidding preference being given to the ports of one State over those of another, (to which attention has already been called,) but the other clauses declaring that no tax or duty shall be laid on articles exported from any State, and that no State shall, without the consent of Congress, lay any imposts or duties upon imports or exports, nor any duty on tonnage. The object of all of these was to protect the States which united in forming the Constitution from discriminations by Congress, which would operate unfairly or injuriously upon some States and not equally upon others. The opinion of Mr. Justice White in *Knowlton* v. *Moore* (178 U. S. 41) contains an elaborate historical review of the proceedings in the Convention, which resulted in the adoption of these different clauses and their arrangement, and he there comes to the conclusion (p. 105) that "although the provision as to preference between ports and that regarding uniformity of duties, imposts and excises were one in purpose, one in their adoption, "they were originally placed together, and "became separate only in arranging the Constitution for the purpose of style." Thus construed together, the purpose is irresistible that the words "throughout the United States" are indistinguishable from the words "among or between the several States," and that these prohibitions were intended to apply only to commerce between ports of the several States as they then existed or should thereafter be admitted to the Union.

Indeed, the practical interpretation put by Congress upon the Constitution has been long continued and uniform to the effect that the Constitution is applicable to territories acquired by purchase or conquest only when and so far as Congress shall so direct. Notwithstanding its duty to "guarantee to every State in this Union a republican form of government," (Art. IV, sec. 4,) by which we understand, according to the definition of Webster, "a government in which the supreme power resides in the whole body of the people, and is exercised by representatives elected by them," Congress did not hesitate, in the original organization of the territories of Louisiana, Florida, the Northwest Territory, and its subdivisions of Ohio,

Indiana, Michigan, Illinois and Wisconsin, and still more recently in the case of Alaska, to establish a form of government bearing a much greater analogy to a British crown colony than a republican State of America, and to vest the legislative power either in a governor and council, or a governor and judges, to be appointed by the President. It was not until they had attained a certain population that power was given them to organize a legislature by vote of the people. In all these cases, as well as in territories subsequently organized west of the Mississippi, Congress thought it necessary either to extend the Constitution and laws of the United States over them, or to declare that the inhabitants should be entitled to enjoy the right of trial by jury, of bail, and of the privilege of the writ of *habeas corpus*, as well as other privileges of the bill of rights.

We are also of opinion that the power to acquire territory by treaty implies not only the power to govern such territory, but to prescribe upon what terms the United States will receive its inhabitants, and what their status shall be in what Chief Justice Marshall termed the "American Empire." There seems to be no middle ground between this position and the doctrine that if their inhabitants do not become, immediately upon annexation, citizens of the United States, their children thereafter born, whether savages or civilized, are such, and entitled to all the rights, privileges and immunities of citizens. If such be their *status*, the consequences will be extremely serious. Indeed, it is doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants, however foreign they may be to our habits, traditions and modes of life, shall become at once citizens of the United States. In all its treaties hitherto the treaty-making power has made special provision for this subject; in the cases of Louisiana and Florida, by stipulating that "the inhabitants shall be incorporated into the Union of the United States and admitted as soon as possible . . . to the enjoyment of all the rights, advantages and immunities of citizens of the United States"; in the case of Mexico, that they should "be incorporated into the Union, and be admitted at the proper time, (to be judged of by the Congress of the United States,) to the enjoyment of all the rights of citizens of the United States"; in the case of Alaska, that the inhabitants who remained three years, "with the exception of uncivilized native tribes, shall be

admitted to the enjoyment of all the rights," &c.; and in the case of Porto Rico and the Philippines, "that the civil rights and political status of the native inhabitants . . . shall be determined by Congress." In all these cases there is an implied denial of the right of the inhabitants to American citizenship until Congress by further action shall signify its assent thereto.

Grave apprehensions of danger are felt by many eminent men—a fear lest an unrestrained possession of power on the part of Congress may lead to unjust and oppressive legislation, in which the natural rights of territories, or their inhabitants, may be engulfed in a centralized despotism. These fears, however, find no justification in the action of Congress in the past century, nor in the conduct of the British Parliament towards its outlying possessions since the American Revolution. Indeed, in the only instance in which this court has declared an act of Congress unconstitutional as trespassing upon the rights of territories, (The Missouri compromise,) such action was dictated by motives of humanity and justice, and so far commanded popular approval as to be embodied in the Thirteenth Amendment to the Constitution. There are certain principles of natural justice inherent in the Anglo-Saxon character which need no expression in constitutions or statutes to give them effect or to secure dependencies against legislation manifestly hostile to their real interests. Even in the Foraker act itself, the constitutionality of which is so vigorously assailed, power was given to the legislative assembly of Porto Rico to repeal the very tariff in question in this case, a power it has not seen fit to exercise. The words of Chief Justice Marshall in *Gibbons* vs. *Ogden*, (9 Wheat. 1,) with respect to the power of Congress to regulate commerce, are pertinent in this connection: "This power," said he, "like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. . . . The wisdom and discretion of Congress, their identity with the people, and the influence which their constituents possess at elections are in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied to secure them from its abuse. They are the restraints which the people must often rely on solely in all representative governments."

So, too, in *Johnson* v. *McIntosh,* (8 Wheat. 543, 583,) it was said by him:

"The title by conquest is acquired and maintained by force. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest. Most usually they are incorporated with the victorious nation and become subjects or citizens of the government with which they are connected. The new and old members of the society mingle with each other; the distinction between them is gradually lost, and they make one people. Where this incorporation is practicable, humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connections and united by force to strangers.

"When the conquest is complete, and the conquered inhabitants can be blended with the conquerors, *or safely governed as a distinct people,* public opinion, which not even the conqueror can disregard, imposes these restraints upon him; and he cannot neglect them without injury to his fame and hazard to his power."

The following remarks of Mr. Justice White in the case of *Knowlton* v. *Moore,* (178 U. S. 109,) in which the court upheld the progressive features of the legacy tax, are also pertinent:

"The grave consequences which it is asserted must arise in the future if the right to levy a progressive tax be recognized, involves in its ultimate aspect the mere assertion that free and representative government is a failure, and that the grossest abuses of power are foreshadowed unless the courts usurp a purely legislative function. If a case should ever rise where an arbitrary and confiscatory exaction is imposed, bearing the guise of a progressive or any other form of tax, it will be time enough to consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of the individual, even though there be no express authority in the Constitution to do so."

It is obvious that in the annexation of outlying and distant possessions grave questions will arise from differences of race,

habits, laws and customs of the people, and from differences of soil, climate and production, which may require action on the part of Congress that would be quite unnecessary in the annexation of contiguous territory inhabited only by people of the same race, or by scattered bodies of native Indians.

We suggest, without intending to decide, that there may be a distinction between certain natural rights, enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights, which are peculiar to our own system of jurisprudence. Of the former class are the rights to one's own religious opinion and to a public expression of them, or, as sometimes said, to worship God according to the dictates of one's own conscience; the right to personal liberty and individual property; to freedom of speech and of the press; to free access to courts of justice, to due process of law and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government. Of the latter class are the rights to citizenship, to suffrage, (*Minor* v. *Happersett,* 21 Wall. 162,) and to the particular methods of procedure pointed out in the Constitution, which are peculiar to Anglo-Saxon jurisprudence, and some of which have already been held by the States to be unnecessary to the proper protection of individuals.

Whatever may be finally decided by the American people as to the status of these islands and their inhabitants—whether they shall be introduced into the sisterhood of States or be permitted to form independent governments—it does not follow that, in the meantime, awaiting that decision, the people are in the matter of personal rights unprotected by the provisions of our Constitution, and subject to the merely arbitrary control of Congress. Even if regarded as aliens, they are entitled under the principles of the Constitution to be protected in life, liberty and property. This has been frequently held by this court in respect to the Chinese, even when aliens, not possessed of the political rights of citizens of the United States. (*Yick Wo* v. *Hopkins,* 118 U. S. 356; *Fong Yue Ting* v. *United States,* 149 U. S. 698; *Lem Moon Sing,* 158 U. S. 538, 547; *Wong Wing* v. *United States,* 163 U. S. 228.) We do not desire, however, to anticipate the difficulties which would naturally arise in this connection, but merely to disclaim any intention to hold

that the inhabitants of these territories are subject to an unrestrained power on the part of Congress to deal with them upon the theory that they have no rights which it is bound to respect.

Large powers must necessarily be entrusted to Congress in dealing with these problems, and we are bound to assume that they will be judiciously exercised. That these powers may be abused is possible. But the same may be said of its powers under the Constitution as well as outside of it. Human wisdom has never devised a form of government so perfect that it may not be perverted to bad purposes. It is never conclusive to argue against the possession of certain powers from the possible abuses of them. It is safe to say that if Congress should venture upon legislation manifestly dictated by selfish interests, it would receive quick rebuke at the hands of the people. Indeed, it is scarcely possible that Congress could do a greater injustice to these islands than would be involved in holding that it could not impose upon the States taxes and excises without extending the same taxes to them. Such requirement would bring them at once within our internal revenue system, including stamps, licenses, excises and all the paraphernalia of that system, and applying it to territories which have had no experience of this kind, and where it would prove an intolerable burden.

This subject was carefully considered by the Senate committee in charge of the Foraker bill, which found, after an examination of the facts, that property in Porto Rico was already burdened with a private debt amounting probably to $30,000,000; that no system of property taxation was or ever had been in force in the island, and that it probably would require two years to inaugurate one and secure returns from it; that the revenues had always been chiefly raised by duties on imports and exports, and that our internal revenue laws, if applied in that island, would prove oppressive and ruinous to many people and interests; that to undertake to collect our heavy internal revenue tax, far heavier than Spain ever imposed upon their products and vocations, would be to invite violations of the law so innumerable as to make prosecutions impossible, and to almost certainly alienate and destroy the friendship and good will of that people for the United States.

In passing upon the questions involved in this and kindred cases, we ought not to overlook the fact that, while the Consti-

tution was intended to establish a permanent form of government for the States which should elect to take advantage of its conditions, and continue for an indefinite future, the vast possibilities of that future could never have entered the minds of its framers. The States had but recently emerged from a war with one of the most powerful nations of Europe; were disheartened by the failure of the confederacy, and were doubtful as to the feasibility of a stronger union. Their territory was confined to a narrow strip of land on the Atlantic coast from Canada to Florida, with a somewhat indefinite claim to territory beyond the Alleghanies, where their sovereignty was disputed by tribes of hostile Indians supported, as was popularly believed, by the British, who had never formally delivered possession under the treaty of peace. The vast territory beyond the Mississippi, which formerly had been claimed by France, since 1762 had belonged to Spain, still a powerful nation, and the owner of a great part of the Western Hemisphere. Under these circumstances it is little wonder that the question of annexing these territories was not made a subject of debate. The difficulties of bringing about a union of the States were so great, the objections to it seemed so formidable, that the whole thought of the convention centered upon surmounting these obstacles. The question of territories was dismissed with a single clause, apparently applicable only to the territories then existing, giving Congress the power to govern and dispose of them.

Had the acquisition of other territories been contemplated as a possibility, could it have been foreseen that, within little more than one hundred years, we were destined to acquire not only the whole vast region between the Atlantic and Pacific Oceans, but the Russian possessions in America and distant islands in the Pacific, it is incredible that no provision should have been made for them, and the question whether the Constitution should or should not extend to them have been definitely settled. If it be once conceded that we are at liberty to acquire foreign territory, a presumption arises that our power with respect to such territories is the same power which other nations have been accustomed to exercise with respect to territories acquired by them. If, in limiting the power which Congress was to exercise within the United States, it was also intended to limit it with regard to such territories as the people of the United States should thereafter acquire, such limitations

should have been expressed. Instead of that, we find the Constitution speaking only to States, except in the territorial clause, which is absolute in its terms, and suggestive of no limitations upon the power of Congress in dealing with them. The States could only delegate to Congress such powers as they themselves possessed, and as they had no power to acquire new territory, they had none to delegate in that connection. The logical inference from this is, that if Congress had power to acquire new territory, which is conceded, that power was not hampered by the constitutional provisions. If, upon the other hand, we assume that the territorial clause of the Constitution was not intended to be restricted to such territory as the United States then possessed, there is nothing in the Constitution to indicate that the power of Congress in dealing with them was intended to be restricted by any of the other provisions.

There is a provision that "new States may be admitted by the Congress into this Union." These words, of course, carry the Constitution with them, but nothing is said regarding the acquisition of new territories or the extension of the Constitution over them. The liberality of Congress in legislating the Constitution into all our contiguous territories has undoubtedly fostered the impression that it went there by its own force, but there is nothing in the Constitution itself, and little in the interpretation put upon it, to confirm that impression. There is not even an analogy to the provisions of an ordinary mortgage for its attachment to after-acquired property, without which it covers only property existing at the date of the mortgage. In short, there is absolute silence upon the subject. The executive and legislative departments of the government have for more than a century interpreted this silence as precluding the idea that the Constitution attached to these territories as soon as acquired, and unless such interpretation be manifestly contrary to the letter or spirit of the Constitution, it should be followed by the judicial department. (Cooley's Const. Lim. secs. 81 to 85. *Lithographic Co. v. Sarony*, 111 U. S. 53, 57; *Field* v. *Clark*, 143 U. S. 649, 691.)

Patriotic and intelligent men may differ widely as to the desirableness of this or that acquisition, but this is solely a political question. We can only consider this aspect of the case so far as to say that no construction of the Constitution should be adopted which would prevent Congress from con-

sidering each case upon its merits, unless the language of the instrument imperatively demand it. A false step at this time might be fatal to the development of what Chief Justice Marshall called the American Empire. Choice in some cases, the natural gravitation of small bodies towards large ones in others, the result of a successful war in still others, may bring about conditions which would render the annexation of distant possessions desirable. If those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation and modes of thought, the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible; and the question at once arises whether large concessions ought not to be made for a time, that, ultimately, our own theories may be carried out, and the blessings of a free government under the Constitution extended to them. We decline to hold that there is anything in the Constitution to forbid such action.

We are therefore of opinion that the Island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution; that the Foraker act is constitutional, so far as it imposes duties upon imports from such island, and that the plaintiff cannot recover back the duties exacted in this case.

The judgment of the Circuit Court is therefore

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

(Cited from "Opinions Delivered in the Insular Tariff Cases in the Supreme Court of the United States," May 27, 1901. Washington: Government Printing Office.)

CHAPTER XI

MILITARY GOVERNMENT

Military Government.—Military government is the organization by which the power of a state is exercised through the medium of its military establishment over the properties and inhabitants of a territory which has previously existed as a separate state or as a part of a separate state.

Military government must not be confused with Martial Law. The latter may be defined as the organization by which a state exercises its power through the medium of its military establishment over a portion of its own territory. The distinction is determined by the character of the territory over which military rule is established. If the territory is foreign, we have military government. If it is domestic, we have Martial Law. In making this distinction, districts which have been occupied by rebels against whom a recognized state of belligerency has existed are considered foreign.

Military Government vs. Martial Law.—The above distinction between military government and martial law is important. By it, military government is placed within the domain of international law and the rule of war, whereas martial law is a domestic fact and the source of its authority is municipal law. This difference is made strikingly manifest through the dissimilar rules of responsibility under which military officers exercise their respective powers. With rare exceptions, the military governor of a district subdued by arms is amenable according to the laws and customs of war only for measures taken affecting the inhabitants of the district; whereas the military commander who enforces martial law must be prepared to answer for his acts, should their legality

be questioned, not only to his military superior but also to the civil tribunals when they resume their jurisdiction.

Military Government vs. Military Control.—Military government must also be distinguished from military control. Here the essential difference is to be found in the relations which exist between the native government and the military power which exercises control over its territory. Military control presupposes the absence of a former state of belligerency and of general armed opposition to its institutions. It is usually the result of the native government's inability to protect life and property and preserve law and order within its borders. It is usually instituted upon the invitation of the native government. It exists with the consent of the inhabitants of the territory or at least with the consent of an influential part of the population. It partakes of a contractual relation between the native government and the military power whereby the former surrenders for the time being the full exercise of its sovereign power in return for the military aid which is necessary to the establishment of peace and order over its territory. It implies the withdrawal of the military control as soon as the object for which it was instituted has been achieved. The American control over Santo Domingo and the former British and Russian control over their respective spheres of influence in Persia are examples.

This chapter deals only with military government, which may be divided into two classes:

1. The Government of Hostile Occupation, which is military government exercised over occupied enemy territory.

2. Military government of ceded or conquered territory, that is, territory which has come under the sovereignty of the state which dominates it but over which civil government has not yet been instituted.

(*a*) *Government of Hostile Occupation.*—The distinction between these two types of military government is one of sovereignty. In the first type, the international title to the occupied territory still rests with the state which pos-

sessed it prior to the occupation. The establishment of a military government over occupied enemy territory does not effect a permanent transfer of sovereignty. It does, however, temporarily suspend the authority of, and the exercise of the rights of, sovereignty by the state which possessed them prior to the occupation. That a true transfer of sovereignty is not effected is evidenced by the well established rule, which is now incorporated in Act XLV of the Hague Convention of 1907, expressly forbidding the government of hostile occupations from compelling the inhabitants to swear allegiance to such government. The military government may require an oath of neutrality, although the necessity for such an oath is not apparent since the inhabitants owe the obligation imposed and can be punished under the law of war for the violation of such obligation. Moreover, the occupant may not demand services which involve the inhabitants in the obligation of taking part in military operations against their own country, nor can he compel the inhabitants of occupied territory to give information of the other belligerent or about his means of defence. These limitations, established by custom and formulated in the terms of the Hague Convention, limit the exercise of supreme power by the occupant, and therefore sustain the modern theory that the occupation of enemy territory suspends the exercise of sovereign power on the part of the former government but does not transfer sovereignty. As a result of the suspension of the exercise of the sovereign power of the former government, the government of Hostile Occupation possesses, for the time being, the authority to exercise most of the rights which under ordinary circumstances are attributes of sovereignty. The exercise of these rights results from the established power of the occupant and is considered legitimate by reason of the necessity of maintaining law and order, indispensable to both the inhabitants and the occupying force.

The German government of Belgium from 1914 to 1919 is an example of a military government of the first type. The

government of Mexico established by General Winfield Scott during the occupation of that country in 1847-48 is another example. The various military governments established by the Federal government over occupied districts of the south during the progress of the War of the Rebellion fall within this category. Here, it will be observed, the Federal government resumed control over territory that was still, according to its own contention, a part of the United States. It was, however, in a legal sense, foreign territory by virtue of the recognized belligerency of the Southern Confederacy to which it belonged. Its existence, however brief, as a part of a separate state had given it a new status in international law, which lasted as long as hostilities continued. Thus, the military governments established over wide sections of the south were in truth military governments, and not municipal governments administered according to the Code of Martial Law.

(*b*) *Government of Ceded Territory.*—Military governments of the second class almost invariably grow out of governments of hostile occupation. The transfer of the sovereignty to the occupant by the formal terms of the peace treaty ending the war, or his long continuance in undisputed and acknowledged possession of the territory, operate to establish a government of the second type. Examples of such governments are to be found in the military governments of Porto Rico, and the Philippine Islands after the signing of the peace between the United States and Spain, and in the German government of Alsace-Lorraine after the signing of the treaty of Frankfort.

The two types of military government resemble each other in form and exist for the same reason, namely, because they provide ready and effective machinery for maintaining law and order and enforcing the will of the dominating state upon an unfriendly population. The two types differ, however, in regard to the primary purpose which each is destined to serve, in the methods employed, and with respect to control exercised over each by the home government. The two types will be considered separately.

I. Government of Hostile Occupation

Government of Hostile Occupation comes into existence as an incident of, or as a result of, a state of belligerency. It presupposes a hostile invasion, as a result of which the invader has rendered the invaded state incapable of publicly exercising its authority, and the invader is in a position to substitute and has substituted his own authority for that of the legitimate government of the territory invaded. It is essentially a government of force, imposed by the arbitrary power of a military commander, without regard to the will of the people upon whom it is imposed. It draws its authority from its possession on the spot of the physical force to make its commands effective. It recognizes no interests paramount to the furtherance of the military aim of the state which has, for the time being, brought the occupied territory under its control. It acknowledges neither personal nor property rights of the inhabitants of the occupied territory when such acknowledgment is opposed to its supreme function of contributing in every possible way to the success of the arms of the state which it represents. It is an instrument of warfare, used to promote the objects of invasion by weakening the enemy and strengthening the invader, and as such its powers are practically unrestricted. The Duke of Wellington, in a speech delivered before the House of Lords in 1851 with reference to the Ceylon Rebellion, accurately described the true character of such government when he said that it "is neither more nor less than the will of the general who commands the army."

The arbitrary nature and wide power of government of hostile occupation do not signify, however, that the exercise of its authority is without regard to the principles of right and justice, as defined by the loose code of international law. For while the authority of the military commander is supreme and absolute for the moment, his acts are subject to the review of his own state government and may be repudiated by it, and their perpetrator punished, if these acts are so at variance with

established usage as to rouse international public opinion against the military government which is responsible for them. Therefore, in a limited sense, the general features of military government are determined by precedent and its functions are exercised in accordance with the accepted rules of international law.

Purpose.—The primary purpose of a government of hostile occupation is to provide for the security of the invading army and contribute to its support and efficiency. This it accomplishes by exercising supervision over an unfriendly population and preventing non-combatants from engaging in hostilities, inciting insurrection, and giving aid to the enemy. In pursuance of the same objective it may appropriate property, requisition supplies, levy contributions, compel forced labor, and restrain commerce. During the course of active operations against a hostile army in the vicinity, the harshest measures and the most summary action may be justified. With the advance of the field army well beyond the boundary of the occupied district and in places fully occupied and fairly submissive, the stern character of the military government is usually relaxed and under favorable circumstances the administration may follow closely the form of the civil government which existed prior to occupation.

Military government begins when an invading army becomes the dominating power over the district occupied. The presence of the hostile army in a position to exercise its authority proclaims its military government. No formal proclamation of the military commander is necessary although such proclamations have usually been issued. On account of the special relations between the inhabitants of the occupied territory and the invading army, the fact of military occupation with the extent of territory affected should be made known. In the absence of a proclamation or similar notice, the time of the establishment of the military government is fixed by the presence of the invading army in sufficient strength to overcome local resistance to its authority and enforce submission

on the part of the inhabitants of the district. The presence of an enemy fort or defended area within the occupied district does not render the military government of the remainder of the district ineffective nor do the operations of guerrilla bands detract from its authority.

Character of Government.—In its early stage a government of hostile occupation is essentially a military autocracy in which the military commander occupies the position of autocrat. For the time being all power, executive, legislative, and judicial is vested in his person. He delegates the exercise of these powers to his military subordinates, to civilian appointees, or to the government officials of the occupied district, as best suits his purpose.

With the pressing demands of the military situation satisfied and with order seemingly reëstablished within the occupied territory, the government of hostile occupation assumes the outward form which the home government determines upon from consideration of policy. Ordinarily this more formal government of hostile occupation does not differ materially from the autocracy set up by the army commander as an incident of invasion. A qualified officer, who, by virtue of his military rank is also the commander of troops assigned for duty in the occupied territory, is appointed military governor. He exercises his authority subject only to such restrictions as his home government may deem it advisable to make.

Modified Forms.—This normal form of government of hostile occupation is frequently modified to fit some special policy of the home government of the occupant. The character of these modifications is usually determined by the occupying government's intentions as to the ultimate disposition of the seized territory. If annexation be contemplated the course of action is usually designed to ween the inhabitants from their former allegiance and allay hostile feeling toward the conqueror. In such a case, the endeavor is made to relax the harsher measures of military government as soon as possible. Thus, in New Mexico in 1846, a so-called civil government

was instituted within one month of the entry of the United States forces into the capital of the territory. A civilian governor and several civilian administrative and judicial officials were appointed by the government at Washington and promptly assumed their duties. Needless to state, the government was civil in name only for its authority rested solely upon the presence of superior military power within the territory. It was in fact a government of hostile occupation administered by civilian officials.

Another modification of the normal government of hostile occupation is exemplified by the appointment of civilian "military" governors over Tennessee, South Carolina, and Louisiana during the War of the Rebellion. These appointees were given military rank and authorized to exercise the powers, duties, and functions of the office of military governor, including the power to establish all necessary offices and tribunals. Here, as in the case of New Mexico mentioned above, the authority of the military governor rested solely upon the presence of superior military power to enforce his decrees.

The institution of civil government over occupied territory is an anomaly. Likewise, the organization of a military government which is designed to function as a separate mechanism but which depends for its authority on the military forces present within the territory, and which must of necessity subordinate its powers to the demands of the military situation, results in a confusion of duties and responsibilities. As a matter of fact, the civilian and quasi military governments mentioned, with their array of subordinate officials, principally civilian, complicate matters in districts at a period when the undisputed military sway is of the utmost importance. As long as hostile territory is the base for, or may become the theatre of, military operations, the establishment of such separate military governments would seem to be inexpedient.

In connection with the variation of form which the government establishes over occupied enemy territory, it may be observed that it is immaterial whether the government be

called civil or military. Its character is the same in either case and the source of its authority is the same. It is a government of force and the legality of its acts is based upon the laws of war.

Officials.—Usually it is to the advantage of the occupant and to the best interests of the inhabitants of occupied territory that at least some of the civil officials of the former government remain in office to assist in the administration of the government of hostile occupation. This policy is particularly advisable in the case of municipal officials, including judges, magistrates, sanitary and police officers. Political officials such as governors, cabinet officers, members of legislative bodies, etc., are removed. Government employees in the railway, telegraph, and telephone services are usually replaced by soldiers of the army of occupation or nationals of the invading state, and such replacement may also extend to the more important officials of the postal service. In general, those officials of the former government are retained whose services will be useful to the military government. Those whose services are not required, and those officials, great and small, who are in a favorable position to injure the invader, are removed.

Officials of the former government who remain in office may be required to take an oath of *temporary allegiance* or *temporary fidelity* to the military government which has been established over the territory, and those who refuse to take such oath may be expelled. Such oath would ordinarily take the form of a pledge to perform the duties of the office conscientiously and without prejudice to the occupant. Such oath is not essential, however, for the officials who continue in office owe strict obedience to the occupant and can be punished under the law of war for acts hostile to his interests. The oath should not be insisted upon, especially when the form of the oath implies allegiance which pertains to sovereignty.

The salaries of civil officials of the former government who remain in office under the government of hostile occupation are paid from the public revenues of the invaded territory.

Officials of the former government who have accepted service under the government of hostile occupation continue to exercise their normal functions of office under the authority of the military governor, who, by virtue of his power, may remove any or all officials should such a course become advisable. Acts injurious to the government of hostile occupation committed by civil officials are punished under the laws of war. Other crimes committed by them are punished according to the law of the land.

The term of service of civil officials of the former government is dependent solely upon the will of the military governor, regardless of the term for which said officials may have been appointed or elected. It is customary, however, to accord civil officials the privilege of resignation on the theory that it is not policy to force an official to exercise the functions of office against his will.

It is the prerogative of the government of hostile occupation to requisition supplies and services of all kinds from the inhabitants of occupied territory. By Article LII of the Hague Convention such requisitions must be for the needs of the Army of Occupation only, but in practice the rule has been interpreted liberally, as is instanced by the German requisitions upon occupied Belgium for machinery and even workmen to operate it, both machinery and workmen being transferred to Germany to supplement the production activities of the besieged state.

Requisitions and Contributions.—Requisitions must be made under the authority of the commander of the locality. No method of levying requisitions is prescribed, but in practice they are usually levied through the local authorities by systematic collection in bulk. If the local authorities fail to produce the supplies demanded, the requisition may be accomplished directly by means of authorized foraging detachments of the occupying force.

Article LII of the Hague Convention requires that requisitioned supplies be paid for in cash or, if cash be not available,

a receipt must be given and payment of the amount due made as soon as possible. As a matter of policy, this requirement is generally complied with, as it usually insures that the needed supplies will be forthcoming. The prices paid for requisitioned supplies are fixed by the military commander who levies the requisition.

In levying requisition, Article LII requires that the demands made shall be in proportion to the resources of the country and of such a nature as not to involve the inhabitants of the territory in the obligation of taking part in the military operations against their country. In practice, the latter rule would be subject to such liberal interpretation as to make its obligation well nigh meaningless, but the requirement that the demand shall be in proportion to the resources of the country is usually complied with, sufficient supplies being left in the possession of the inhabitants to insure them against severe want.

In addition to the taxes which it collects, the government of hostile occupation may levy other money contributions in occupied territory. Articles 49 to 51 of the Hague Convention require that:

(1) Contributions shall be only for the needs of the army or the administration of the occupied territory.
(2) Contributions shall be collected only on the written order and on the responsibility of the commander-in-chief.
(3) Contributions shall be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.
(4) For every contribution a receipt shall be given to the contributor.

The first and second requirements are based on sound judgment and are generally observed. The third requirement is not always adhered to as it is usually more practicable to levy a contribution in accordance with some more convenient and direct method. The purpose of the fourth requirement is not clear and it is doubtful if it would be observed.

Collective Punishments.—Collective punishments may be inflicted upon a community within occupied territory for offences, the responsibility for which may be properly charged against the community as a whole.

Such collective punishments have been common in modern warfare. The offences for which collective punishments may be inflicted are not necessarily limited to the laws of war. Any breach of the occupant's proclamation or regulations may be punished collectively. The punishment usually takes the form of a fine or of additional burdensome restrictions upon the liberties of the inhabitants. In extreme cases collective punishments have consisted of the destruction of public and private property, or in the execution of non-combatants, but such severe reprisals are properly held to be violations of the laws of civilized warfare.

Administration of Occupied Territory.—Under a government of hostile occupation all functions of the former government, whether of a general, provincial, or local character, cease or continue under the sanction of, or, if deemed advisable, with the participation of, the governmental machinery of the occupant.

The civil and criminal laws of the occupied territory, modified by such changes and suspensions as the government of hostile occupation find it expedient to make, are usually continued in force. The operation of any or all of the old law may, however, be suspended and new laws may be promulgated at the will of the military governor. In practice the exercise of this power of suspension is usually applied only to laws granting political privileges and those which might affect the security of the occupying force. Such laws are those relating to the right of suffrage, freedom of the press, the right to bear arms, the right of assembly, the right to quit or travel freely in occupied territory, and the authority to recruit for the armies of the ejected government. Such suspensions should be made known to the inhabitants by means of proclamation.

New laws are promulgated by the government of hostile

occupation as the occasion for such new legislation arises. Such laws usually define and establish new crimes and offences incident to the state of war, and are laws or regulations necessary for the proper control of the inhabitants and protection of the army.

The government of hostile occupation exercises full authority over all means of transportation both public and private within occupied territory. It establishes a rigid censorship over the press and over postal and telegraphic correspondence. If desired, it may prohibit entirely the publication of newspapers. It has the unquestioned right to regulate commerce within the territory and with neighboring districts and may impose whatever restrictions and limitations it deems necessary upon the commercial intercourse of the inhabitants.

Taxes.—The government of hostile occupation exercises full authority over the collection of taxes and the expenditure of the funds derived from taxation. Article XLVIII of the Hague Convention lays down the rule that, if the occupant collects the taxes, imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force and that, in consequence of having collected the taxes, he shall be bound to defray the expenses of the occupied territory to the same extent that the former government was so bound. These requirements are usually complied with, but when, due to flight or unwillingness on the part of the local officials, it is impracticable to follow the rules of assessment in force, the total amount of the taxes to be paid may be allotted among the various communities within the district and the local authorities required to collect the amounts allotted. The expedient of farming out certain taxes is sometimes resorted to, as was the case in Mexico in 1847, but the well known evils of this system of collection make the practice one to be generally condemned.

As the imposition of taxes is an attribute of sovereignty, no new taxes should be imposed by the occupant. If additional funds are required they should be obtained by levying contri-

butions. The difference may be merely one of terminology so far as the result to the occupant and the effect upon the inhabitants are concerned, but the legal position of the government of hostile occupation cannot be questioned in the case of the exercise of its power to levy contributions.

The first charge upon the State taxes collected by the occupant is for the cost of local administration and maintenance. The government of hostile occupation will supervise the expenditure of such revenue and prevent its hostile use. The surplus, after the satisfaction of the charge for local administration and maintenance, may be used for the purpose of the occupant.

The American Military Government in Germany.[1]—The salient features of a modern government of hostile occupation are well illustrated by the American military government established on the Rhine at the close of the World War. The territory assigned to the American army was the Moselle Valley from the border of Luxemburg to the Rhine, with a thirty kilometer bridgehead across the Rhine. It is a rich agricultural country, well provided with good roads and railways. Its population numbers about one million, but there are only two large towns, Coblenz with 65,000 inhabitants and Trier with 45,000.

In one particular this military government differed from others. The commanding general of the Army of Occupation was not designated as military governor, but all of the troops in the occupied area were under his command. An advanced general headquarters was established at Treves and the administration of civil affairs was entrusted to an officer on the staff of General Pershing and called the officer in charge of civil affairs. The latter outlined the policy and coördinated the work with the allies. Throughout the occupation there was not the slightest trace of friction between the civil affairs section and the Third Army or any part of it.

[1] Adapted and quoted by permission from the pamphlet on Military Government prepared by General H. A. Smith and issued by the General Service Schools.

The occupation naturally divides itself into two parts—the advance from Luxembourg to the Rhine, a period of constant marching, and then the final occupation and holding of the country. The instructions for the first period were few and simple, and consisted of the proclamation of the commander-in-chief and a few rules for commanding officers of troops in towns and villages. The proclamation said in part:

"The above mentioned areas and their inhabitants are under the regulation and authority of the American Army. These orders are succinct and strict observance is expected of all. Those who observe these regulations have nothing to fear. The American Army is not bringing war against the civilian population. All who lawfully and peacefully abide by the regulations laid down by the military authorities may count on protection of their persons, houses, property and life; the others will be arrested at once and brought strictly to account. The American Army on their part will adhere strictly to the laws of nations as well as the laws of civilized warfare. . . . It is the duty of the population to regain their normal mode of life, and to re-establish the schools, churches, hospitals and charitable institutions and to continue in their regular local activities. Therein they will not be disturbed, but rather assisted and protected. Insofar as their scope and bearing permits, the courts, city departments and civil establishments will be continued under the supervision of the American Army. The existing laws and regulations, insofar as they do not interfere with the duty and security of the American troops, shall remain in force."

American Orders.—The orders to the troops were intended as a guide and to secure a uniform practice. They were as follows:

PRELIMINARY INSTRUCTIONS FOR THE AMERICAN ARMY ENTERING GERMANY

1. In entering Germany the marches will be conducted with the usual precautions for security. Halts in the towns should be avoided.

2. On stopping in a town where a halt for the night or a longer period has been ordered, the commanding officer will send for the burgomaster, chief of police and other prominent officials.

He will hand them copies of the proclamation of Marshal Foch and the commander-in-chief. He will inform them that military government has been established in the town and surrounding district, that the principal object of this government is to provide for the security and efficiency of the United States Army, that so long as the inhabitants conduct themselves peaceably and quietly the ordinary civil and criminal laws will be continued in force, and will be administered by the local officials, and that private and personal rights will be respected. Should an official decline to serve, the commanding officer will direct the burgomaster to name his successor. Should the burgomaster be absent, the commanding officer will direct the next official in rank or a suitable civilian to act as such.

The commanding officer will obtain from the burgomaster a map of the town showing the location of all banks, hospitals, railroad stations, libraries and all public buildings. He will inquire if added police protection is needed. If in his judgment such added protection is needed, extra guards will be posted.

At each halt for the night, brigade and regimental commanders will inspect the arrangements made by all detachments of their commands.

The commanding officer will direct the burgomaster to inform his people to avoid assembling in crowds and to go quietly about their ordinary affairs of life.

He will direct the burgomaster to prohibit the sale of liquors, except beer and light wines. The sale of beer and light wines will be prohibited between the hours of 9:00 P.M. and 9:00 A.M.

He will direct the burgomaster to forbid the sale or carrying of fire arms or deadly weapons.

He will direct the burgomaster to furnish billets for so many officers, so many men, and so many animals and such supplies (fuel, forage, straw, etc.) as may be needed for the troops under his command.

(The attention of all officers is called to the fact that requisitions shall only be demanded on the authority of the commanding officer in the locality occupied.)

He will inform the burgomaster that these requisitions will not be paid in cash, but that receipts for all billets and supplies furnished will be given. Requisitions should generally be made upon the municipal authorities, but may be made upon individuals, if necessary. The receipts given should be filed with the burgomaster.

All receipts should be signed in duplicate by a supply officer and approved by the commanding officer. One copy will be given to the municipal officer or individual furnishing the supplies and one will be forwarded to the officer in charge of civil affairs through military channels.

It is worthy of note that with these simple instructions as a guide, the American Army made the march from the Luxembourg border, down the Moselle Valley, across the Rhine and into the bridgehead without a single hostile act.

Belgian and French Orders.—These simple instructions are in marked contrast to those issued by the Belgians in their advance. The Belgian troops entered Juelich, December 3, 1918, and the commanding officer issued, among other instructions, the following:

"2. All inhabitants must be and remain in their houses from 7:00 PM. until 5:00 AM. All traffic in the interim is forbidden. . . .

"6. Hostages, which I will designate, must remain at my disposal in the town hall and will be regarded as the guarantors for the security of the Belgian garrison in the town. They will present themselves this evening at 8:00 o'clock and remain there twenty-four hours. They will be relieved daily by replacement. . . .

"14. The entire civilian population must salute a passing officer by removing the head covering, at the same time leaving the side-walk.

"15. Whoever disobeys my order and does not carry it out will be arrested and shot without ceremony. The inhabitants in question, as well as the city, will be furthermore subject to a fine."

The French issued similar instructions, in some cases. The 2d Dismounted Cavalry Division issued, among others, the following:

"The town major will inform the burgomaster and the notables that they are responsible for the attitude of the population toward the French Army. He will designate for that purpose two or three hostages, who will remain at the guard room. . . .

"All doors to remain open in every house. Civilian traffic inside the town forbidden from dusk to daybreak. All men to salute the French colors and all officers."

These instructions show in principle one difference between the American occupation and that of the allies. Another difference was in the number and character of orders issued. The Americans issued few, but simple instructions, and these were enforced to the letter. The other armies of occupation issued more complicated and voluminous orders.

American Orders.—On December 13, 1918, Orders No. 1 from the officer in charge of civil affairs in occupied territory was issued. This order organized the office of the Officer in Charge of Civil Affairs with the following departments:

(a) Public works and utilities.
(b) Fiscal affairs.
(c) Sanitation and public health.
(d) Schools and charitable institutions.
(e) Legal department.

It was never the intention of this office to build up a large machine, but to leave all matters of detail and the execution of all plans to the Army of Occupation, reserving to the department only the larger matters of policy.

All civil and criminal laws in the occupied territory were continued in force and were administered by the local officials. Crimes, not of a military nature, and which did not affect the safety of the army, were left to the jurisdiction of the local courts. The German administration is highly centralized, and the people and officials accustomed to obeying orders. Probably no military government ever exercised by the United States ran so smoothly and easily and with so little friction between the army officials and the civilian officials as this particular government. The higher German officials, such as the President of the Rhine Province, the regierungspräsidents and the burgomasters of the larger towns, such as Coblenz and Trier, are skilled administrators and able officials. They yielded readily to superior force and complied strictly with all orders issued to them. Elections were held in January to elect delegates to the National Assembly and to the Prus-

sian Diet. These elections were orderly and were in no way interfered with by the American troops. In March the government in Berlin issued orders directing that elections be held in Rhineland to elect new local officials, burgomasters in small towns, and landrats. As this might have resulted in removing from office officials with whom the Americans had worked successfully and might tend to upset or confuse the machine, these elections were forbidden in all occupied territories. No laws of a purely local or administrative character were suspended.

Trade Regulations.—An economic section was organized in the American territory and given authority to issue permits for exporting and for importing of such goods as were deemed necessary to the industrial life of the district. The interallied economic section was informed of each permit given. The adoption of this policy kept the number of unemployed down to a minimum, and thus prevented the danger of disturbances which might have resulted from official interference with the normal economic life of the people.

Provost Courts.—The German system of courts was in no way interfered with and they exercised both civil and criminal jurisdiction, the same as before the occupation. No member of the American or allied forces could be tried by German courts. To try offenders against the military government for violation of our laws and regulations, a system of provost courts was instituted. Army corps and division commanders were authorized to convene military commissions for the trial of inhabitants offending against the laws of war or the military government. These were superior criminal courts and there were but five cases tried before them during the entire occupation. Division commanders appointed for the districts occupied by their division a superior provost court, consisting of one officer, preferably a field officer. The maximum punishment which this court could impose was imprisonment for six months and a fine of 5,000 marks or both.

Commanding officers of each city, town or canton were

authorized to appoint an inferior provost court, for the trial of minor offenders against the laws of war or military government. The maximum punishment which this court could impose was imprisonment for three months and a fine of 1,000 marks, or both. These courts were practically police courts and each kept a simple record showing the name of the offender, the offense, the plea, the findings, the sentence and the action of the convening authority in each case. All money collected as fines by provost courts was turned in weekly to the Department of Fiscal Affairs.

Sanitation and Public Health.—The well organized public health service which the occupying army found in the territory was continued under the supervision of the division surgeon of the American army.

Billeting.—In each city and village there was a billeting officer, charged with the duty of securing suitable quarters for officers and men. He worked in coöperation with the burgomaster. In the cities of Treves and Coblenz the best hotels were requisitioned and used by officers, and to care for American and allied guests coming into the area. Entire houses were requisitioned in some cases.

The higher German officials and prominent citizens accepted the occupation but were at first inclined to try out the American temper. When the burgomaster of Trier was summoned and told to secure a suitable office building in a good location, and dignified in every way, he designated an old dilapidated barracks on the outskirts of the town. When told in a forcible way that this building was not dignified, was not an office building and was not in a suitable location, he designated a school. When informed that the American Army did not propose to use school buildings and that, if a suitable building were not provided within a few hours, the American General would make his own selection, he promptly offered a three-story office building in the best location in town. No further trouble was ever experienced with this official.

Censorship.—The censorship over the press, postal, tele-

graph, and telephone service was early established. The censorship over the press was liberal. Articles reflecting on the military government or upon the allies were prohibited. There were several cases of suspension of newspapers of from one to seven days for violations of these rules. Aside from this the press was free. Long-distance telephone messages were subject to censorship, as were all telegrams. The mail was subject to censorship at all times. About 5 per cent of all letters passing through the mail were read by the American censors. The object of this censorship was not to prevent communication, but to gain information for use of the American Army in regard to the sentiment in occupied territory.

All theatres and motion pictures were subject to censorship. In the exercise of his function as theatrical censor, one young officer went so far as to prohibit the production of "Madame Butterfly" on the ground that the opera represented an American naval officer as a bigamist. This incident, however, cannot be taken as a fair example of American censorship, which was generally of a tolerant nature.

Circulation.—In the American zone, no restrictions were placed upon the movements of individuals, providing the traveler had the usual identity card. This freedom was in striking contrast to the French and Belgian regulations, which were very strict at first. It was also much more lenient than the British rule, which required all inhabitants to remain in their homes after nine o'clock in the evening.

In order to check unauthorized persons coming into towns and villages, burgomasters were required to report all arrivals within their jurisdiction. Each house also had posted just inside the door a list of all residents, showing the name, sex, and age. A curfew law was imposed by the American authorities upon a few towns where disturbances occurred.

To go beyond the American zone, into unoccupied Germany or to the British, French or Belgian zones, a pass was necessary. Circulation offices were established in the larger towns. It was astonishing how many Germans wished to travel. In

Coblenz and Treves they applied for passes by the hundred. These passes were always granted where there was any legitimate reason for so doing.

Schools and Charitable Institutions.—Pursuant to the policy outlined by the commander-in-chief, American Expeditionary Forces, orders were issued directing that all buildings of schools and charitable institutions used as billets for troops would be vacated wherever it was possible to give the troops proper accommodations elsewhere. As a result, these buildings became available for their normal use, and beginning January 1, 1919, almost every school building in the territory occupied by American troops was open and available to the German educational authorities.

Supervision of schools and charitable institutions was exercised through the commissioners of education, or, in isolated cases, through the responsible director of the particular institution concerned. This plan gave satisfactory results and met in every way the requirements of the situation.

Public Works.—As soon as American troops had occupied their area an inspection was made of all public utilities, the principal highways, and the leading industrial plants. The importance of obtaining an uninterrupted service from the water works, electric light and power companies, gas works, street railways, plants for disposal of sewage, and street cleaning was discussed with German authorities, and provisions made for the continued functioning of these services.

The country highways and many city streets were like the machinery in the public utilities—in need of overhauling. The immediate increase in traffic caused by the large number of American automobiles and trucks required such work to be started at once, and the first road construction work was done by American troop labor. A general scheme of road improvement, mostly resurfacing, was begun. This work was supervised by the engineer troops of the Third Army, but the labor was furnished by the German authorities.

Requisitions.—The principle of requisitioning supplies was exercised extensively throughout the area, but always under

central control so that there was no abuse of the privilege. Requisitions were limited to the classes of supplies procurable on the supply tables of the American Army and properly approved receipts were given in all cases. Food and forage were not requisitioned. A board of appraisal was appointed and payments made for all property heretofore obtained by requisition on the inhabitants.

According to the system used, requisitions were made on the local burgomasters, who as a rule placed the orders with appropriate dealers or stores. The whole transaction was little different from buying on a few months' credit.

Keeping in Touch with the People.—Being well aware of the fact that no military government can be a success unless it keeps in touch with the sentiment in the occupied district, the American authorities established the necessary machinery for obtaining information along this line. The sources of information were many and varied—intelligence reports from all headquarters; reports of censorship and secret service agents; reports of interviews with inhabitants; newspapers not only of the occupied area but of adjoining areas; reports of chambers of commerce and other business associations; and even sermons by priests and preachers. A competent officer was charged with the duty of making a daily study of all of the information derived from these sources, and the responsibility for digesting and editing the net result. Daily reports of important happenings were laid on the desk of the officer in charge of civil affairs. In this manner a finger was kept on the pulse of the community at all times.

II. Military Government of Ceded or Conquered Territory

When occupied territory is ceded to the occupant by the terms of the treaty terminating hostilities, the conclusion of peace invariably finds the military government in force over ceded territory. This is continued pending the establishment of a civil government to replace it. The interval during which the military government continues to function over ceded

territory is dependent upon numerous factors, the most important one being the attitude of the former enemy subjects toward the change of sovereignty. Should the inhabitants generally look with favor upon the change, the military government may continue barely long enough to allow for the formulation of a plan for the permanent civil government to take its place. Thus California, ceded to the United States by the treaty of peace with Mexico in 1849, was admitted into the union as a state in September 1850. On the other hand, if the inhabitants of the ceded territory are resentful and hostile toward the state which has assumed authority over them, the military government may be of long duration. In the Philippine Islands for instance, a government which is essentially military has continued for more than 20 years, although the true military government was formally superseded by a so-called civil government in 1901.

The cessation of hostilities, however, and the transfer of sovereignty operate to alter the relations between the military government and the inhabitants of conquered territory. The prime necessity of contributing to the success of a field army operating against an armed enemy no longer exists. Moreover, since the occupied territory has been permanently transferred to the conquering state, the government will be determined by the policy of the home government toward its newly acquired possessions. This policy will be based upon whatever plans the home government may have for the future of the territory, whether it is to be eventually incorporated in the state, as was the case of California, New Mexico, and Alsace-Lorraine, and Korea, whether it is to become a permanent colonial possession as in the case of Porto Rico and Algeria, or whether it is to be given independence, as in the case of Cuba, and as was professed in the case of the Philippines. Generally speaking, the effect of the policy of the home government upon the military government is to modify the severity of its rule in the endeavor to reconcile the inhabitants to the new authority.

STATISTICS AND ILLUSTRATIVE CITATIONS

EXAMPLE OF PROCLAMATION AND ORDER ESTABLISHING MILITARY GOVERNMENT

General Pershing's Proclamation to the People of Germany

PROCLAMATION

To All Inhabitants:

The Army of the United States of America, operating with the allied military authority, takes possession of and occupies * * * * * * * * * * * * * The described territory and its inhabitants are under the military rule and authority of the American Army.

This rule is strict, and implicit obedience to it is exacted of all. None the less, no law-abiding person need have any fear. The American Army has not come to make war on the civilian population. All persons, who with honest submission act peaceably and obey the rules laid down by the military authorities, will be protected in their persons, their homes, their religion and their property. All others will be brought within the rule with firmness, promptness and vigor.

The American Army will govern in strict accordance with international law and the rules and customs of war sanctioned by the civilized world. The inhabitants, on their part, must absolutely abstain, in word and deed, from every act of hostility or impediment, of any kind, toward the American forces.

It is your duty now to devote yourselves to the orderly and obedient conduct of your private lives and affairs, the reestablishment of normal conditions in your schools, churches, hospitals and charitable institutions and the resumption of your local civil life. You will not be obstructed; but, on the contrary, you will be encouraged and protected in those pursuits. So far as your attitude and conduct make it possible, your local courts, governing bodies and institutions will be continued in operation under the supervision of the American

authorities, and except where they affect the rights and security of the American Army, your present laws and regulations will remain undisturbed and in force.

Every violation of the laws of war, every act or offer of hostility or violence and every disobedience of rules laid down by the military authority will be punished with the utmost vigor.

JOHN J. PERSHING,
Commander-in-Chief,
American Expeditionary Forces.

Organization of Civil Affairs in Germany

ADVANCE GENERAL HEADQUARTERS

AMERICAN EXPEDITIONARY FORCES

Officer in Charge of Civil Affairs in Occupied Territory

TREVES, GERMANY, *December 13, 1918.*

ORDERS
No. 1.

1. Army, corps and division commanders will detail, from their commands, suitable officers to be designated as in charge of the civil affairs on their respective staffs.

2. The division commander will be responsible for the administration of civil affairs in his district. He will detail a suitable officer, preferably the commanding officer, to be in charge of each town or canton occupied. Army and corps commanders will take similar action in the case of territory occupied by the army and corps troops.

3. Cantons not garrisoned will be inspected and regulated by officers detailed by the commanding general of the division controlling the area in which such cantons are located, or in the case of army or corps troops by the army or corps commander.

4. The office of the officer in charge of civil affairs will be the only office of record in civil affairs administration. All reports, documents and papers of any kind relating to civil affairs in the occupied territory will be forwarded to this office for action or file.

ORGANIZATION

5. The office of the officer in charge of civil affairs will be organized with the following departments:

(a) *Public Works and Utilities.*—This department will include supervision of railroads, street railways, telephones, electric lighting plants, etc. The officer in charge will consult and coöperate with the Inter-Allied Commission on Railroads.

(b) *Fiscal Affairs.*—This department will be charged with the supervision of all treasuries, banks, financial institutions and all matters of taxation.

(c) *Sanitation and Public Health.*—This department will have charge of the sanitation and health in the districts, so far as the inhabitants are concerned.

(d) *Schools and Charitable Institutions.*—This department will exercise a general supervision over all schools and charitable institutions in the occupied districts.

(e) *Legal Department.*—This department will exercise general supervision over all military commissions and provost courts and will be charged with the custody of all court records. It will exercise general supervision over all local courts in the territory occupied.

(f) Other departments will be added when the necessity arises.

6. Officers in charge of the above departments are advisory to the officer in charge of civil affairs. In giving instructions to officers, they will be careful that they are given through the proper channels.

COURTS

7. Army, corps and division commanders are authorized to convene military commissions for the trial of inhabitants offending against the laws of war or the military government.

8. No death sentence will be carried into execution unless approved by the commander-in-chief.

9. Division commanders will appoint, for the districts occupied by their divisions, a superior provost court to consist of one officer, preferably a field officer. Army and corps commanders will appoint a superior provost court for the districts occupied by the army and corps troops. The maximum punishment which this court may impose is imprisonment for six months and a fine of five thousand marks, or both.

10. Commanding officers of each city, town or canton will appoint an inferior provost court for the trial of minor offenses against laws of war or military government by inhabitants. The maximum punishment which this court may impose is imprisonment for three months and a fine of one thousand marks, or both.

11. Officers appointing provost courts shall have power to approve, disapprove or mitigate the sentences of such courts.

12. Each provost court will keep a simple record showing the name of the offender, the offense, the plea, the finding, the sentence and the action of the convening authority in each case.

13. Weekly reports, to be made each Saturday, will be forwarded, through channels, to the office of the officer in charge of civil affairs, showing all cases tried and the information given in Par. 12.

14. A form for these reports is attached hereto.

15. No member of the American or allied forces will be tried by any military commission or provost court.

16. All money collected as fines by provost courts will be turned in weekly to the Department of Fiscal Affairs.

REQUISITIONS

17. Billets for officers and men, fuel, forage and straw will be requisitioned.

18. Food will not be requisitioned except in case of an immediate emergency. All such cases to be reported at once to the division, corps or army commander.

19. Requisitions will only be demanded on authority of the commanding officer in the locality occupied.

20. Requisitions will not be paid in cash, but a receipt will be given for all supplies and billets furnished. This receipt will be signed by a supply officer and approved by the commanding officer. It will show clearly the number of billets occupied, and the length of time and the quantity and condition of all supplies furnished.

21. Requisitions should generally be made upon municipalities, but may be made upon individuals when necessary.

22. All inhabitants should file receipts with their burgomeister.

23. Supply officers will forward through channels to the

office of the officer in charge of civil affairs one copy of all receipts given.

24. Time will be changed from German to International time at midnight, December 14-15. At that time all clocks will be set back one hour. Military authorities will see that the local German authorities in all occupied cities, towns, or cantons are notified.

25. The official rate of exchange is one hundred (100) francs equal one hundred and forty-two marks and eighty-five pfennigs (142.85) or one mark equals seventy (70) centimes. Officers and men should change their francs at banks, as short changing will be eliminated; the banks stand the loss, if any, and general prices will not be raised.

By Command of General Pershing:

JAMES W. MCANDREW,
Chief of Staff.

Official:

ROBERT C. DAVIS,
Adjutant General.

CHAPTER XII

THE RUSSIAN EXPERIMENT

Before 1917, the Russian government was an autocracy of a familiar type. At its head stood the Czar, an hereditary monarch with supreme power. "To obey his authority," reads Article IV of the Fundamental Laws (1906), "not only through fear but for the sake of conscience, is ordered by God himself." Associated with the Czar was a cabinet of ministers solely responsible to him, and each at the head of a department of administration. These ministers, together with their secretaries and clerks, formed a vast bureaucracy which carried on the practical work of government. Legislative bodies with powers analogous to those in western Europe did not exist. A Council of Empire, composed equally of members appointed by the Czar, and members elected, corresponded in position to an upper chamber of a legislature, but its functions and powers were strictly limited and it was completely subservient to the will of the Czar and his bureaucracy. The Duma was an elected body corresponding in position to the lower chamber of a modern legislature, but the electoral suffrage was so limited and the authority of the Duma so checked by the Council of Empire that its members accomplished little. In general, the Russian government was reactionary in the extreme as compared with the liberal advanced states of central and western Europe. Russia presented a sad spectacle of an unenlightened despotism.

Agitation for reform of the political system, with the idea of extending the suffrage and introducing modern principles of governmental responsibility to popularly elected representatives, had proceeded for some decades before the decisive

1917 revolution. The unfeeling cruelty with which the agents of the Czar's bureaucracy punished these liberal agitators exiled thousands to Siberia, drove others to seek refuge in foreign countries, and induced violent acts of reprisal in the form of assassinations and bomb outrages in Russia. The liberal leaders, inexperienced in political management, in their bitter resentment at the governmental policy tended to become extremely radical. Many of the most influential among them adopted the theories and policies of Karl Marx, and advocated the overthrow of the Czar's government and the establishment of a Socialist Republic.

This is not the place to trace in detail the successive steps in the progress of the radical movement in Russia. Suffice it to say that the revolutionary disorders of 1917 gave its leaders their opportunity to put their theories into practice. In March of that year the wide-spread depression following Russian and Rumanian defeats in the World War, together with a popular distrust of the good faith, honesty, and efficiency of the Czar's counsellors and generals, caused popular outbreaks in Petrograd and Moscow. The troops were disaffected and joined the rioters. In a few days, with comparatively little bloodshed, the rioters gained control of both these nerve-centers of the empire. The Duma, realizing that the revolt could not be checked and fearing that leadership might pass to extreme radicals, placed itself at the head of the revolutionary movement, accepted the abdication of the Czar, and speedily formed a provisional government to carry Russia through the transitional period until a new constitution could be framed, adopted, and put into force.

Unfortunately for Russia, as it has turned out, this Provisional Government was unequal to the task so suddenly thrust upon it. It lacked a definite program which appealed to the entire country. Though the wealthy and enlightened elements in Russia rallied to its support, the industrial workers, and the soldiery were apathetic or openly suspicious of its motives. When instant action was needed, it wasted time. Where force

and efficiency were necessary to save the situation, it weakly temporized. Where for the moment all effort should have been devoted to internal civil reorganization, it attempted a great military offensive.

Its mistakes might not have been so fatal had there not been an aggressive determined party undermining its wavering influence and ready to supplant it when the time was ripe. The removal of the shackles of autocracy had opened the gates to the radical socialists. Throughout Russia they spread their propaganda and preached their policy openly among the ignorant and inexperienced masses of the people. To the peasants they promised free land, to each according to his ability to cultivate it. To the industrial workers they promised vast social reforms, including political powers and the abolition of the capitalist system. To the war-weary soldiers they promised immediate peace. The Provisional Government, busy first with its great offensive against Germany, and then with the defence of the country when the offensive movement was checked and the armies hurled back in a disorderly rout, had no adequate force to police the country and check this dangerous propaganda.

Early in November, 1917, the radical Socialists, known as Bolsheviki, engineered a sudden and almost bloodless revolution by which they gained ascendancy in Petrograd and Moscow. With incredible energy they worked to establish a government and to fulfil the pledges they had made to the various classes of the people. They at once initiated negotiations with the Central Powers for peace. They permitted the disbanding and disintegration of the army. At the end of November they issued a Declaration of the Rights of the Peoples of Russia. In December they decreed the separation of church and state and the nationalization of the banks, abolished existing legal courts and replaced them with new, formed a Revolutionary Tribunal to deal with political opponents, authorized the recognition of civil marriages only, established an eight-hour labor law, founded a new system of

popular education. Of course, many of these vast social and institutional changes could take place by paper decree only: they required readjustments of the life of the country which could be accomplished only after a long period of time. Their immediate effect, as a matter of fact, was naturally to throw the whole country and the entire national administration into an extreme of chaotic confusion. These decrees, impractical and inadvisable as many of them were under the circumstances, illustrate however the tremendous energy with which the leaders of these radicals worked.

The new constitution for the country was framed in the early months of 1918, was submitted to the all-Russian Congress of Soviets, and adopted by it July 10. In this constitution we find again a reflection of the vast social and economic changes intended by the radical leaders in control. For example, notice the following extracts from this constitution: [1]

Bearing in mind as its fundamental problem the abolition of exploitation of men by men, the entire abolition of the division of the people into classes, the suppression of exploiters, the establishment of a Socialist society, and the victory of socialism in all lands, the third All-Russian Congress of Soviets of Workers', Soldiers', and Peasants' Deputies further resolves:

(a) for the purpose of realizing the socialization of land, all private property in land is abolished, and the entire land is declared to be national property and is to be apportioned among husbandmen without any compensation to the former owners, in the measure of each one's ability to till it.

(b) all forests, treasures of the earth, and waters of general public utility, all implements whether animate or inanimate, model farms and agricultural enterprises, are declared to be national property.

(c) as a first step toward complete transfer of ownership to the Soviet Republic of all factories, mills, mines, railways, and other means of production and transportation, the Soviet law for the control by workmen and the establishment of the Supreme Soviet of National Economy is hereby confirmed, so as to assure the power of the workers over the exploiters.

[1] The constitution as a whole is given in the appendix.

(d) with reference to international banking and finance, the third Congress of Soviets is discussing the Soviet decree regarding the annulment of loans made by the government of the Czar, by landowners and the bourgeoisie, and it trusts that the Soviet Government will firmly follow this course until the final victory of the international workers' revolt against the oppression of capital.

(e) the transfer of all banks into the ownership of the Workers' and Peasants' Government, as one of the conditions of the liberation of the toiling masses from the yoke of capital, is confirmed.

(f) universal obligation to work is introduced for the purpose of eliminating the parasitic strata of society and organizing the economic life of the country.

(g) for the purpose of securing the working class in the possession of the complete power, and in order to eliminate all possibility of restoring the power of the exploiters, it is decreed that all toilers be armed, and that a Socialist Red Army be organized and the propertied class be disarmed.

Expressing its absolute resolve to liberate mankind from the grip of capital and imperialism, which flooded the earth with blood in this present most criminal of all wars, the third Congress of Soviets fully agrees with the Soviet Government in its policy of breaking secret treaties, of organizing on a wide scale the fraternization of the workers and peasants of the belligerent armies, and of making all efforts to conclude a general democratic peace without annexations or indemnities, upon the basis of the free determination of the peoples.

It is also to this end that the third Congress of Soviets insists upon putting an end to the barbarous policy of the bourgeois civilization which enables the exploiters of a few chosen nations to enslave hundreds of millions of the toiling population of Asia, of the colonies, and of small countries.

The third All-Russian Congress of Soviets of Workers', Soldiers', and Peasants' Deputies believes that now, during the progress of the decisive battle between the proletariat and its exploiters, the exploiters cannot hold a position in any branch of the Soviet Government. The power must belong entirely to the toiling masses and to their plenipotentiary representatives—the Soviets of Workers', Soldiers', and Peasants' Deputies.

The fundamental problem of the Constitution of the Russian Socialist Federated Soviet Republic involves, in view of the present transition period, the establishment of a dictatorship of the

urban and rural proletariat and the poorest peasantry in the form of a powerful All-Russian Soviet Republic belongs to the All-Russian Congress of Soviets, and, in periods between the convocation of the Congress, to the All-Russian Central Executive Committee.

For the purpose of securing to the toilers real freedom of conscience, the church is to be separated from the state and the school from the church, and the right of religious and anti-religious propaganda is accorded to every citizen.

For the purpose of securing the freedom of expression to the toiling masses, the Russian Socialist Federated Soviet Republic abolishes all dependence of the press upon capital, and turns over to the working people and the poorest peasantry all technical and material means of publication of newspapers, pamphlets, books, etc., and guarantees their free circulation throughout the country.

The Russian Socialist Federated Soviet Republic considers work the duty of every citizen of the Republic, and proclaims as its motto: "He shall not eat who does not work."

The financial policy of the Russian Socialist Federated Soviet Republic in the present transition period of dictatorship of the proletariat, facilitates the fundamental purpose of expropriation of the bourgeoisie and the preparation of conditions necessary for the equality of all citizens of Russia in the production and distribution of wealth. To this end it sets forth as its task the supplying of the organs of the Soviet power with all necessary funds for local and state needs of the Soviet Republic, without regard to private property rights.

The provisions given above represent the economic ideals with which the leaders of the Soviet Government started, and which they still hope, apparently, ultimately to put into effect. The sudden transition from the previous capitalistic regime to this radical socialistic scheme proved impracticable, and the economic life of this great nation descended into chaos. Auxiliary causes of these chaotic conditions there were, undoubtedly, such as the allied non-recognition and blockade, warfare by successive champions of the old régime, civil war, and unprecedented crop failures, but the fundamental cause is to be located in the radical economic policies attempted. Finally recognizing the truth of the situation, the leaders of the gov-

ernment in the early months of 1921 turned about face, advocated measures allowing the establishment of some degree of private ownership and capitalism, and secured in March, 1921, the approval of the tenth Soviet Congress in session at Moscow.

The New Economic Policy thus approved provided for greater freedom in the exchange of goods, abandonment of the compulsory requisition of farm products and the substitution therefor of a fixed levy in kind, authority for a far greater measure of initiative in industry, and comparative liberty for the coöperative societies which had been so important a feature of Russian economy under the old régime.

Interesting as these social and economic provisions are in this remarkable constitution, it is necessary to pass from them to a consideration of the political provisions. What is the form of government for this new Russia as established by the constitution? What are the organs of government? What is the machinery of government? These are questions with which the political science student is especially concerned.

The official title of the new Russian state is The Russian Socialist Federated Soviet Republic. Articles one and two, chapter one, of the constitution read as follows:

1. Russia is declared to be a Republic of the Soviets of Workers', Soldiers', and Peasants' Deputies. All the central and local power belongs to these Soviets.
2. The Russian Soviet Republic is organized on the basis of a free union of free nations, as a federation of Soviet National Republics.

The word *Soviet* means *council* or *committee*, so that the provisions above cited may be interpreted as meaning that the Russian state as a whole is constituted a federal republic, uniting for purposes of central government a number of local units each represented by a council or committee of Workers, Soldiers, and Peasants.

The fundamental feature of this new state is obviously the Soviet or Council. In order to gain some preliminary con-

ception of the character of the government, it is essential to consider fully the Soviet. Notice first of all that the Soviet is a council merely of the deputies of Workers (*i.e.* industrial workers, such as mechanics, engineers, etc.), Soldiers, and Peasants. These limitations at once bar from political representation important sections of the community. Land owners, who do not till their own land, employers, capitalists, bankers, financiers, merchants, middlemen, and the like, are not included as such, but only insofar as they change their methods and become absorbed into classes of workers and direct producers. The purpose and principle of the Soviet System is to make the basis of political representation *industrial* or *economic* rather than *geographic.* Article 4, chapter 13, of the constitution defines more precisely the extent and the limitations of the suffrage. It must be remembered, however, that the system outlined in the constitution has never been completely realized in practice. The passages quoted are valuable as revealing the original ideals of the Bolshevik leaders.

(a) All who have acquired the means of living through labor that is productive and useful to society, and also persons engaged in housekeeping, which enables the former to do productive work, i.e., laborers and employees of all classes who are employed in industry, trade, agriculture, etc.: and peasant and Cossack agricultural laborers who employ no help for the purpose of making profits.
(b) Soldiers of the army and navy of the Soviets.
(c) Citizens of the two preceding categories who have to any degree lost their capacity to work.

The following persons enjoy neither the right to vote nor the right to be voted for, even though they belong to one of the categories enumerated above, namely:

(a) Persons who employ hired labor in order to obtain from it an increase in profits.
(b) Persons who have an income without doing any work, such as interest from capital, receipts from property, etc.
(c) Private merchants, trade and commercial brokers.
(d) Monks and clergy of all denominations.
(e) Employees and agents of the former police, the gendarme

corps, and the Okhrana (Czar's secret service), also members of the former reigning dynasty.

(f) Persons who have in legal form been declared demented or mentally deficient, and also persons under guardianship.

(g) Persons who have been deprived by a Soviet of their rights of citizenship because of selfish or dishonorable offenses, for the period fixed by the sentence.

The existing government is, therefore, planned to be a dictatorship of certain specified classes of the whole people—indeed, the constitution itself recognizes this dictatorship in Article 1, chapter 4, paragraph 7, and again in Article 2, chapter 5, paragraphs 9 and 10:

ART. I; CHAP. 4; PAR. 7

7. The third All-Russian Congress of Soviets of Workers', Soldiers', and Peasants' Deputies believes that now, during the progress of the decisive battle between the proletariat and its exploiters, the exploiters cannot hold a position in any branch of the Soviet Government. The power must belong entirely to the toiling masses and to their plenipotentiary representatives—the Soviets of Workers', Soldiers', and Peasants' Deputies.

ART. II; CHAP. 5; PARS. 9 AND 10

9. The fundamental problem of the Constitution of the Russian Socialist Federated Soviet Republic involves, in view of the present transition period, the establishment of a dictatorship of the urban and rural proletariat and the poorest peasantry in the form of a powerful All-Russian Soviet authority, for the purpose of abolishing the exploitation of men by men and of introducing Socialism, in which there will be neither a division into classes nor a state of autocracy.

10. The Russian Republic is a free Socialist society of all the working people of Russia. The entire power, within the boundaries of the Russian Socialist Federated Soviet Republic, belongs to all the working people of Russia, united in urban and rural Soviets.

The exact method by which the representatives of the Soviets are chosen is not clear from available information. Indeed, it seems probable that different methods are used in

different communities. In Article 4, Chapter 14, paragraph 66 of the constitution it is provided: "Elections are conducted according to custom on days fixed by the local Soviets"; and in paragraph 70 following: "Detailed instructions regarding the election proceedings and the participation in them of professional and other workers' organizations are to be issued by the local Soviets, according to the instructions of the All-Russian Central Executive Committee." From a decree on Provincial Soviet Organization, issued in December, 1917 (six months before the constitution was adopted), we can gain a vague general idea of what may be the methods of election in a normal case:

(a) A Soviet of Workmen's, Soldiers', Peasant, and Cossack Deputies is constituted of one or two representatives each of all workmen's, soldiers', peasant, and Cossack organizations (parties, trade unions, committees, etc.) in the cities, villages, and settlements.

(b) The peasants elect two representatives from each township to the district Soviet (a township Soviet has one or two representatives from each small town, village, or hamlet).

(c) The Cossacks elect two representatives (or three) from each village to the Regional Soviet of Workmen's, Soldiers', Peasant, and Cossack Deputies, and one representative each from a forepost (small settlement), hamlet, or small town to the village Soviet. (In Cossack territories the peasant representation in the Regional Soviet is proportional, according to the villages.)

(d) The workmen and all proletarian laboring masses in cities where the urban proletariat does not exceed 5,000 or 6,000 persons have representation on the following basis:

(1) Every enterprise employing 100 persons sends one representative.

(2) Enterprises employing from 100 to 200 persons send two representatives; from 200 to 300 persons, three representatives, etc.

(3) Enterprises employing less than 50 persons, combine, if possible, with other small kindred enterprises and send a common representative to the Soviet. Those unable to combine may send their representative independently.

(e) The soldiers of a local garrison (Cossacks, sailors) send to the Soviet their representatives on the following principle: each company, squadron, command, etc., elects two representatives to

the Soviet; clerks, hospital attendants, horse reserves, and other small units, send one representative each.

We have, to supplement the above, the record of the regulations for the April, 1918, election of the Moscow City Soviet:

"The electors will be informed of the date of elections by notices posted in prominent places in all corridors of the factory not later than two days before the elections; in case of the Trade Unions the electors are informed by the usual method employed in calling meetings to elect officials. A meeting, at which not less than two-thirds of the electors are present, will be considered a quorum. . . .

"Establishments employing 200-500 workers have one representative; those employing over 500 send one representative for every 500. Establishments employing less than 200 workers combine for the purpose of representation with other small establishments. Ward Soviets send two deputies, elected at a plenary session. Trade Unions with a membership not exceeding 2,000 send one deputy; not exceeding 5,000, two deputies; above 5,000, one for every 5,000 workers, but not more than ten deputies for any one Union. The Moscow Trades Council sends five deputies.

"Political parties send thirty deputies to the Soviet: the seats are allotted to the parties in proportion to their membership, provided that the parties include four representatives of industrial establishments and organized workers. Representatives of five non-Russian National Socialist parties are also given one seat each."

From: Postgate: The Bolshevik Theory.

These Soviets, then, scattered innumerably over Russia, constitute the broad base of the pyramid of government in the present Republic. They are formed in every community, whether urban or rural. They are frequently convened. They have broad powers of local self-government and administration, conformable to the general principles of Socialist practice as set forth in the national constitution. They have important functions of election or appointment to the Congresses of the larger units or areas. They are theoretically continually responsible to the bodies of workers, soldiers, and peasants who have elected them.

It might be thought that the restriction of the electorate as outlined above would be sufficient to guarantee the selection

of Soviet delegates certain to be acceptable to the Bolshevik leaders. For fear, apparently, that in some way members of the classes not politically recognized, or that members hostile to the Bolshevik theory of government, might be selected by the Soviets, the constitution contains provisions obviously intended to enable the central Bolshevik representatives to annul unsatisfactory elections. (See constitution in appendix, Article 4, Chapters 14 and 15.) For example:

> Election takes place in the presence of an electing committee and the representatives of the local Soviet. The Soviet decides the question when there is doubt as to which candidate is elected.
>
> If an election was irregularly carried on in its entirety, it may be declared void by a higher Soviet authority.
>
> The highest authority in relation to questions of election is the All-Russian Central Executive Committee.

For purposes of administration of larger areas, all Russia, outside of the cities, is divided into four types of governmental units: (a) The Rural District; (b) next larger, the County; (c) next larger, the Province; and (d) largest, the Region. The cities, or thickly populated areas, have separate and distinct organization. Although they may be territorially within a county or province, they are politically independent.

Each of the territorial units above named has a governmental body, known as a Congress of Soviets. Thus we find provisions for the Rural Congress of Soviets, the County Congress of Soviets, the Provincial Congress of Soviets, and the Regional Congress of Soviets.

(a) The Rural Congress of Soviets is composed of representatives of all the village Soviets in the Volost (or district), one delegate for each ten members of the Soviet. The Congress elects an executive committee of not more than ten members, responsible to the congress. The congress meets at least once a month.

(b) The County Congress of Soviets is composed of representatives from the Rural Congresses in the County, one delegate for each 1,000 inhabitants, but not more than 300 for

the entire county. The County Congress elects an Executive Committee of not more than twenty members, responsible to the congress. The congress meets at least once every three months.

(c) The Provincial Congress of Soviets is composed of representatives from the Urban Soviets (one for each 2,000 voters) and of representatives from the Rural Congress (one for each 10,000 inhabitants). This Provincial Congress elects an Executive Committee of not less than twenty-five members, responsible to the Congress. The Congress meets at least once every three months.

(d) The Regional Congress of Soviets is composed of representatives of the Urban Soviets (1 for each 5,000 voters) and of representatives of the Provincial Congress (1 for each 25,000 inhabitants). The Congress elects an Executive Committee of not less than twenty-five members, responsible to the Congress. The Congress meets not less than twice a year.

Article III, Chapter 12, Paragraphs 61 and 62 outline the functions and powers of the respective congresses:

61. Regional, provincial, county, and rural organs of the Soviet power and also the Soviets of Deputies have to perform the following duties:

(a) Carry out all orders of the respective higher organs of the Soviet power.

(b) Take all steps toward raising the cultural and economic standard of the given territory.

(c) Coördinate all Soviet activity in their respective territory.

62. The Congresses of the Soviets and their Executive Committees have the right to control the activity of the local Soviets (i.e., the regional Congress controls all Soviets of the respective regions; the provincial, of the respective province, with the exception of the urban Soviets, etc.); and the regional and provincial Congresses and their Executive Committees in addition have the right to overrule the decisions of the Soviets of their districts, giving notice in important cases to the central Soviet authority.

Over and above these local divisions and their Soviet Congresses stands the central supreme power in Russia, con-

centrated in what is known as The All-Russian Congress of Soviets of Workers', Peasants', Cossacks', and Red Army Deputies—the All-Russian Congress of Soviets, for short. This All-Russian Congress is composed of representatives from the Urban Soviets (one delegate for 25,000 voters) and representatives from the Provincial Congress of Soviets (one delegate for 125,000 inhabitants). This All-Russian Congress meets at least twice a year, and is, as Article 3, Chapter 6, Paragraph 24 of the Constitution states, "the supreme power of the Russian Socialist Federated Soviet Republic."

For purposes of practical administration of government, the All-Russian Congress elects an All-Russian Central Executive Committee of not more than two hundred members, responsible wholly to the Congress, but entrusted by the Congress between sessions with the exercise of the supreme legislative, executive, and controlling power of the Republic. This All-Russian Central Executive Committee, says the constitution (Article III, Chapter 7, *passim*):

> . . . directs in a general way the activity of the workers' and peasants' Government and of all organs of the Soviet authority in the country, and it coordinates and regulates the operation of the Soviet Constitution and of the resolutions of the All-Russian Congresses and of the central organs of the Soviet power. . . .
>
> considers and enacts all measures and proposals introduced by the Soviet of People's Commissars or by the various departments and it also issues its own decrees and regulations. . . .
>
> convokes the All-Russian Congress of Soviets, at which time the Executive Committee reports on its activity and on general questions. . . .

Obviously, a body of two hundred members proved too unwieldy for the active exercise of governmental authority. This All-Russian Central Executive Committee, therefore, is empowered to form what is known as a Council of People's Commissars to manage the affairs of the Republic. This Council consists of seventeen members, each at the head of a

department (*commissariat*) of administration. It is wholly responsible to the All-Russian Central Executive Committee. In order to maintain the closest possible supervision by the All-Russian Central Executive Committee over the policies and acts of the Peoples' Commissaries, the constitution expressly provides that "the members of the All-Russian Central Executive Committee work in the various departments (Peoples' Commissariats)." This feature is quite unique in political practice. It is presumably an endeavor to provide for efficient coördination between the chief executive committee and a subordinate agency, but it seems to imply some distrust on the part of the All-Russian Congress or of the Central Executive Committee of the good faith or good judgment of the highest government officials. It is as though the House of Commons in Great Britain elected an Executive Committee of two hundred members, who chose a cabinet, and then divided themselves among the different departments to watch how the cabinet members performed their duties.

With the Council of Peoples' Commissars, and the closely coördinated All-Russian Central Executive Committee, we touch the pinnacle of power in the present Russian government. Lenin, Trotsky, Tchitcherin, and the other famous Bolshevik leaders whose names are linked with this government are at one post or another in the Council of Peoples' Commissars—they are, individually, *Commissars*, practically corresponding to the cabinet ministers in other countries. The separate departments correspond in name and in scope to those with which we are familiar in other countries:—Foreign Affairs, Army, Navy, Interior, Justice, Labor, Education, Finances, Agriculture, Commerce and Industry, etc. Each commissar has an advisory committee (including members of the All-Russian Central Executive Committee) to assist him in deciding the problems of administration. Disagreements are referred to the All-Russian Central Executive Committee as a whole. Special provision is made in the constitution that during the intervals between meetings of the All-Russian

Congress, "the All-Russian Central Executive Committee is the supreme power of the Republic," and the outline above has indicated that the Commissars are the actual managers of the government for this Central Executive Committee.

In Article III, Chapter 9 of the constitution, the scope of the Committee's power is given. Outside of the "ratification and amendment of the fundamental principles of the Soviet Constitution," and the "ratification of peace treaties," which are solely under the jurisdiction of the All-Russian Congress, the Central Executive Committee is authorized to deal with all questions of state as the executive, legislative, and controlling agent of the All-Russian Congress. After specifying a number of important questions within its jurisdiction, the Constitution gives the following blanket authorization:—

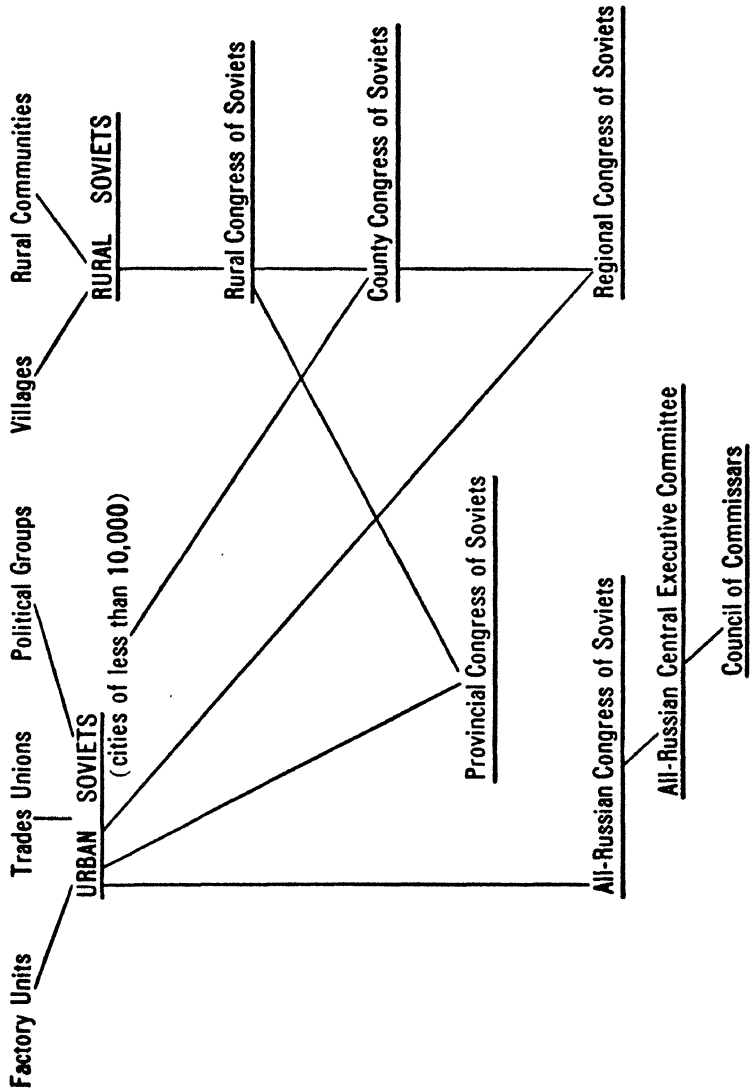
"Besides the above-mentioned questions, the All-Russian Congress and the All-Russian Central Executive Committee have charge of all other affairs which, according to their decision, require their attention."

Behind this visible government whose framework has been outlined stands a controlling body which works in secrecy. The actual manipulators of government in Russia are the supreme heads of the Communist party—not a political party in the ordinary sense of the word among western nations, but a small, compact, closely organized, and rigidly disciplined body of trusted men selected with great care out of the whole number of professed communists and admitted into the inner Party only after a year of probation. The total number of this Party is estimated at between 200,000 and 500,000 in a nation of 130,000,000. Half a dozen leaders, including such outstanding figures as Lenin, Trotsky, Krassin, Radek, Tchitcherin, and Litvinoff, determine the party's policies and supervise their execution. They frame governmental legislation and decrees, place them before the Soviet Congress, and gain the Congress's approval with little discussion or opposition. Our outline in the preceding paragraphs has been of the

constitutional framework of a nominal government: the *real* government of Russia in these years is a masked dictatorship of the leaders of the Communist party.

Our knowledge of the practical success of this unique form of government is meager. We know that Russia has suffered an economic breakdown, but it is not possible to determine just how far this breakdown is due to political and economic inefficiency on the part of the government, and how far it is due to the virtual blockade and boycott of Russia by other civilized nations, to the hostile attacks by adherents of the old régime countenanced by powerful nations, or to unseasonable weather conditions resulting in widespread crop failure and social disorganization. In the economic field, the government has been forced by the disastrous conditions to take many steps toward a return to a non-socialistic system, such as legalizing the institution of private property, permitting private mercantile business. But so far as the framework and operation of the strictly political machinery are concerned, they seem to have remained as set forth in the constitution as outlined above. At present writing, the government has operated for more than four years. Irrespective of the economic breakdown, politically the Soviet government has received the acknowledgment (let us say more or less voluntary) of a nation of a hundred and thirty million; it has organized a national and local administration and has made it function; it has raised, equipped, and led an army of nearly a million men in successful operations; it has represented the country in European congresses, and its members have been accepted. In view of these indisputable facts, whatever opinion one may have with respect to Bolshevism as a theory, the present government of Russia deserves serious consideration as a going political organization.

The following diagram will give a graphic representation of the several organs of government as outlined in the above account, and of the electoral and functional relations between these.


Factory Units
Trades Unions
Political Groups
Villages
Rural Communities
URBAN SOVIETS
(cities of less than 10,000)
RURAL SOVIETS
Rural Congress of Soviets
County Congress of Soviets
Provincial Congress of Soviets
Regional Congress of Soviets
All-Russian Congress of Soviets
All-Russian Central Executive Committee
Council of Commissars

STATISTICS AND ILLUSTRATIVE CITATIONS

EXTRACTS FROM THE RUSSIAN LAND LAW [1]

The following "Fundamental Law of Socialization of the Land" in Russia went into effect in September, 1918.

DIVISION I

General Provisions

ARTICLE 1. All property rights in the land, treasures of the earth, waters, forests, and fundamental natural resources within the boundaries of the Russian Federated Soviet Republic are abolished.

ARTICLE 2. The land passes over to the use of the entire laboring population without any compensation, open or secret, to the former owners.

ARTICLE 3. The right to use the land belongs to those who till it by their own labor, with the exception of special cases covered by this decree.

ARTICLE 4. The right to use the land cannot be limited by sex, religion, nationality, or foreign citizenship.

ARTICLE 5. The sub-surface deposits, the forests, waters, and fundamental natural resources are at the disposition (according to their character) of the county, provincial, regional, and Federal Soviet powers and are under control of the latter. . . .

ARTICLE 12. The apportionment of land among the laboring population is to be carried on on the basis of each one's ability to till it and in accordance with local conditions, so that the production and consumption standard may not compel some peasants to work beyond their strength; and at the same time it should give them sufficient means of subsistence.

ARTICLE 22. The following is the order in which land is given for personal agricultural needs:

1. To local agriculturists who have no land or a small

[1] From *The New York Nation*, issue of Jan. 25, 1919, containing the entire law.

amount of land, and to local agricultural workers (formerly hired), on an equal basis.

2. Agricultural emigrants who have come to a given locality after the issuance of the decree of socialization of the land.

3. Non-agricultural elements in the order of their registration at the land departments of the local Soviets.

NOTE. When arranging the order of the apportionment of land, preference is given to laboring agricultural associations over individual homesteads.

ARTICLE 50. The right to use the land may cease for an entire agricultural unit, or for individual members of the same.

ARTICLE 51. The right of the given individual to use the land may cease for the whole plot or for a part of it.

ARTICLE 52. The right is cancelled (*a*) if the organization, or the purpose for which it had taken the land, is declared void; (*b*) if units, associations, communities, etc., disintegrate; (*c*) if the individual finds it impossible to cultivate the field or do other agricultural work, and if at the same time the individual has other means of subsistence (for instance, a pension paid to the incapacitated); (*d*) upon the death of the individual, or when his civil rights are cancelled by the court.

ARTICLE 53. The right to use a plot of land ceases:

(*a*) in case of a formal refusal to use the plot.

(*b*) in case of obvious unwillingness to use the plot, although no formal refusal has been filed.

(*c*) in case the land is used for illegal purposes (*e. g.*, throwing garbage).

(*d*) in case the land is exploited by illegal means (*e. g.*, hiring land secretly).

(*e*) in case the use of the land by a given individual brings injury to his neighbor (*e. g.*, manufacture of chemicals).

Chairman of the All-Russian Central Executive Committee: Sverdloff.

Members of the Executive Body: Spiridonova, Mouranoff, Zinoveiff, Oustinoff, Kamkoff, Lander, Skouloff, Volodarsky, Peterson, Natanson-Bobroff.

Secretaries of the Central Executive Committees: Avanessoff, Smoliansky.

Chairman of the Soviet of People's Commissaries: V. Oulianoff (Lenin).

People's commissar of Agriculture: A. Kolegueff.

CHAPTER XIII

THE FUNCTIONS OF GOVERNMENT

The Functions of Government.—Government, we stated in the opening chapter, is the organization within a state for the purpose of maintaining internal peace and order for the general welfare of the people, and preserving the national independence from foreign aggression. It follows logically that the functions which governments should exercise should be those which most perfectly secure this internal peace and order and general welfare, and this protection from external attack. Conditions in one state may warrant the government in assuming more extensive functions than are assumed by the government of a neighboring state; in times of great national peril, any government may assume much greater functions than it would assume under ordinary circumstances; but in all cases and at all times the sole justification for the functions which a state exercises is the preservation of peace and order within its boundaries to further the general welfare of its people, and the insurance of safety from external aggression.

I. Individualist Theories

Different Theories of the Functions of Government: Individualistic.—Radically different theories of the functions of the government under ordinary circumstances are held by different thinkers. A few generations ago a group of writers advocated the limitation of governmental powers and functions so far as possible. These "individualists," as they are called, contended that government is a necessary evil, only to be endured because, without the restraints imposed by government, the crimes of certain members of the community

might threaten the peace and security of all. The only chance for the full and proper development of the individual depended upon non-interference by the government. Every function exercised by the government was, according to these thinkers, an infringement on the natural inherent liberty of the individual. If it were not for the inborn selfishness of man, whereby he sought commonly to elevate himself at the expense of his fellow human beings, government would be unnecessary and men would be allowed to develop their capacities to their fullest without restraint.

The Individualistic State.—What, then, would be the condition of affairs in an individualistic state? Government would exist only as a police department to punish crime, to provide against external aggression and for the maintenance of peace and order, and to enforce contractual obligation. There would be no governmental ownership of railroads, of telegraphs, or even (according to some) of the post office; no governmental regulation of corporations or of labor; no governmental support of libraries, museums, and the like; no provision by the government for public education, health, or sanitation:—such functions of the government are to be condemned, according to the individualists, as infringing upon private enterprise or encroaching upon private liberty.

Argument for Individualistic State.—The individualists argued for their ideas by emphasizing the evils of overgovernment in paralyzing men's initiative, and by pointing to the analogy of the natural world where the principle of the "survival of the fittest" resulted (they claimed) in the evolution of a higher type of being. Where men become accustomed to look to the government for help, they lose the ability to help themselves and tend to degenerate. Allow a free competition without governmental assistance, and the individual strains to his utmost capacity to survive in the struggle and thus develops his powers more and more. The superman, the ideal man of a type above what we know at present, is only to be evolved, they asserted, under such conditions.

Weakness of Individualistic System.—The most fundamental weakness in the individualistic theory lies in its emphasis upon the development of *man* as opposed to the welfare of the whole *group of men.* Government is not an organization for the sole purpose of evolving a few supreme individuals: it is rather an organization to secure conditions under which the general welfare of the whole people is furthered. With the results of the Industrial Revolution—the sudden growth of huge cities with their new problems of public health, sanitation, transportation, and the like, the building of great factories housing the machinery which the workmen needed in order to make a living, the amassing of immense fortunes which gave the possessor overmuch power for good or for ill—a reaction against the individualistic theories set in. The welfare of the whole group required that strict sanitary regulations be imposed upon each person for the benefit of all persons, that regulations be imposed upon the individual factory owner to protect the relatively helpless mass of workers, that the ignorant be protected by governmental regulation from the results of their own ignorance; in short, that the government act more and more as the trustee of the people as a whole to administer the aggregate power of the state for the general welfare. With the spread of liberalism to the extent that the people actually do exercise a control over their government, the former distrust of government has naturally disappeared. When the government owns or manages the railroads or supply plants, when the government introduces a system of compulsory education, when the government establishes a great library or museum, or equips scientific expeditions, the people no longer are inclined to condemn these activities as encroachments upon individual enterprise, but to welcome them as the acts of their own collective agency intended for their own collective benefit. The doctrines of the individualists are discredited at the present time in favor of a theory of governmental functions which emphasizes the advancement of the general welfare.

II. Socialist Theory

Socialistic Theory of the Functions of Government.—The exact antithesis of the individualistic theory of the functions of government is the socialistic. Whereas the individualist believes in the minimum of government, the socialist believes in the maximum; whereas the individualist looked upon government as a necessary evil, the socialist looks upon it as the supreme good.

Socialism pictures the government as owning all the means of production, communication, transportation, and distribution. Thus all the land, mines, water supplies, forests, gas supply plants, power plants, and the like would belong directly to the government; all the telegraph and telephone lines would belong to the government; all the railroads, trolley lines, steamship lines, and stage lines would belong to the government; and all the wholesale and retail markets, stores, and shops would belong to the government. To work these various agencies, all the people of the state would be organized by, and be under the control of, the government. The government would be the sole employer of labor. The socialistic state would be a huge coöperative community under government management. Government ownership and organization, and general coöperation among the people of the state, are the essential features of the socialist theory.

The Socialist State.—What, then, would be the system in the ideal socialist state?

Politically, it would be more nearly a perfect democracy than any with which we are familiar. The initiative, referendum, and recall, the most effective measures for accurate representation of all sections of the community, entire responsibility of every official of the government at any and all times to the people,—such devices would be introduced to insure democracy.

Economically, the socialist proposes to replace the present competitive system of private capital with a system by which

the community shall own the means of production and distribution and shall use these for its own benefit. The community is to be organized into labor forces for production and to each laborer is to be distributed a part of the production proportionate to the amount of labor performed. Workmen will still be workmen, but they will be working for the state with tools belonging to the state and will be paid the full value of their labor by the state, instead of working for the individual capitalist with tools belonging to the capitalist and being paid by the capitalist a sum less than the full value of his production. "Surplus value" (*i. e.* the value of the completed product over and above the cost of production), which formerly constituted *profits* for the capitalist, will cease to exist; wages as such will be transmuted into an income representing a share in the national production exactly proportioned to the individual's share in that production. All workers, whether directly producing articles of consumption such as wheat, corn, meat, cotton, or whether of service to the community as lawyers, musicians, teachers, will receive a share of the total production directly proportioned to the time they have spent in work for the community. Furthermore, income from other sources than labor performed will not be possible under the socialist system. The use of property as a means of getting more property, as by loaning it for interest, or (what is equivalent) investing it in stocks with the expectation of receiving dividends, or building houses to rent to others, is absolutely forbidden under the socialist system, whereby the only source of income shall be labor. The results must be, the socialists claim, a practical equality in income.

The socialist government will be systematized in vast departments. The department of production, by means of monthly and yearly statistics collected from all sections of the community, will estimate the amount of each product necessary,—the amount of food products, cloth products, building material, manufactured products, etc. With this deter-

mined in advance in the form of a huge budget, the department will apportion to the different communities their labor of production, whether agricultural or mechanical. A department of distribution will undertake all the complicated wholesale and retail businesses of the system familiar to us. It will take the products from the department of production, arrange with the department of transportation for their delivery into certain central warehouses, and prepare to distribute to each citizen his pro rata proportion of the material. The department of labor will have the huge task of apportioning the masses of people to the necessary tasks for production, transportation, and distribution of goods. The workmen will theoretically be free to choose which field they wish to enter, but in case too many apply for one field and too few for another, the labor department will be justified in lowering the value of an hour's labor in the former in order to repel workmen and in increasing the value of an hour's labor in the latter in order to attract workmen. A large group of socialists advocate the abolition of money: payment for labor is to be in the form of labor checks, exchangeable for commodities at the public storehouse. Other departments, many of them, and bureaus as subdivisions of the departments, will be necessary to manage the complicated affairs and meet the manifold needs of a nation of a hundred millions of people: the rough outline which has been given of three of these will, however, serve to indicate the radical change in economic conditions proposed by socialism.

Socially, the change which the socialist claims will result from the proposed system is equally radical. With the abolition of any form of income except that obtained from labor performed, and with the establishment of the ideal democracy, the social inequalities due to great wealth must inevitably disappear. The individual may save and thus accumulate for himself or his family some wealth, but with the opportunities removed for the investing of that wealth to obtain other wealth in the form of interest, rent, or dividend, his wealth

only temporarily can raise him or his family above the common necessity of labor. The economic equality thus introduced spells social equality and equal opportunity for all.

Difficulties in Carrying Out the Socialistic Scheme.—The above picture of the ideal socialist state is attractive; there are, however, greater difficulties in the way than the socialists seem willing to admit.

The destruction of private ownership in productive property is certain to remove one of the sharpest spurs to individual incentive. It can hardly be denied that the accumulation of sufficient capital to provide an income for old age, or to insure the care of one's family in the event of one's death, or to widen one's social opportunities, is at present an incentive to many men to put forth their utmost efforts in labor. If the possibility of such income be removed, if the earnest, self-sacrificing man be paid with the same labor-check you give to the indifferent and lazy, it is too much to expect of human nature that the former's earnestness and zeal will continue. It seems to our modern ideas unfair that the inventor who saves the labor of thousands by some device, the chemist whose discoveries result in a new treatment of some deadly disease, the surgeon whose skill operates to save lives, should be paid on the same basis as the truck driver. Is the manager and director of the state's huge steel factory to receive approximately the same labor time-check as the night watchman at the same factory? Equality of income spells the death of initiative and energy.

Again, the socialist inveighs against the corruption and inefficiency of government under the present system: can he imagine that a government with infinitely more complex problems will be less corrupt? When the functions of a government are increased in number and widened in scope, the difficulties are immeasurably heightened. To put upon the government the determination of supply and demand for a nation of one hundred millions, the management of the entire wholesale and retail distribution of the products, the opera-

tion of all means of transportation and communication, and to expect efficiency under such circumstances, is visionary.

It may be fairly argued, also, that the socialist régime would result in a general deterioration in the character of the individuals in the state. Lacking the personal incentive to labor, all men would tend to do their work indifferently and inefficiently. It is not enough to argue that a man in working for the democratic state is in reality working for himself: the results of his labor are too diffuse for him to appreciate its value to himself. He would be but one of a hundred millions producing for the welfare of the whole hundred millions. His consciousness of the benefits that would accrue to the whole hundred millions by his zealous labor as an individual would not, as human nature is at present constituted, inspire him.

On the whole, the socialist state incurs the suspicion of not being practical. Were men all altruistic, to be inspired by a high zeal for the common good of all fellow-men, the socialist state would be an ideal form of organization. With human nature as it seems still to be in this era, men need all the spurs of necessity and ambition to do their best work for themselves and for mankind.

III. "General Welfare" Theories

General Welfare Theory.—The "general welfare" theory with respect to the functions of government is that government should exercise such functions as tend to maintain and develop the general welfare of the people. In a sense, of course, both the individualistic and socialistic theories are also general welfare theories, for the adherents of each believe that the general welfare of the people in the state would be promoted by their respective systems. The term "general welfare," therefore, is used merely as a convenient distinguishing name.

In the individualistic system the functions of government are rigidly fixed at the irreducible minimum; in the socialistic

system these functions are extended to and maintained at the maximum; in the general welfare system the functions are assumed to shift according to conditions. In a state where the economic education of the people is on a relatively low plane, it may be advisable for the general welfare of the community for the government among its various functions to stimulate enterprise by entering the industrial field itself; in a neighboring state where conditions differ and the people are quick to discern and advance their own economic interests, the government may restrict its functions and allow an ever increasing amount of liberty to individuals to develop themselves to their best capacity. The flexibility of the general welfare theory as contrasted with the rigidity of the individualist and socialist theories is one of its most attractive features.

Difficulty of Determining Proper Functions under General Welfare System.—The obvious difficulty in this system lies in the determination of the functions which are conducive to the general welfare of the community. Wherever government extends its functions, there will always be bitter critics who point out the infringement upon the liberties of the individual; on the other hand, wherever government deliberately limits its functions, there will be equally bitter critics who lament the withdrawal of protection and encouragement from needy elements in the community. To illustrate these statements, it is only necessary to refer to the outcry in England at first when the factory and mining laws were enacted, and to the protest in the United States against the lowering of the high protective tariff. It may be taken for granted that under no circumstances will the scope of the government's functions be satisfactory to all persons and classes in the community. The government's primary duty under this system is to ascertain by all means possible the greatest good for the greatest number, and to take measures accordingly.

However difficult its application, the general welfare theory of the scope of governmental functions is in favor with states

at the present time. The individualist theory is discredited, the socialist theory is distrusted: there remains only the effort of the government to exercise such functions as may increase the general welfare of its people.

IV. The Necessary Functions of Government

Classes of Functions.—In general, the functions exercised by modern democratic governments may be differentiated into two classes, necessary (or essential) and optional (or unessential). Naturally, with respect to the necessary functions a substantial agreement in the practice of states is to be found which may not be found with respect to the unnecessary or optional functions. The unnecessary or optional functions, however, indicate more strikingly the general character of the governments examined.

Necessary Functions.—The necessary functions of a government are those functions which it *must* exercise in order to insure internal peace and order and protection from external attack. They are the functions which all governments, from the primitive and rudimentary to the civilized and complex, find it essential to exercise in order to fulfill the primary purpose of the government's existence. These necessary functions may be classified as military, financial, and civil.

Military

The military function of the government was the original, and is still the chief, function of the government. The very existence of the state depends upon the readiness of the government to maintain domestic peace and order, and to defend the state even at the cost of war when the nation's safety or vital interests are at stake.

Theoretically, for the enforcement of its military function a government may impress all able-bodied men in the state. Such impressment may practically be undertaken in critical war times. In ordinary times, however, a government main-

tains in constant readiness certain military forces for use in emergency. In states whose position renders them peculiarly liable to attack by land, the need of enormous armies has made compulsory military service for all able-bodied men between certain ages an essential governmental policy. Thus the governments of France and Germany prior to 1914 kept under arms and in reserve nearly the entire male population of their respective states, and expended annually enormous sums (France approximately $185,000,000, Germany $200,000,000) in maintaining the armies in perfect condition. In states where danger of attack by land is remote, as England and the United States, armies are recruited by voluntary enlistment, such "regular" troops to be reënforced in time of war by militia troops, volunteers and conscripts. In states with long and important seacoasts and with oversea possessions requiring defense, governments are forced to develop powerful navies.

The modern developments in tactics and strategy, both for armies and navies, require the most careful organization and most efficient handling of the military forces at the disposal of the government. Hence the armies and navies are officered from the lowest to the highest command by men especially trained (often in special schools) for their duties. Hence, too, armies are organized into different "arms," as infantry, cavalry, artillery, engineers, according to the special weapons, limitations, and uses of the force concerned, and ships in the navies are built for particular purposes, as battleships, cruisers, torpedo boats, etc. Each detail of organization is planned to keep the army and navy of the government concerned abreast of, if not ahead of, the military forces of other states.

Uses of the Military.—A government maintains its military forces for use in two kinds of emergencies; namely, foreign war and domestic disorder. The protection of the honor and interests of the state from foreign aggression has always been a proper field for the government's military forces, but the exercise of the military function by the government in internal

affairs was long resented. Individuals felt that they could take care of themselves. The associations of men for mutual protection in former times, the guilds, the orders of knighthood, the secret societies, and the like, all show conclusively how readily men united for their own protection and how little they desired governmental interference in what they believed to be their individual rights and interests. But side by side with groups organized for the protection of their members, were other groups, as of bandits and criminals, organized to prey upon society as a whole. Against these groups the government, representing the interests of the entire people, used its military forces. Likewise, the government found it essential to exercise its military function to enforce compliance with the laws of the community, as by suppression of rebellions, riots, and similar disturbances.

The ultimate responsibility and direction for the use of such forces is vested in the executive head of the state. In most modern governments, however, the power to declare war is vested in the legislative body, thus putting into the hands of the representatives of the people the initial move in an armed conflict with a foreign state; but after war is declared, the chief executive, aided by his cabinet officers and military and naval advisers, is responsible for the conduct of operations. In the use of the military forces for the suppression of disorder within the state, no special consent of the legislative body is necessary and the chief executive takes such measures as in his judgment and that of his advisers seem necessary.

Financial

The financial functions of a government are those functions having to do with the collection and expenditure of funds for the government's maintenance and operation. A government exercises the right to exact from the people it controls the funds necessary for its own maintenance and for the performance of its varied services; it exercises the right also to expend the funds it exacts in such ways as according to

its judgment best serve the fundamental purpose of its existence. Its methods and activity in exacting, handling, and expending the funds constitute the financial functions of the government.

Taxation is Method of Securing Funds.—Modern governments obtain the funds necessary for their maintenance and operation by the exaction of compulsory contributions variously known as taxes, rates, assessments, duties, fees, imposts, tolls, licenses, etc. A consideration of the first aspect of the financial functions of a government, then, involves a consideration of the nature, principles, kinds, and methods of taxation.

Taxation is the act or process of assessing and collecting from a people a portion of their property for the maintenance and operation of their government. Inasmuch as the command of a constant and adequate revenue is essential to the existence of organized government, the power to tax is a necessary attribute of sovereignty. Organized government must be maintained, and the means for such maintenance comes from taxation.

There never has been a science of taxation according to the definitely stated principles of which government could adjust its taxes; taxes have been levied under the influence of existing circumstances rather than in accordance with acknowledged principles of equality, justice, and reason. Human selfishness and greed have at different times imposed almost every conceivable form of a tax, but never with sole reference to the economic principles involved. "The act of taxation consists," said Louis XIV's minister, Colbert, "in so plucking the goose (*i. e.* the people) as to produce the largest quantity of feathers with the least possible amount of squealing."

Although there is no accepted science of taxation, students of finance have from time to time advanced certain facts with respect to taxation which have been generally accepted as sound. Most important are the four cardinal facts set forth by Adam Smith [1] as follows:

[1] *Wealth of Nations*, Book V, Chap. II.

"I. The subjects of every state ought to contribute toward the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state. The expense of government to the individuals of a great nation, is like the expense of management to the joint tenants of a great estate, who are all obliged to contribute in proportion to their respective interests in the estate. . . .

"II. The tax which each individual is bound to pay, ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear to the contributor, and to every other person. When it is otherwise, every person subject to the tax is put more or less in the power of the tax-gatherer, who can either aggravate the tax upon any obnoxious contributor, or extort, by the terror of such aggravation, some present or perquisite to himself. . . .

"III. Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it. . . . Taxes upon such consumable goods as are articles of luxury are all finally paid by the consumer, and generally in a manner that is very convenient for him. . . .

"IV. Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the state. A tax may either take out or keep out of the pockets of the people a great deal more than it brings into the public treasury, in the four following ways. First, the levying of it may require a great number of officers whose salaries may eat up the greater part of the procedure of the tax, and whose perquisites may impose another additional tax upon the people. Secondly, it may obstruct the industry of the people, and discourage them from applying to certain branches of business which might give maintenance and employment to great multitudes. While it obliges people to pay, it may thus diminish, or perhaps destroy, some of the funds which might enable them more easily to do so. Thirdly, by the forfeitures and other penalties which those unfortunate individuals incur who attempt unsuccessfully to evade the tax, it may frequently ruin them, and thereby put an end to the benefit which the community might have received from the employment of their capitals. . . . Fourthly, by subjecting the people to the frequent visits and the odious examination of the tax-gatherers, it may expose them to much unnecessary trouble, vexation, and oppression; and though

vexation is not, strictly speaking, expense, it is certainly equivalent to the expense at which every man would be willing to redeem himself from it. It is in some one or other of these four different ways that taxes are frequently so much more burdensome to the people than they are beneficial to the sovereign."

In addition to the above principles set forth by Adam Smith we may add the following:

V. The subjects of taxation "are persons, property, and business. Whatever form taxation may assume, whether as duties, imposts, excises or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though as applied to them the taxation may be exercised in a great variety of ways." (Opinion U. S. Supreme Court. Foreign-held Bond case, 15 Wallace.)

VI. Taxation must be for, and only for, public purposes. Any exaction of any kind by the government for other than public purposes is tyrannical and unlawful. The right of taxation is only vested in the government on the ground that government serves the ends of the whole community; consequently such right may legally be exercised only for use in the service of the whole community.

VII. "All subjects over which the sovereign power of the state extends are objects of taxation, but those over whom it does not extend are, on the soundest principles, exempt from taxation." (Opinion U. S. Supreme Court. Chief Justice Marshall.) Thus the legal power of taxation extends as far as, and no farther than, the territorial limits of the state sovereignty.

VIII. The taxation scheme should be capable of expansion or contraction to meet corresponding expansion or contraction in the necessary expenditures. A rigid system, not changeable except with great difficulty, will involve a government in severe financial stringency if some emergency (as war) requires an immediate increase in revenues.

Kinds of Taxes: Direct and Indirect.—For convenience of treatment, the kinds of taxes now imposed by governments may be classified as *direct* and *indirect.* A direct tax is one which is exacted directly from the person on whom the burden of the tax is expected to fall. Thus a poll tax is a direct tax, inasmuch as the burden of paying it remains upon the person from whom it is directly exacted. An indirect tax, on the contrary, is a tax exacted from a person other than the

one on whom the burden is expected ultimately to fall. Thus a customs duty is an indirect tax, since the burden of it is shifted by the importer (from whom it is exacted) to the ultimate consumer by means of an increased charge which the importer puts upon the goods.

Forms of Direct Tax: the Poll Tax.—The simplest form of direct tax is that used in the preceding paragraph as an illustration; namely, the poll tax. At the present time only one government, France, exacts a poll tax from all its citizens. In France the poll tax (*impôt personnel*) is supposed to represent three days' wages provided that a day's wages be estimated at not less than one half franc and not more than one and one half francs. In about one half of the separate commonwealths in the United States a poll tax is imposed. In a few cases in the United States the tax is imposed by the commonwealth for commonwealth purposes, but in general it is a local tax, the proceeds of which are expended for such local objects as the maintenance of roads and highways.

The chief objection to a poll tax is its obvious injustice, in that the burden is relatively heavy upon a poor man and light upon a rich man.

The Income Tax.—A second form of direct tax very commonly imposed by governments is an income tax. An income tax is a tax levied upon personal incomes, usually with an exemption to incomes below a stipulated amount. The adoption of the income tax so widely is due to the need of greater revenue for the government and the belief that the income tax provides just distribution of the burden of taxation upon those who are best able to support it. At the present time England, France, Prussia, Italy, Austria, Switzerland, Spain, Denmark, Sweden, and the United States (since 1914) impose such taxes. The amount of exemption and the rate of taxation differ widely. In Italy exemption is granted only to incomes below $78 a year, in England to incomes below $620 a year, in the United States such exemption extends to all incomes below $2000 a year ($1000 for unmarried persons). In

some states the rate or per cent of tax remains the same for all incomes, in others (including the United States) the rates are advanced with the size of the income; in some states the rate or per cent of tax is higher upon the income of property than upon the income from personal services (pay, wages, salary).

The chief objection to this tax is the difficulty of assessment. The individual is tempted to evade an honest statement of his income, and yet will resent the inquisitorial methods necessary on the part of government officials. In states where the exemption line is placed high in the scale, as in the United States, the claim is urged that an undue proportion of the burden of taxation is laid upon the relatively wealthy, thus bringing the income tax law into the region of class legislation and in case of high rates restricting the flow of capital into industrial channels.

The Inheritance Tax.—A third kind of direct tax of importance is an inheritance tax. An inheritance tax is a tax upon the devolution of a deceased person's property to his heirs or legatees. The theory upon which such a tax is laid is that the heir or legatee has no natural right to inherit the property of a deceased person but that the state concedes and grants the privilege; therefore, the state has a constitutional right to declare the terms upon which the estate shall devolve to heirs or legatees. The tax is usually considered equitable and equal in its operation. In the application of the tax, a lesser burden is usually laid upon direct heirs than upon collateral heirs or legatees. In many states the tax is graduated from a small per cent to a larger per cent according to the amount of property involved. Thus in England, under the schedule adopted in 1910, inheritance taxes ("death duties," as they are called in that country) are laid in a progressive scale from 1 per cent on the smallest inheritance above £100 to 15 per cent on amounts above £1,000,000.

The inheritance tax is easy of collection and yields annually a large income. It is at present levied in nearly all the Euro-

pean countries and in all but ten of the commonwealths of the United States. It is now levied by the central government in the United States, as well as by the commonwealths.

The Property Tax.—The most important of the direct taxes is what may be called a property tax, *i.e.* a tax levied upon property of any kind or of whatever nature. The general theory underlying the imposition of this tax is that each owner is guaranteed and protected in the possession of his property by the state and therefore should willingly contribute to the state in proportion to the amount thus guaranteed and protected.

Property is commonly divided into two classes, real and personal. Real property consists strictly of property in land and houses; personal property is all other property, in general consisting of chattels, things temporary or movable.

The tax upon real property, property in land and houses, is easy to assess and cannot be evaded. Such property cannot be concealed and unpaid taxes are a first charge against the property. The ease of assessment and collection has led a group of political economists to advocate a single tax on real estate to replace all the varied taxes imposed to-day.

The tax upon personal property is one of the most difficult to assess and collect of all the direct taxes. Under modern conditions, where such an enormous amount of personal property is in the form of evidences of indebtedness, such as certificates of stock, mortgages, bonds, and the like, the ease with which it may be concealed has led to wholesale evasion of the tax. To be assured of a complete declaration of personal property, government officials must use inquisitorial methods which would be deeply resented by individuals, which would indeed probably result in a political upheaval. No assessor can possibly find the true amount of personal indebtedness without such methods. Most commonwealths of the United States have provisions for the taxation of all personal property over a specified amount (as $50), but the enforcement of the tax is commonly acknowledged to be impossible.

The personal property tax is the most unsatisfactory of the direct taxes.

The Indirect Tax.—Of the indirect taxes, the most important are the customs duties (tariffs) and the excise tax.

Tariffs, or Customs Duties.—Tariffs, customs, or customs duties are taxes imposed on commodities imported into, or exported from, a country. Export customs are seldom imposed and may therefore be disregarded. Import customs or tariffs form in most countries the most prolific source of revenue for the central government.

Kinds of Tariffs.—Tariffs may be distinguished as revenue tariffs, protective tariffs, and retaliatory tariffs. A revenue tariff is a tariff imposed solely for the purpose of revenue. A protective tariff is a tariff imposed for the artificial fostering of home industries by so taxing imports that they cannot compete with home products. A retaliatory tariff is a tariff levied by one country under such rules as to affect imports from a country suspected of discriminating by a high tariff against the particular products of the first country.

Difficulties in Tariff Systems: 1. Specific and Ad Valorem Duties. Tariffs, or customs duties, are easy to collect but difficult to adjust. The first difficulty that presents itself is the question whether to tax commodities according to a specific duty (as by weight, measurement, or the like), or *ad valorem*, according to market value. The specific duty exacts so much tax for each pound, yard, or square foot of commodities of a given kind without regard to their relative fineness or value. The *ad valorem* duty exacts a percentage tax based on the market value of the goods. Specific duties are comparatively simple to assess and collect, but seem unjust to importers of lower grades of goods. *Ad valorem* duties are difficult to assess, owing to the fluctuations in market values, and require the employment of a large force of trained experts in various lines.

2. Determination of Taxable Commodities.—The second great difficulty in fixing the tariff is to determine what com-

modities to tax and how much tax to exact. So far as any general principle is observable in the tariff history of modern states it is that the imports of luxuries shall be taxed and taxed heavily and the imports of necessities shall be taxed lightly or not at all. Thus, wines and precious stones are commonly taxed at an extraordinarily high rate, and meats, grains, and clothing fabrics are commonly admitted free or with a very low tariff. All the great nations of the world, with the single exception of England, exact a tax upon a large number of different articles imported into the country. England has, by a series of parliamentary measures since 1840, established practical free trade, retaining only about twenty-five articles as dutiable (including tobacco, tea, sugar, spirits, wine, motor spirits, coffee, chicory, cocoa, and dried fruit). In 1921, however, the British parliament passed a defense of essential industries act, permitting the government, upon complaint from these industries of the effects of competition from industries in countries with depreciated currency, to impose an *ad valorem* tax of 33 1/3 per cent on goods imported from a country whose currency is depreciated to a specified degree below the English level.

Excise or Internal Revenue Taxes.—The excise duties, or, as they are called in the United States, internal revenue taxes, comprise all those taxes levied upon the manufacture, sale, or consumption of commodities within the limits of a country. All prominent governments of the modern world derive a large proportion of their income from the exaction of such taxes. Such taxes are easily assessed and collected and impose but an infinitesimal tax upon the ultimate consumer. Although they are unpopular, they are probably less objectionable in their political and economic effects than the customs duties (tariffs).

Chief Commodities Taxed.—The chief income from excise duties has in the past been from tobacco and spirituous and fermented liquors. In 1909 the United States imposed an internal revenue tax on the net income, over and above $5000,

of all business corporations whose primary object is money making. At present the income from internal revenue is derived in the United States mainly from the following taxes: tobacco manufactures, oleomargarine and "process" butter, filled cheese, playing cards, theatre tickets, club-dues, and corporations. An excise tax has always been unpopular. To yield an appreciable amount of revenue, it must be imposed on an article of general consumption, and when thus laid it results in a rise in price, thus throwing the burden of the tax upon the great masses of relatively poor people. The assessment and collection of such a tax, too, require restrictive regulations by the government over manufacturers or dealers, and such regulations are always a cause of annoyance and trouble. However, if the excise is imposed upon only a few articles of luxury, as tobacco and spirituous and fermented liquors, these objections are not of great force.

To meet the needs of war or to meet unusually heavy demands upon the treasury, the field of excise taxes has been greatly extended and made to yield enormous revenues. The so-called luxury taxes of all of the World War belligerents and the heavy excess profits taxes levied by the warring nations are examples of this. All forms of amusement and numerous articles of consumption, not classed as necessities, have been taxed, and necessary articles, which cost above specified amounts, require the payment of a "war tax," usually ten per cent, by the purchaser. Profits of corporations have been subjected to heavy levies to meet the unprecedented expenses of the government.

The war profit taxes in Great Britain were levied upon the profits made by business concerns in excess of the normal profits, as determined from an average of the net profits of any two of the three years immediately preceding the war. From 50 to 80 per centum of such "war profits" was taken by the government to meet its enormous war expenditure. In the United States, by the Revenue Act of 1917, a corporation tax was levied upon net incomes in excess of an 8 per centum

return on the capitalization of the corporation. The Revenue Act of 1918 included a highly complicated war and excess profits proviso which levied an increased tax upon excess profits as determined by the Act of 1917 (as high as 65 per centum in some cases) and an added war profits tax on the British plan.

Taxation: Method of Assessment and Collection of Taxes.—Of the method of assessment and collection of taxes little need be said. In ancient times, and under retrogressive governments (as Turkey) in modern times, the practice of "farming out" taxes was common. This consisted in a leasing out of taxes for a fixed sum to a person authorized to collect and retain them. Many abuses flourished under this system: agents of the tax farmers scrupled at nothing to wring excessive amounts from the people; immense and illegitimate fortunes were thus gained; and unhappy communities rose in insurrection against governments permitting such evils. At present the practice of assessment and collection of the taxes by regularly appointed officials of the government is universal in civilized states. The rate of taxation is public, and the opportunities for extortion are reduced to a minimum.

The Budget System for Adjusting Revenue to Expenditure.—In adjusting the state revenue to the expenditure, most modern governments have established the "budget" system. The budget consists of a tabulated statement of estimated revenue and estimated expenditure. It is commonly drawn up under the direction of one of the members of the cabinet and presented to the legislative body for approval. Whenever the estimated necessary expenditures exceed appreciably the estimated revenues, suggestions for increased taxation to cover the estimated deficit often accompany the budget and are likewise presented to the legislative body for action.

The Budget in England and Continental States.—For example, in England the chancellor of the exchequer, who is a member of the cabinet, presents to the House of Commons, usually in April of each year, (1) a statement of the actual

results of the revenue and expenditure during the last fiscal year ending March 31, and (2) a statement estimating the revenue and expenditure for the coming twelve months. Parliament acts upon these statements, incorporating in a bill the provisions for any new taxes deemed necessary and advisable. When the reports have been approved, the budget is passed as the *Finance Act*.

Civil

The third necessary function of government is what may be termed the civil function. The state in the exercise of its civil function regulates the relations, social, economic, and political, between its individual citizens. The exercise of this function requires that the state provide for the enforcement of contractual obligations, regulate the conditions under which property may be held, sold, or transmitted, maintain the rights of the individual against infringement or encroachment, punish for crime, and decide matters of dispute. This function is a necessary function, because by its exercise the state maintains peace and order within its boundaries.

The judiciary system provided for in the constitution of all states is the means by which this function is exercised. In federal states, such as the United States and Germany, a large part of the exercise of this function falls within the province of the component units, although the state maintains an independent system of courts for cases of specified kinds. In all states the judiciary system is so adjusted that the burden of handling the large number of trivial cases falls upon the local governments or organizations.

STATISTICS AND ILLUSTRATIVE CITATIONS

I

EXTRACT FROM THE FINANCE ACT OF 1894, PROVIDING FOR THE INHERITANCE TAX IN ENGLAND

AN ACT to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Law relating to Customs and Inland Revenue, and to make other provision for the financial arrangements of the year.

(31st July 1894.)

MOST GRACIOUS SOVEREIGN,

WE, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I

GRANT OF ESTATE DUTY

1. In the case of every person dying after the commencement of this Part of this Act, there shall, save as herein-after expressly provided, be levied and paid, upon the principal value ascertained as herein-after provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "Estate duty," at the graduated rates herein-after mentioned, and the existing duties mentioned

in the First Schedule to this Act shall not be levied in respect of property chargeable with such Estate duty.

2. (1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say:

(*a*) Property of which the deceased was at the time of his death competent to dispose;

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interests; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;

(*c*) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881,[1] as amended by section eleven of the Customs and Inland Revenue Act, 1889,[2] if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom; and

(*d*) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by the arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(2) Property passing on the death of the deceased when situate out of the United Kingdom shall be included only, if, under the law in force before the passing of this Act, legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes. . . .

RATES OF ESTATE DUTY

The rates of Estate duty have been twice revised since 1894, once in the Finance Act of 1907, and again in the Finance Act of 1910. The rates in force at present, as stated in the Second Schedule appended to Finance (1909–10) Act 1910, are as follows:

[1] 44 & 45 Vict. c. 12.
[2] 52 & 53 Vict. c. 7.

Where the Principal Value of the Estate					Estate Duty shall be Payable at the Rate Per Cent of
	£			£	
Exceeds	100	and does not exceed		500....	1
Exceeds	500	and does not exceed		1,000....	2
Exceeds	1,000	and does not exceed		5,000....	3
Exceeds	5,000	and does not exceed		10,000....	4
Exceeds	10,000	and does not exceed		20,000....	5
Exceeds	20,000	and does not exceed		40,000....	6
Exceeds	40,000	and does not exceed		70,000....	7
Exceeds	70,000	and does not exceed		100,000....	8
Exceeds	100,000	and does not exceed		150,000....	9
Exceeds	150,000	and does not exceed		200,000....	10
Exceeds	200,000	and does not exceed		400,000....	11
Exceeds	400,000	and does not exceed		600,000....	12
Exceeds	600,000	and does not exceed		800,000....	13
Exceeds	800,000	and does not exceed		1,000,000....	14
Exceeds	1,000,000	.....		.....	15

II

The Budget and Accounting Act, 1921, U. S. Congress

TITLE I. DEFINITIONS

Section 1. This act may be cited as the "budget and accounting act, 1921."

Sec. 2. When used in this act—

The terms "department and establishment" and "department or establishment" mean any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including the municipal government of the District of Columbia, but do not include the legislative branch of the Government or the Supreme Court of the United States;

The term "the budget" means the budget required by section 201 to be transmitted to Congress;

The term "bureau" means the bureau of the budget;

The term "director" means the director of the bureau of the budget; and

The term "assistant director" means the assistant director of the bureau of the budget.

TITLE II. THE BUDGET

SEC. 201. The President shall transmit to Congress on the first day of each regular session the budget, which shall set forth in summary and in detail:

(a) Estimates of the expenditures and appropriations necessary, in his judgment, for the support of the Government for the ensuing fiscal year; except that the estimates for such year for the legislative branch of the Government and the Supreme Court of the United States shall be transmitted to the President on or before October 15 of each year, and shall be included by him in the budget without revision;

(b) His estimates of the receipts of the Government during the ensuing fiscal year, under (1) laws existing at the time the budget is transmitted, and also (2) under the revenue proposals, if any, contained in the budget;

(c) The expenditures and receipts of the Government during the last completed fiscal year;

(d) Estimates of the expenditures and receipts of the Government during the fiscal year in progress;

(e) The amount of annual, permanent, or other appropriations, including balances of appropriations for prior fiscal years, available for expenditure during the fiscal year in progress, as of November 1 of such year;

(f) Balanced statements of (1) the condition of the Treasury at the end of the last completed fiscal year, (2) the estimated condition of the Treasury at the end of the fiscal year in progress, and (3) the estimated condition of the Treasury at the end of the ensuing fiscal year, if the financial proposals contained in the budget are adopted;

(g) All essential facts regarding the bonded and other indebtedness of the Government; and

(h) Such other financial statements and data as in his opinion are necessary or desirable in order to make known in all practicable detail the financial condition of the Government.

SEC. 202. (a) If the estimated receipts for the ensuing fiscal year contained in the budget, on the basis of laws existing at the time the budget is transmitted, plus the estimated amounts in the Treasury at the close of the fiscal year in progress, available for expenditure in the ensuing fiscal year, are less than the estimated expenditures for the ensuing fiscal year con-

tained in the budget, the President, in the budget, shall make recommendations to Congress for new taxes, loans, or other appropriate action to meet the estimated deficiency.

(b) If the aggregate of such estimated receipts and such estimated amounts in the Treasury is greater than such estimated expenditures for the ensuing fiscal year, he shall make such recommendations as in his opinion the public interests require.

SEC. 203. (a) The President from time to time may transmit to Congress supplemental or deficiency estimates for such appropriations or expenditures as in his judgment (1) are necessary on account of laws enacted after the transmission of the budget or (2) are otherwise in the public interest. He shall accompany such estimates with a statement of the reasons therefor, including the reasons for their omission from the budget.

(b) Whenever such supplemental or deficiency estimates reach an aggregate which, if they had been contained in the budget, would have required the President to make a recommendation under subdivision (a) of section 202, he shall thereupon make such recommendation.

SEC. 204. (a) Except as otherwise provided in this act, the contents, order, and arrangement of the estimates of appropriations and the statements of expenditures and estimated expenditures contained in the budget or transmitted under section 203, and the notes and other data submitted therewith, shall conform to the requirements of existing law.

(b) Estimates for lump-sum appropriations contained in the budget or transmitted under section 203 shall be accompanied by statements showing, in such detail and form as may be necessary to inform Congress, the manner of expenditure of such appropriations and of the corresponding appropriations for the fiscal year in progress and the last completed fiscal year. Such statements shall be in lieu of statements of like character now required by law.

SEC. 205. The President, in addition to the budget, shall transmit to Congress on the first Monday in December, 1921, for the service of the fiscal year ending June 30, 1923, only, an alternative budget, which shall be prepared in such form and amounts and according to such system of classification and itemization as is, in his opinion, most appropriate, with such

explanatory notes and tables as may be necessary to show where the various items embraced in the budget are contained in such alternative budget.

SEC. 206. No estimate or request for an appropriation and no request for an increase in an item of any such estimate or request and no recommendation as to how the revenue needs of the Government should be met shall be submitted to Congress or any committee thereof by any officer or employee of any department or establishment unless at the request of either House of Congress.

SEC. 207. There is hereby created in the Treasury Department a bureau to be known as the bureau of the budget. There shall be in the bureau a director and an assistant director, who shall be appointed by the President and receive salaries of $10,000 and $7,500 a year, respectively. The assistant director shall perform such duties as the director may designate, and during the absence or incapacity of the director or during a vacancy in the office of director he shall act as director. The bureau, under such rules and regulations as the President may prescribe, shall prepare for him the budget, the alternative budget, and any supplemental or deficiency estimates, and to this end shall have authority to assemble, correlate, revise, reduce, or increase the estimates of the several departments or establishments.

SEC. 208. (a) The director, under such rules and regulations as the President may prescribe, shall appoint and fix the compensation of attorneys and other employees and make expenditures for rent in the District of Columbia, printing, binding, telegrams, telephone service, law books, books of reference, periodicals, stationery, furniture, office equipment, other supplies, and necessary expenses of the office, within the appropriations made therefor.

(b) No person appointed by the director shall be paid a salary at a rate in excess of $6,000 a year, and not more than four persons so appointed shall be paid a salary at a rate in excess of $5,000 a year.

(c) All employees in the bureau whose compensation is at a rate of $5,000 a year or less shall be appointed in accordance with the civil service laws and regulations.

(d) The provisions of law prohibiting the transfer of employees of executive departments and independent establishments until after service of three years shall not apply during

the fiscal years ending June 30, 1921, and June 30, 1922, to the transfer of employees to the bureau.

(e) The bureau shall not be construed to be a bureau or office created since January 1, 1916, so as to deprive employees therein of the additional compensation allowed civilian employees under the provisions of section 6 of the legislative, executive, and judicial appropriation act for the fiscal years ending June 30, 1921, and June 30, 1922, if otherwise entitled thereto.

SEC. 209. The bureau, when directed by the President, shall make a detailed study of the departments and establishments for the purpose of enabling the President to determine what changes (with a view of securing greater economy and efficiency in the conduct of the public service) should be made in (1) the existing organization, activities, and methods of business of such departments or establishments, (2) the appropriations therefor, (3) the assignment of particular activities to particular services, or (4) the regrouping of services. The results of such study shall be embodied in a report or reports to the President, who may transmit to Congress such report or reports or any part thereof with his recommendations on the matters covered thereby.

SEC. 210. The bureau shall prepare for the President a codification of all laws or parts of laws relating to the preparation and transmission to Congress of statements of receipts and expenditures of the Government and of estimates of appropriations. The President shall transmit the same to Congress on or before the first Monday in December, 1921, with a recommendation as to the changes which, in his opinion, should be made in such laws or parts of laws.

SEC. 211. The powers and duties relating to the compiling of estimates now conferred and imposed upon the Division of Bookkeeping and Warrants of the office of the Secretary of the Treasury are transferred to the bureau.

SEC. 212. The bureau shall, at the request of any committee of either House of Congress having jurisdiction over revenue or appropriations, furnish the committee such aid and information as it may request.

SEC. 213. Under such regulations as the President may prescribe, (1) every department and establishment shall furnish to the bureau such information as the bureau may from time to time require, and (2) the director and the assistant director

or any employee of the bureau when duly authorized shall, for the purpose of securing such information, have access to, and the right to examine, any books, documents, papers, or records of any such department or establishment.

SEC. 214. (a) The head of each department and establishment shall designate an official thereof as budget officer therefor, who, in each year under his direction and on or before a date fixed by him, shall prepare the departmental estimates.

(b) Such budget officer shall also prepare, under the direction of the head of the department or establishment, such supplemental and deficiency estimates as may be required for its work.

SEC. 215. The head of each department and establishment shall revise the departmental estimates and submit them to the bureau on or before September 15 of each year. In case of his failure so to do the President shall cause to be prepared such estimates and data as are necessary to enable him to include in the budget estimates and statements in respect to the work of such department or establishment.

SEC. 216. The departmental estimates and any supplemental or deficiency estimates submitted to the bureau by the head of any department or establishment shall be prepared and submitted in such form, manner, and detail as the President may prescribe.

SEC. 217. For expenses of the establishment and maintenance of the bureau there is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $225,000 to continue available during the fiscal year ending June 30, 1922.

TITLE III. GENERAL ACCOUNTING OFFICE

SEC. 301. There is created an establishment of the Government to be known as the general accounting office, which shall be independent of the executive departments and under the control and direction of the comptroller general of the United States. The offices of Comptroller of the Treasury and Assistant Comptroller of the Treasury are abolished, to take effect July 1, 1921. All other officers and employees of the office of the Comptroller of the Treasury shall become officers and employees in the general accounting office at their grades and salaries on July 1, 1921, and all books, records, documents,

papers, furniture, office equipment, and other property of the office of the Comptroller of the Treasury shall become the property of the general accounting office. The comptroller general is authorized to adopt a seal for the general accounting office.

SEC. 302. There shall be in the general accounting office a comptroller general of the United States and an assistant comptroller general of the United States, who shall be appointed by the President, with the advice and consent of the Senate, and shall receive salaries of $10,000 and $7,500 a year, respectively. The assistant comptroller general shall perform such duties as may be assigned to him by the comptroller general, and during the absence or incapacity of the comptroller general, or during a vacancy in that office, shall act as comptroller general.

SEC. 303. Except as hereinafter provided in this section, the comptroller general and the assistant comptroller general shall hold office for 15 years. The comptroller general shall not be eligible for reappointment. The comptroller general or the assistant comptroller general may be removed at any time by joint resolution of Congress after notice and hearing, when, in the judgment of Congress, the comptroller general or assistant comptroller general has become permanently incapacitated or has been inefficient, or guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment. Any comptroller general or assistant comptroller general removed in the manner herein provided shall be ineligible for reappointment to that office. When a comptroller general or assistant comptroller general attains the age of 70 years he shall be retired from his office.

SEC. 304. All powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department, and the duties of the Division of Bookkeeping and Warrants of the office of the Secretary of the Treasury relating to keeping the personal ledger accounts of disbursing and collecting officers, shall, so far as not inconsistent with this act, be vested in and imposed upon the general accounting office and be exercised without direction from any other officer. The balances certified by the comptroller general shall be final and conclusive upon the executive branch of the Government. The revision by the comptroller general of

settlements made by the six auditors shall be discontinued, except as to settlements made before July 1, 1921.

The administrative examination of the accounts and vouchers of the Postal Service now imposed by law upon the Auditor for the Post Office Department shall be performed on and after July 1, 1921, by a bureau in the Post Office Department to be known as the bureau of accounts, which is hereby established for that purpose. The bureau of accounts shall be under the direction of a comptroller, who shall be appointed by the President, with the advice and consent of the Senate and shall receive a salary of $5,000 a year. The comptroller shall perform the administrative duties now performed by the Auditor for the Post Office Department and such other duties in relation thereto as the Postmaster General may direct. The appropriation of $5,000 for the salary of the Auditor for the Post Office Department for the fiscal year 1922 is transferred and made available for the salary of the comptroller, bureau of accounts, Post Office Department. The officers and employees of the office of the Auditor for the Post Office Department engaged in the administrative examination of accounts shall become officers and employees of the bureau of accounts at their grades and salaries on July 1, 1921. The appropriations for salaries and for contingent and miscellaneous expenses and tabulating equipment for such office for the fiscal year 1922, and all books, records, documents, papers, furniture, office equipment, and other property shall be apportioned between, transferred to, and made available for the bureau of accounts and the general accounting office, respectively, on the basis of duties transferred.

SEC. 305. Section 236 of the revised statutes is amended to read as follows:

"SEC. 236. All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the general accounting office."

SEC. 306. All laws relating generally to the administration of the departments and establishments shall, so far as applicable, govern the general accounting office. Copies of any books, records, papers, or documents, and transcripts from the books and proceedings of the general accounting office, when certified by the comptroller general or the assistant comptroller

general, under its seal, shall be admitted as evidence with the same effect as the copies and transcripts referred to in sections 882 and 886 of the Revised Statutes.

SEC. 307. The comptroller general may provide for the payment of accounts or claims adjusted and settled in the general accounting office, through disbursing officers of the several departments and establishments, instead of by warrant.

SEC. 308. The duties now appertaining to the Division of Public Moneys of the Office of the Secretary of the Treasury, so far as they relate to the covering of revenues and repayments into the Treasury, the issue of duplicate checks and warrants, and the certification of outstanding liabilities for payment, shall be performed by the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury.

SEC. 309. The comptroller general shall prescribe the forms, systems, and procedure for administrative appropriation and fund accounting in the several departments and establishments, and for the administrative examination of fiscal officers' accounts and claims against the United States.

SEC. 310. The offices of the six auditors shall be abolished, to take effect July 1, 1921. All other officers and employees of these offices except as otherwise provided herein shall become officers and employees in the general accounting office at their grades and salaries on July 1, 1921. All books, records, documents, papers, furniture, office equipment, and other property of these offices, and of the Division of Bookkeeping and Warrants, so far as they relate to the work of such division transferred by section 304, shall become the property of the general accounting office. The general accounting office shall occupy temporarily the rooms now occupied by the office of the Comptroller of the Treasury and the six auditors.

SEC. 311. (a) The comptroller general shall appoint, remove, and fix the compensation of such attorneys and other employees in the general accounting office as may from time to time be provided for by law.

(b) All such appointments, except to positions carrying a salary at a rate of more than $5,000 a year, shall be made in accordance with the civil-service laws and regulations.

(c) No person appointed by the comptroller general shall be paid a salary at a rate of more than $6,000 a year, and not more than four persons shall be paid a salary at a rate of more than $5,000 a year.

(d) All officers and employees of the general accounting office, whether transferred thereto or appointed by the comptroller general, shall perform such duties as may be assigned to them by him.

(e) All official acts performed by such officers or employees specially designated therefor by the comptroller general shall have the same force and effect as though performed by the comptroller general in person.

(f) The comptroller general shall make such rules and regulations as may be necessary for carrying on the work of the general accounting office, including rules and regulations concerning the admission of attorneys to practice before such office.

SEC. 312. (a) The comptroller general shall investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds, and shall make to the President when requested by him, and to Congress at the beginning of each regular session, a report in writing of the work of the general accounting office, containing recommendations concerning the legislation he may deem necessary to facilitate the prompt and accurate rendition and settlement of accounts and concerning such other matters relating to the receipt, disbursement, and application of public funds as he may think advisable. In such regular report, or in special reports at any time when Congress is in session, he shall make recommmendations looking to greater economy or efficiency in public expenditures.

(b) He shall make such investigations and reports as shall be ordered by either House of Congress or by any committee of either House having jurisdiction over revenue, appropriations, or expenditures. The comptroller general shall also, at the request of any such committee, direct assistants from his office to furnish the committee such aid and information as it may request.

(c) The comptroller general shall specially report to Congress every expenditure or contract made by any department or establishment in any year in violation of law.

(d) He shall submit to Congress reports upon the adequacy and effectiveness of the administrative examination of accounts and claims in the respective departments and establishments and upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.

(e) He shall furnish such information relating to expenditures and accounting to the bureau of the budget as it may request from time to time.

SEC. 313. All departments and establishments shall furnish to the comptroller general such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the comptroller general, or any of his assistants or employees, when duly authorized by him, shall for the purpose of securing such information have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 291 of the Revised Statutes.

SEC. 314. The Civil Service Commission shall establish an eligible register for accountants for the general accounting office, and the examinations of applicants for entrance upon such register shall be based upon questions approved by the comptroller general.

SEC. 315. (a) All appropriations for the fiscal year ending June 30, 1922, for the offices of the Comptroller of the Treasury and the six auditors are transferred to and made available for the general accounting office, except as otherwise provided herein.

(b) During such fiscal year the comptroller general, within the limit of the total appropriations available for the general accounting office, may make such changes in the number and compensation of officers and employees appointed by him or transferred to the general accounting office under this act as may be necessary.

(c) There shall also be transferred to the general accounting office such portions of the appropriations for rent and contingent and miscellaneous expenses, including allotments for printing and binding, made for the Treasury Department for the fiscal year ending June 30, 1922, as are equal to the amounts expended from similar appropriations during the fiscal year ending June 30, 1921, by the Treasury Department for the offices of the Comptroller of the Treasury and the six auditors.

(d) During the fiscal year ending June 30, 1922, the appropriations and portions of appropriations referred to in this

section shall be available for salaries and expenses of the general accounting office, including payment for rent in the District of Columbia, traveling expenses, the purchase and exchange of law books, books of reference, and for all necessary miscellaneous and contingent expenses.

SEC. 316. The general accounting office and the bureau of accounts shall not be construed to be a bureau or office created since January 1, 1916, so as to deprive employees therein of the additional compensation allowed civilian employees under the provisions of section 6 of the legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1922, if otherwise entitled thereto.

SEC. 317. The provisions of law prohibiting the transfer of employees of executive departments and independent establishments until after service of three years shall not apply during the fiscal year ending June 30, 1922, to the transfer of employees to the general accounting office.

SEC. 318. This act shall take effect upon its approval by the President. *Provided,* That sections 301 to 317, inclusive, relating to the general accounting office and the bureau of accounts, shall take effect July 1, 1921.

CHAPTER XIV

UNNECESSARY OR OPTIONAL FUNCTIONS OF GOVERNMENT

Unnecessary or Optional Functions.—The functions which have been discussed in the preceding pages are the functions which must necessarily be exercised to insure the existence of government; in addition to these, all governments of the modern era exercise many other functions in their attempt to promote the general welfare and prosperity of their people. These latter functions we may call the unnecessary or optional functions of government.

Lack of Uniformity: Principles for the Exercise of Optional Functions.—No absolute uniformity with regard to the optional functions exercised by governments exists in practice to-day. Some governments own and manage their railroads, others do not; nearly all central governments manage the post office; some governments control and administer the telegraphs and telephones, others leave these to private ownership and management; within a single great state we may see differences in practice, as in the United States, where the Panama Canal is constructed by the central government, the so-called Barge Canal in New York by the commonwealth government, and the Cape Cod Canal by private capital. The only principles determining whether or not a government shall exercise certain of these optional functions are: (1) that a government should do for the public welfare those things which private capital would not naturally undertake, and (2) that a government should do those things which by its very nature it is better equipped to administer for the public welfare than is any private individual or group of individuals. How far these

principles are applicable in concrete instances is to be determined by the statesmanship of those at the head of the separate governments.

Classes of Optional Functions.—In considering the present practice with regard to optional functions, we may, for convenience, distinguish five general classes: (1) Public Works; (2) Public Education; (3) Public Charity; (4) Industrial Regulations; and (5) Health and Safety Regulations.

I. Public Works

Public Works.—In the class of public works are to be included all those industries which have been removed by a government from private control and management to its own control and management in accordance with one or other of the principles stated above. As has been emphasized, governments differ in the extent to which they have considered these principles applicable; thus, for example, governments uniformly control the coinage and currency in their respective countries and establish and maintain lighthouses, but on the other hand governments differ radically in the extent to which they go in the control of railroads, water supplies, forests, etc.

1. **Finances.**—Modern governments uniformly control the coinage and issue of currency of various kinds. Nothing is more important to insure the stability of business relations than a fixed standard of exchange; and no individual or group of individuals is in a position to insure such a fixed standard. In minting its metal currency and in printing its paper currency to represent the precious metal stored in its vaults, and in punishing severely any attempt to counterfeit such currency or to reduce the value of such currency, a government is but guaranteeing to its citizens a fixed standard of exchange and thus facilitating the prosperity of the country.

In addition to its function in coinage, certain governments, notably England and the United States, have established and now maintain savings banks (commonly called postal savings banks, because operated with the agency of the post office

department). These savings banks have offered to the people a place of deposit for their money which is as secure as the nation itself. Although the rates of interest are lower than in the privately managed savings banks, the absolute security of the principal against mismanagement or dishonesty has made such banks very popular.

2. **Communications.**—Almost uniformly, modern governments control and manage the public postal service of their respective states. Such control and management is so familiar to us to-day that we are tempted to forget that not many generations ago the transmission of mail matter was in the hands of private business concerns. Governments have taken the postal service over on the ground that they, by their nature, are better fitted to insure the necessary safety and speed of delivery than are any private concerns.

The same considerations that led governments to take over the postal service have led them in several notable instances to take over also the other important means of communication; namely, the telegraph and telephone service. A distinct advantage accrues to governments owning the telegraph and telephone service of the country, in that in case of war an immediate and absolutely effective censorship can be established over all the means of communication. At the present time Germany, France, Belgium, and England are among the important governments which own and manage this service. State ownership has been proposed in the United States, but the enormous expense involved in taking over the companies has been one chief argument against so doing.

3. **Transportation.**—Arguments similar to those used for government ownership and management of the postal, telegraph, and telephone services have led Germany into the government ownership and management of railroads. The government of Italy also owns and operates its railroads, but the considerations in that state leading to such governmental ownership were different from those in Germany. Owing to the peculiar shape of, and land conditions in, the Italian

peninsula, privately owned railroads could not be profitable; and yet the industrial development of the country could be increased only by a system of railroads: for the public good, therefore, the Italian government maintains the financial burden of owning and operating the railroads in the state. The United States has been confronted by a somewhat similar condition in Alaska, and the government has at last been authorized to build, equip, and manage a railroad to tap certain great coal deposits in that territory. In this case, it was not believed beneficial to the public interest to allow private capitalists to control the freight facilities for these coal deposits.

In local governments, the municipal ownership of street transit lines has been widely favored and adopted. Thus many cities in England, Germany, Austria, Switzerland, Italy, and the United States have bought, or have built and are now operating, the municipal transit lines, on the principle that lower fares and better service result from municipal than from private ownership. In this country the question is still a live issue. To be weighed against the manifest advantages of honest and intelligent municipal ownership and operation is the prevalent distrust of political influence and graft.

4. Public Safeguards.—A field in which the exercise of optional governmental functions is not questioned is the provision of public safeguards, such as lighthouses, buoys, beacons, and the like. All persons recognize that the safety of traffic by water depends upon the maintenance of such safeguards, and yet there would be no inducement to private concerns to establish and maintain them. Hence, the government is forwarding the general interest of the state in undertaking this work.

The building of dikes and levees is but a different application of this optional function for the general welfare.

5. Thoroughfares.—From very early times the maintenance of thoroughfares has been an optional governmental function. The marvelous military roads of the Roman Empire still exist to bear witness of this fact. Governments (state or local) are still engaged in building and maintaining roads, canals,

bridges, and wharves, in dredging and deepening river channels and harbors, and in removing various obstructions to traffic, as derelicts in the sea paths. In these cases, again, we find a natural optional function of government, a function which all recognize as exercised for the public welfare, and yet a function which, if not exercised by the government, would probably not be exercised at all.

6. Natural Resources.—The extension of governmental functions to include the conservation of the natural resources of the country, and to insure that the benefits to be derived from these natural resources shall be equitably distributed for the common good, has become a vital question in this country in recent years. The government has checked the ravages of private individuals and business concerns in time to preserve some natural resources of inestimable value. For example, the United States government owns and manages "in the interest of the whole people" (as stated in an official report) forests to the extent of 150,000,000 acres. These forests are protected against fire and are scientifically cut and replanted. In the future this enormous supply may play an important part in preventing a lumber famine. Again, the government has taken an active hand in insuring an equitable distribution of the water supply in certain semiarid regions of the west. For the purpose of irrigation it has built the enormous Roosevelt Dam in Arizona, another huge dam (the highest in the world) in Wyoming, the Lagune Dam holding the waters of the Colorado River, and an earthen dam in South Dakota. Under the Reclamation Act of 1902, Congress provided for the above engineering works, and for more to follow.

7. Supply Plants.—Governmental ownership and operation of supply plants, as of water, gas, or electricity, is for the most part confined to local governments. As in the case of street transit lines, municipal ownership of the water, gas, and electricity supplies has been extensively adopted in cities of modern states. The arguments in favor of such ownership and operation, provided the operation is honest and intelligent, are

irrefutable, but the suspicion that municipal control would infuse the worst elements of party politics and graft into the management of these public necessities has led many serious thinkers to take their stand in opposition.

II. Public Education

The second of the five general classes of optional functions is composed of those functions having to do with public education. It may safely be said that in no line has government done so much as in this during recent generations. With the introduction and steady increase in democratic institutions, governments have realized that the education of the people was their best insurance for continued existence.

1. **Public School System.**—The most obvious manifestation of the exercise of this optional function is the public school system established and maintained in all progressive governments to-day. Where children of the poorer classes were not expected to receive any education in many of the foremost states a century ago, free schools are now provided and stringent truancy laws enforced. In the money appropriated for education, and in the number and quality of the schools provided, the United States excels any other great state.

2. **Museums, Art Galleries, etc.**—For educational purposes also modern governments establish and maintain museums, art galleries, libraries, botanical and zoölogical gardens, and parks. Both national and local governments exercise these functions. The British Museum in London, the Louvre in Paris, and the Smithsonian Institution in Washington are examples of what free educational opportunities the central government offers to its people.

3. **Scientific Establishments.**—Of a different but equally valuable kind for the education of the people are the scientific bureaus, experiment stations, and the like established and maintained by the government. The weather bureau, the hydrographic office, and the astronomical observatories are

examples of such bureaus established not only to safeguard the people, but to gather and disseminate information of general interest and value.

A few striking statistics of what a single branch of government does in a scientific way will illustrate the value of the government's work to the country at large. The department of agriculture in the United States stands ready to help the farmer in whatever difficulty may beset him. It will show him for what crops his soil is suited and how to grow those crops; what animals to breed and how to take care of them. It has introduced into this country sorghum, durum wheat, alfalfa, the navel orange, Japanese rice and bamboo, the Corsican citron, the Indian mango, Spanish almonds, French prunes, Chinese mustard, and Egyptian cotton. It establishes subsidiary bureaus to report the condition of imported seeds, grains, and the like. In its laboratories it studies the best methods of fighting the numerous pests and diseases which baffle the farmer, as the boll weevil, the brown-tailed moth, the tent caterpillar, the little-peach disease and the peach-blight, the apple bitter-rot, etc. Such work as this appeals in a practical way to every citizen of the state.

III. Public Charity

The third of the general classes of optional functions is composed of those functions having to do with public charity. In the exercise of this function, the government is doing something which the heart of each man approves, yet which, were it not done by the government, would be less efficiently done by individuals. It is true that in recent years men of large fortunes have devoted huge sums to public charitable and educational uses, as by the endowment of research laboratories, hospitals, libraries, and colleges. The governments, however, in no degree relax their efforts to take care of the poor and helpless. The soldiers' homes established and maintained by the central government, the numerous insane asylums, almshouses, and hospitals, either of the central or local govern-

ments, and the various corrective institutions, all bear witness to the exercise of public charity by the government.

Public Charity Insurance.—In comparatively recent years a notable endeavor to help poor people to help themselves, or at least to assure public charity to the really deserving, has resulted in the introduction of various forms of state insurance.

Germany has in her laws the most complete system of workingmen's insurance in the world to-day. At present, her laws provide for compulsory insurance on the part of the workman against accident, sickness, or old age. In accident insurance, the workman in case of accident receives in benefits medical attendance and weekly payments based on his earned rate of wages, and in case of death a burial benefit and a pension to those dependent on him. In sickness insurance, which is also compulsory, he receives in benefits a weekly sum based on his earned rate of wages, medical or hospital treatment if necessary, and in case of death a funeral benefit twenty times his weekly wages. Old age insurance, also compulsory, entitles a workman at the age of 70, who has paid the compulsory contributions for not less than 1200 weeks, to receive a pension for the remainder of his life.

In 1908 England passed an old age pension law, differing markedly from the insurance system in Germany. Under the provisions of this act, no contributions are exacted from the recipient of the benefits. Any person upon reaching the age of 70, who has been a resident 20 years preceding his application, can show that he has an annual income of less than $157.50, can prove that he has been industrious, has not been convicted of a criminal offense, may claim a weekly pension of not more than $1.25. The amount of the pension (about $40,000,000 in 1909) is taken from the general funds derived from taxation.

In France, Denmark, and the Australian countries some form of state insurance has also been introduced. In the United States, state insurance has commonly taken the form of Workmen's Compensation Acts by the legislatures of the

separate commonwealths. The principle underlying such acts is that the burden of industrial accidents and injuries from whatever cause should not fall entirely upon either the workman or the employee, but should be included among the costs of production and should be distributed among the whole consuming public. The acts therefore ordinarily provide that employers shall insure their workmen against industrial accidents, including the cost of such insurance among their regular items of expense (like taxes or fire insurance). State administrative boards are provided to adjust disputes, determine awards, and to dispose wisely, for the benefit of the workman, of the amounts awarded. Forty-two of the commonwealths now (1923) have laws of this general kind. Proposals for sickness, unemployment, and old age insurance acts are being actively pushed by social workers in various commonwealths, but so far have been slow in finding general acceptance.

Regulative Functions.—The two remaining classes of optional functions differ in character from those discussed above in that they are mainly regulative in nature. They consist in an attempt by the government to benefit the whole people by the enactment of laws regulating their actions under stated circumstances rather than (as in the previous classes of functions) in the direct assumption by the government of a business or an institution. These regulative functions are especially obnoxious to the individualist, to the believer in the *laissez-faire* theory. In whatever state they are exercised, insistent criticism of the government for alleged encroachment on individual rights is made. The defense of the government is, stated simply, that it is acting in good faith for the greatest good of the greatest number of its citizens.

IV. Industrial Regulation

The regulation of industrial conditions is the class of regulation which has aroused most open and bitter criticism. Although certain industrial conditions have been regulated by governments from time immemorial (as foreign trade and

commerce), the wholesale extension of governmental regulation to such things as the amalgamation of competing business concerns, the prices charged by common carriers (as the railroads), the age, hours of labor, conditions in factories, etc., is fiercely resented by interested parties.

For convenience in treatment, the regulative functions of government concerned with industrial conditions will be discussed under the following heads: (1) Financial; (2) Commercial; (3) Business or corporation; (4) Labor.

1. **Financial.**—The institutions which together compose the financial system in a state are known as *banks*. So important has their influence in the economic life and prosperity of the state become that now hardly any one questions the advantage of governmental regulation over them. To understand the nature of this regulation, a general notion of what a bank is and does must be given.

A bank is an establishment for the custody, loan, exchange, or issue of money and credit. It receives deposits for safekeeping subject to draft by the depositor; it invests or lends for interest the money intrusted to it and thus earns a certain amount over and above the expense of conducting the establishment; and in certain cases it has the privilege of issuing its own bank notes to be used as currency. In providing a secure place for the deposit of money and in being ready at any time to pay out such money when required by the depositor, and in honoring checks of the depositor drawn to the credit of another person and transferring the funds from the depositor to that designated person, a bank is an inestimable convenience to its community. In providing money and credit for loan in response to legitimate private needs and to legitimate business enterprises, a bank may do much toward increasing the general prosperity of the community. In issuing its bank notes (which are nothing more or less than promises to pay a stipulated amount on demand), a bank may increase the flexibility of the whole system by providing ample currency when currency is urgently needed and by taking in its currency when the need

is slight. Thus in all its functions a bank *may* be of great benefit to its community, but the harm to its community if a bank business is not properly conducted is correspondingly great. For if a bank does not safeguard the deposits of the people, the bank is not fulfilling one of its primary and most important purposes, and ultimately must fail. And if a bank invests its depositors' funds in poor securities, or lends these funds to borrowers who when the time comes to repay are unable to meet their obligations, or has so much of its depositors' funds invested in things upon which it cannot realize quickly that it is unable upon the demand of any considerable number of its depositors to pay them back their money—if a bank commits any of these faults, it is certain to fail. And again, if a bank is allowed to issue its bank notes beyond its ability to pay, ultimately such bank notes will constitute an overwhelming liability under which the bank must fail.

The failure of a bank, great or small, is a public calamity. The depositors are left without funds, the confidence of the people is undermined, and the radiations from a single bank failure may cause the failure of a large number of individuals and business firms. The stability of the banks and of the whole banking system is absolutely essential to the natural course of business and community life. It is in the realization of the dangers to the community in bad banking that the government exercises its regulative power to insure good banking.

Regulation commonly takes the following forms: (*a*) Requirement of incorporation; (*b*) Requirement of a stipulated minimum of capital and surplus; (*c*) Liability of stockholders; (*d*) Regulation of investments; (*e*) Regulation of reserves; (*f*) Regulation of note issues; (*g*) Public inspection and supervision.

(*a*) In view of the manifest importance of the banking business to the community, no one should be permitted to engage in it without authority from the government. Hence arises the requirement of incorporation, either by a special

charter or in accordance with the provisions of a general banking law. Such special charter or general law states the conditions under which the bank shall conduct its business. Were incorporation not required, it would be impossible for the government to exercise the necessary supervision over the banks.

(*b*) The requirement of a certain minimum capital and surplus is imposed by the government in its endeavor to secure to depositors in a bank the safety of their deposits. The capital is an amount directly contributed by the stockholders or proprietors of the bank, and the surplus is an additional amount earned and set aside from the profits of the business. In case a bank fails, its capital and surplus may be used to pay the depositors and other creditors.

(*c*) In some states, stockholders in banks may be assessed for an amount equal to their holdings in case the bank fails with assets insufficient to pay the depositors. In this provision, again, the attempt is made to secure above everything else the safety of the depositors' funds.

(*d*) Governmental regulation of a bank's investments presents a difficult problem. The success of a bank wholly depends upon these investments, and yet it is not feasible to regulate these to any considerable extent. The care and wisdom of the officers and directors of a bank must be trusted. In some commonwealths of the United States the banking officials issue lists of securities which are legal investment for certain classes of banks within the commonwealth; the national banks of the United States are restricted by a general law in the matter of real estate investments; all the banks are subject to periodical examination by governmental commissioners who determine the condition of the bank.

(*e*) In most states no legal requirements with regard to the reserves exist. The United States, however, and its commonwealths uniformly require a certain amount of reserve funds to be kept available, the amount varying from 15 per cent to 25 per cent.

(*f*) Restrictions upon bank-note issues are most necessary, for if bank notes are unsecured by assets of equal value, disaster is sure to follow. In England, the Bank of England may issue £18,450,000 in bank notes upon the deposit of securities to that value, and may issue above that amount only by the deposit of bullion to equal value. During the period of the World War, however, the government of Great Britain adopted various expedients to increase the supply of money and credit to meet the enormous war expenditure and to provide for the vast increase in business activity incident to the war. Currency notes, which were notes not backed by an equivalent gold reserve, were issued in ever increasing amounts until in December, 1919, they reached the enormous total of £356,152,000, against which there was a gold reserve of approximately 10 per cent. Meanwhile, to prevent the loss of gold, the government withdrew it from circulation and issued for use in its stead an equivalent of bank notes. In France, a limit is set by law to the amount of issue by the Bank of France. In the United States, prior to the passage of the Federal Reserve legislation, national banks (which were the only ones privileged to issue bank notes) were required to deposit government bonds with the comptroller of the currency to secure their issues, and then the national government sent the bank notes to the bank and guaranteed the payment. Such national banks were not allowed to issue bank notes to an amount greater than their paid-in capital stock. These various regulations will illustrate the care with which governments attempt to insure the safety of the bank-note issues.

(*g*) Lastly, periodical examination of the condition of the banks by governmental officials is required by law, that any evidences of unsound banking may be detected. In addition to this, a sworn statement of each bank's condition is required to be published at certain intervals. The accounts of the Bank of England are regularly published in the English financial journals; banks in Germany must make weekly reports; the Bank of France has its balance sheet published each Friday,

and must furnish the government with a full statement of its condition and operations each six months; national banks in the United States are called upon five times annually by the comptroller of the currency for reports, and these reports are published; banks in the commonwealths are required by the laws of the commonwealths to issue periodical statements of condition.

The Federal Reserve Act, 1914.—In the United States the Federal Reserve Act, adopted in 1914, illustrates well how far the government is willing to go in the exercise of its optional functions. Under the provisions of this legislation, a federal reserve board of seven members is established, and the country is to be divided into from eight to twelve federal reserve districts, each containing a federal reserve bank with branch banks. Each federal reserve bank is the bank of bankers: its capital stock (minimum $4,000,000) is to be subscribed by the banks of its district; its government is in a board of nine directors, of whom six are elected by the member banks; it can accept no deposits from any persons, concerns, or institutions except banks and the United States; it conducts no business except with banks; and its dividends are limited to 6 per cent, any excess being equally apportioned to the surplus and to the government. The deposits are to be made up of portions of the required reserve of the banks of the district in the system, of deposits of funds of the national government, and (for exchange purposes only) funds transferred from other federal reserve banks. The federal reserve banks are, under stipulated conditions, to be the issuers of bank notes hereafter. The federal reserve banks are allowed to discount for any member bank its notes, drafts, or bills of exchange arising out of actual commercial transactions, and special provision is made to allow notes and the like secured by the agricultural products or other goods or merchandise to be discounted by the federal reserve bank for its member banks. Provision is also made for one reserve district to get the advantage of an excess of funds in other reserve districts. Briefly, the proposed system seems

to establish a chain of money reservoirs with connecting pipes through which funds may pass from one part of the country to another as need occurs, with provision that from each reservoir funds may be sprayed out upon call to the various member banks of the district.

In this same connection, we may mention the efforts of the government to establish banking institutions which should provide credit at fair rates to the great agricultural industry of the country, thus rescuing farmers from the hands of private money-lenders and mortgage-brokers. After a study of land-bank systems in Europe, Congress enacted in 1916 a Farm Loan bill, authorizing two types of land banks: 1st, Farm Loan Banks; and 2d, Joint Stock Land Banks.

The first of these types was provided in an effort to encourage coöperative banking among the farmers. Briefly, the following is an outline of the system. A federal Farm Loan Board of five members was empowered to establish twelve regional banks (capital stock $750,000 each, in $5.00 shares) in the twelve districts into which the country was divided. Each of these regional banks was authorized to loan funds, not to a farmer directly, but to Farm Loan Associations. These Farm Loan Associations were voluntary associations formed by groups of not less than ten farmers desiring credit and chartered by the bank. The Farm Loan Associations guaranteed the loans of its members and were required to invest in stock of the bank to the amount of 5 per cent of their aggregate loans; and the individual farmers were required to invest five per cent of their loans in the stock of the Farm Loan Association. The Farm Loan Bank received its money by issuing bonds (interest not over 5 per cent) up to an amount twenty times its capital stock and upon the security of its mortgage loans. The borrower (*i.e.*, the farmer) was protected against extortionate interest rates by a provision that the bank could not charge over 1 per cent more than the interest rate of its bonds. The expectation was that by successive investments of the Farm Loan Associations in each bank's stock, the banks of the system

would ultimately be owned by these Associations; and provision was made that as such investments in the separate banks reached an amount equal to the original capital stock, the original capital stock should be gradually retired. Retirement of this original stock would leave the Associations' stock outstanding and controlling.

The second type, The Joint Stock Land Bank, was provided for in the same bill, apparently in the fear that the coöperative credit idea would be slow in developing, and with the purpose of providing government authorized institutions of a more familiar type. A Joint Stock Bank could be organized with a capital stock of not less than $250,000, subscribed by individuals who invested their money for profit. Such a bank was under the supervision of the Federal Farm Loan Board (as were the Farm Loan Banks) and was limited to a maximum interest charge of 6 per cent, and in no case of over 1 per cent more than the interest rate of the bonds it issued. It was authorized to issue bonds to the amount of fifteen times its capital stock, likewise on the security of its farm mortgages. The profits of the Joint Stock Bank went to the stockholders.

Through these two systems of banks established in accordance with this Act, the agricultural interests of the country have received substantial assistance, over $890,000,000 through the Farm Loan Banks and $210,000,000 through the Joint Stock Land Banks. These sums amount to approximately one quarter of the total borrowings of the farming industry in the country.

2. Regulation of Commerce.—The next class of industrial regulation is the regulation of commerce. The governmental regulation of commerce is not new; in the form of tariffs and tolls it has existed since ancient times. The history of commerce in any state is inextricably bound up with the history of the tariff. The governmental tariffs on grain in England (the "corn laws") of the early nineteenth century, and the English navigation laws intended to insure supremacy in the

oceanic carrying trade to the English merchant marine, are striking examples of the governmental regulation of commerce.

United States: Interstate Commerce Commission and Commerce Court.—In the United States the government has exercised this optional function to an extraordinary degree in the matter of interstate commerce. By a law of February 4, 1887, as amended in subsequent acts down to 1920, an Interstate Commerce Commission of seven members appointed by the President has very extensive inquisitorial powers over the affairs of all common carriers between different commonwealths. Its chief duties are to prevent unjust discrimination by railroads among various shippers and to secure reasonable and just transportation charges. By a law of June 29, 1906 (Hepburn Act), the jurisdiction of the commission was extended to pipe lines conveying oil or any other commodity (except water or natural gas) and to express companies and sleeping car companies, and strict provision was made for the publication of rates, the supervision of accounts and records, etc.

By amendments in the Transportation Act of 1920, it is provided that the Commission shall establish such freight and passenger rates as will provide the railroads as a whole with a net operating income equal to 5½ or 6 per cent on the fair value of the property. Earnings in excess of 6 per cent are to be divided, half to be retained by the railroad as a reserve, and half to go to the government for building up a contingent fund. The Commission also has the power to fix minimum as well as maximum rates, and to pass on the division of through rates as between two or more railroads. Provision is made for combinations of railroads subject to the approval of the Commission; and the Commission is authorized and empowered to lay out a general plan for such combinations. The powers granted to the Interstate Commerce Commission are among those powers most bitterly criticized by the opponents of the extension of governmental functions.

Aid to Commerce and Commercial Business by Governmental Regulation.—It must not be thought that governments have always used their optional functions affecting commerce for the purpose of suppression. In the United States huge grants of land were made to railroads in former times to encourage them to extend their lines and develop the country; in England and Japan, at present, subsidies in one form or another are bestowed by the government upon certain steamship lines to encourage the increase of the merchant marine; and in the United States the government has at various times imposed protective tariffs to foster the beginnings and growth of home industries of certain types.

A peculiar form of the extension of governmental functions over commerce is to be observed in so-called "sumptuary" regulations and fiscal monopolies. Sumptuary regulations are regulations imposed with the primary purpose of preventing extravagance on the part of the people. Thus Switzerland monopolizes the manufacture of alcohol and certain alcoholic liquors and Japan monopolizes the commerce in opium in Formosa. In the latter case, the government intends, probably, to regulate the traffic to the point of suppression. Fiscal monopolies are enterprises monopolized by the state primarily for the revenue to be derived therefrom. Thus France monopolizes the manufacture of matches, cigarettes, and tobacco in general; Prussia, Austria, Italy, and Spain maintain public lotteries; and Japan has created fiscal monopolies in many articles of general consumption.

3. **Regulation of Business.**—The class of industrial regulation just discussed is closely akin to the next class, the class concerned with the regulation of business corporations. In this country, especially, the "trust" problem has been a live issue in recent times, and each step in the extension of governmental regulation has been fiercely fought.

The "trusts" in the United States.—A trust in the ordinary acceptance of the term is an organization or combination of a number of firms or corporations engaged in the same line of

business, such organization or combination being formed primarily to control the supply and price of its products. The trust may itself be a corporation, or it may consist of a number of persons or business corporations united by mutual contracts or agreements. The trust is, it is contended by many, a natural evolution of business. The waste due to keen competition among a number of business firms in the same line of business is only to be eliminated by the combination of these firms into one or by their operation under a mutual agreement with respect to territory, selling prices, etc. When the great trusts began to be formed in this country, they had many defenders; but the advantage that huge business combinations have taken of their size and money resources to stifle legitimate competition and thus create for themselves an absolute monopoly in production has caused a general revulsion of feeling. In general, it has become evident that to allow any combination of individuals to control the output of any necessity for a hundred millions of people is to give to that combination more power than it ought to have. Such a situation tends to result in a deterioration of product and a rise in price. Individual initiative for the invention of new and more efficient machinery required in such a business is stifled. The prices offered for the raw material used in the business may, where a single buyer may dictate its own figures, fall to almost ruinous levels. Stock may be issued to an amount far beyond the value of the combined plants ("stock watering") and figures may be juggled to deceive the stockholders. An unhealthy moral tone may result from continued business deception. A number of such combinations, controlling capital to a staggering amount, may easily exercise a control over the government itself.

In view of the possibilities and the facts, important legislation has been passed both by the federal government and by the commonwealth governments to check the formation of trusts and to accomplish the dissolution of such as were already formed. The most important of these laws is that known as the Sherman Anti-trust Act of 1890, by which, in the words of

section 1, "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract, or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court." In a succeeding section the act provides that any person injured by such a combination in restraint of interstate trade may recover threefold damages, with costs. Under the provisions of this Sherman Act, the government has actually caused the dissolution of two great corporations on the ground that they were trusts (the Standard Oil Company and the American Tobacco Company) and is at the present time carrying on cases in the courts against various others. The decisions of the Supreme Court in test cases will operate to allow efficiently managed and non-monopolistic trusts to exist, for great emphasis is laid on the "rule of reason" in construing the words *restraint of trade* in the Sherman Act. Apparently in the future the character of the acts of a combination rather than the form of organization will determine whether or not it is illegal.

Trusts in Foreign Countries.—The aggregation of business concerns into trusts is not confined to this country; in France, Austria, and Germany trusts in one form or another abound. In England the trusts have little influence, owing to the free-trade principles, which allow the unrestricted competition of foreign producers in the English markets. In Austria and Germany it is probable that trusts include as many industries and control as large a proportion of manufactures as they do in the United States. These industrial combinations are not checked by law in foreign countries to the extent they are in this country. France has a law prohibiting combinations of the chief producers with a view to controlling prices, but the law is not now rigorously enforced and there are many such

combinations. A somewhat similar situation exists in Austria, where, in spite of a law to the contrary, many great combinations exercise a marked control over prices and output. In Germany price agreements are legal, but if the prices fixed are unreasonable, the trust is liable to suit in the courts for extortion.

4. **Regulation of Labor.**—The last of the classes of industrial regulation is the governmental regulation of labor. Modern governments have gone to extraordinary lengths to protect the laborers of various types and in various kinds of work.

This regulation has been necessitated chiefly by the wholesale introduction of machinery and its results upon industrial conditions. Where communities formerly were rural and where each laborer owned his own means of production, suddenly huge factories housing the means of production for thousands sprang up and created cities. The home spinning wheel could not compete with the machine, and the laborer was forced to go into the factory and use the capitalist's machine to earn a living. All the power of economic life or death was thus suddenly delivered into the hands of the capitalists. They were careless of their employees' lives, for the empty places were soon filled. All the evils of child labor, too long hours of labor, unsanitary factories, improper protection against accidents, were allowed to flourish.

It required a generation of people enduring these conditions to arouse the public conscience. After conscience was once aroused and trustworthy investigations had revealed the true state of affairs, remedial legislation was soon passed. In England, where conditions were at one time the worst, there is now a complete set of laws securing the health and safety of the laborers and providing for periodical official inspections of the places used by the laborers. In other countries also, as France, Germany, and the United States, the government has extended its functions in the endeavor to secure the advantage of the laboring classes.

These protective labor laws are not only intended to protect the dependent laborer from the capitalist, but also to protect the laborer from the results of his own ignorance or carelessness. The ignorant laborer will allow his small children to work in the factory for the pittance that their wages add to his income; the government will not (in most states) allow children under a certain age to be employed except under the most favorable conditions. The ignorant or careless laborer will accept employment involving great risk, either without knowledge of the risk or with the belief that he will be lucky enough to escape. Here again the government intervenes with special laws covering employment in dangerous trades and with legislation placing the liability for disease, accident, or death upon the employer.

V. Public Safety Regulation

Public Safety Regulation.—The fifth great class of optional functions includes the various regulations which government enforces in its effort to conserve the public health and safety. In this present day, when the causes of the spread of disease are better understood than ever before, government exercises a control over sanitary conditions which it never attempted to exercise in previous eras; and now, with the spread of democracy, the life of each individual, however lowly, has its value, which government recognizes by a multitude of regulations intended to insure safety.

Sanitary Regulations.—The regulations with which we are all familiar are those which impose a quarantine upon persons suffering from a contagious disease and those which require vaccination or inoculation as a preventive to certain diseases. The national government provides that each ship that comes to its shores shall be inspected for the presence of contagious disease. In this country the federal government provides for the physical examination of all immigrants before they are allowed to land. Usually the local governments attend to the quarantine of persons with contagious disease in their locality.

Vaccination is commonly a requirement of the local government in communities, and is rigidly enforced among school children.

Under the head of public safety regulations we may classify the mass of prohibitive legislation which has, in recent years, found a place in the statute books of the various commonwealths of the United States and of the federal government itself. Within the last 30 years the evils of alcoholism have been generally recognized and vigorously combated through the medium of legislation prohibiting the manufacture and sale of fermented and spirituous beverages. Although many of the commonwealths of the United States have had prohibition for years, Russia was the first great state to adopt nation-wide prohibition. The manufacture and sale of vodka, which was a monopoly of the Russian government and from which a large revenue was derived, was stopped shortly after the outbreak of the World War. This step was taken as an economic measure to conserve the man-power of the nation for war purposes.

In the United States in January, 1919, the commonwealths ratified an amendment to the federal constitution prohibiting the manufacture, importation, and sale of alcoholic beverages. The strict enforcement of this amendment was provided for by the Volstead Act which limits the alcoholic content of beverages to one-half of 1 per cent. Prohibition is vigorously objected to on the ground that it is an infringement upon the liberty of the individual; and defended as a measure promoting the general welfare of the people.

Regulation of Morals.—Side by side with the physical health, government tries to protect the moral health of its people by the regulation of pictures, posters, and printed matter, and by strict supervision of theaters, dance halls, and the like. Such regulation is commonly undertaken by the local government.

Regulation of Businesses and Professions.—Another way in which the government extends its functions to safeguard health and life is by inspection of certain businesses and professions which closely affect the people. For example, the

sources of a community's milk supply come under government supervision; the businesses of baking, plumbing, and slaughtering are carried on under regulations imposed by the government. Doctors and dentists can secure the right to practice only by undergoing a governmental examination. Even the chauffeur must prove that he knows how to handle an automobile. In each case the extension of governmental functions is warranted by the fact that thus disease or accident may be avoided and lives saved.

In general, the people in the foremost countries have become accustomed to the interference of the government in their affairs, and tend to acknowledge that such interference is justifiable where it can be shown that the people as a whole may be benefited. People trust their own government more as they have come to wield a greater and greater influence over it. In the United States to-day, the mass of the people seem to desire an extension of the optional functions of government rather than the contraction of any of such functions which the government has already undertaken.

STATISTICS AND ILLUSTRATIVE CITATIONS

I

ENGLISH OLD AGE PENSION LAW

An Act to provide for Old Age Pensions
(1st August, 1908)

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Right to Receive Old Age Pension

1. (1) Every person in whose case the conditions laid down by this Act for the receipt of an old age pension (in this Act referred to as statutory conditions) are fulfilled, shall be entitled to receive such a pension under this Act so long as those conditions continue to be fulfilled, and so long as he is not disqualified under this Act for the receipt of the pension.

(2) An old age pension under this Act shall be at the rate set forth in the schedule to this Act.

(3) The sums required for the payment of old age pensions under this Act shall be paid out of moneys provided by Parliament.

(4) The receipt of an old age pension under this Act shall not deprive the pensioner of any franchise, right, or privilege or subject him to any disability.

Statutory Conditions for Receipt of Old Age Pension

2. The statutory conditions for the receipt of an old age pension by any person are—

(1) The person must have attained the age of seventy:

(2) The person must satisfy the pension authorities that for at least twenty years up to the date of the receipt of any sum on account of a pension he has been a British subject, and has

had his residence, as defined by regulations under this Act, in the United Kingdom:

(3) The person must satisfy the pension authorities that his yearly means as calculated under this Act do not exceed thirty-one pounds ten shillings.

Disqualification for Old Age Pension

3. (1) A person shall be disqualified for receiving or continuing to receive an old age pension under this Act, notwithstanding the fulfilment of the statutory conditions—

(*a*) While he is in receipt of any poor relief (other than relief excepted under this provision), and, until the thirty-first day of December nineteen hundred and ten unless Parliament otherwise determines, if he has at any time since the first day of January nineteen hundred and eight received, or hereafter receives, any such relief: Provided that for the purposes of this provision—

(*i*) any medical or surgical assistance (including food or comforts) supplied by or on the recommendation of a medical officer; or

(*ii*) any relief given to any person by means of the maintenance of any dependant of that person in any lunatic asylum, infirmary, or hospital, or the payment of any expenses of the burial of a dependant; or

(*iii*) any relief (other than medical or surgical assistance, or relief herein-before specifically exempted) which by law is expressly declared not to be a disqualification for registration as a parliamentary elector, or a reason for depriving any person of any franchise, right, or privilege; shall not be considered as poor relief:

(*b*) If, before he becomes entitled to a pension, he has habitually failed to work according to his ability, opportunity, and need, for the maintenance or benefit of himself and those legally dependent upon him:

Provided that a person shall not be disqualified under this paragraph if he has continuously for ten years up to attaining the age of sixty, by means of payments to friendly, provident, or other societies, or trade unions, or other approved steps, made such provision against old age, sickness, infirmity, or want or loss of employment as may be recognized as proper provision for the purpose by regulations under this Act, and any such provision, when made by the husband in the case of a

married couple living together, shall as respects any right of the wife to a pension, be treated as provision made by the wife as well as by the husband:

(*c*) While he is detained in any asylum within the meaning of the Lunacy Act, 1890,[1] or while he is being maintained in any place as a pauper or criminal lunatic:

(*d*) During the continuance of any period of disqualification arising or imposed in pursuance of this section in consequence of conviction for an offence.

(2) Where a person has been before the passing of this Act, or is after the passing of this Act, convicted of any offence, and ordered to be imprisoned without the option of a fine or to suffer any greater punishment, he shall be disqualified for receiving or continuing to receive an old age pension under this Act while he is detained in prison in consequence of the order, and for a further period of ten years after the date on which he is released from prison.

(3) Where a person of sixty years of age or upwards having been convicted before any court is liable to have a detention order made against him under the Inebriates Act, 1898,[2] and is not necessarily, by virtue of the provisions of this Act, disqualified for receiving or continuing to receive an old age pension under this Act, the court may, if they think fit, order that the person convicted be so disqualified for such period, not exceeding ten years, as the court direct.

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Commencement and Short Title

12. (1) A person shall not be entitled to the receipt of an old age pension under this Act until the first day of January nineteen hundred and nine and no such pension shall begin to accrue until that day.

(2) This Act may be cited as the Old Age Pensions Act, 1908.

[1] 53 & 54 Vict. c. 5.
[2] 61 & 62 Vict. c. 60.

Schedule

Means of Pensioner	Rate of Pension per Week	
Where the yearly means of the pensioner as calculated under this Act—	*s.*	*d.*
Do not exceed 21*l.*	5	0
Exceed 21*l.*, but do not exceed 23*l.* 12*s.* 6*d.*	4	0
Exceed 23*l.* 12*s.* 6*d.*, but do not exceed 26*l.* 5*s.*	3	0
Exceed 26*l.* 5*s.*, but do not exceed 28*l.* 17*s.* 6*d.*	2	0
Exceed 28*l.* 17*s.* 6*d.*, but do not exceed 31*l.* 10*s.*	1	0
Exceed 31*l.* 10*s.*	No pension	

II

The Sherman Anti-trust Act

Chap. 647.—An act to protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Persons Combining, Guilty of Misdemeanor

Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Persons Attempting to Monopolize, etc., Guilty of Misdemeanor

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars,

or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Trusts, etc., in Territories or District of Columbia Illegal

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination, or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Jurisdiction of United States Circuit Courts

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas to that end may be served in any district by the marshal thereof.

Trusts, etc., Property in Transit

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

Damages, Litigation, Recovery

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States, in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

"Person," or "Persons," Defined

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Approved, July 2, 1890.

(United States Statutes at Large, 51st Congress, 1889-1891.)

III

SUMMARY OF PARAGRAPHS IN, AND EXTRACTS FROM, THE ACT TO REGULATE COMMERCE, KNOWN AS THE INTERSTATE COMMERCE ACT [AMENDED BY PROVISIONS IN TRANSPORTATION ACT, 1920]

SECTION 1. [Summary. Provides that the provisions of the act apply (1) to corporations or persons engaged in the transportation of oil or other commodity except water and gas by

pipe lines, (2) to telegraph, telephone, and cable companies, (3) to railroads, (4) to express companies and sleeping car companies, in so far as any of these classes of carriers engage in an interstate business: and provides that such carriers furnish service at just and reasonable rates.]

SEC. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

SEC. 3. (1) That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic in any respect, whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

"(2) From and after July 1, 1920, no carrier by railroad subject to the provisions of this Act shall deliver or relinquish possession at designation of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to assure prompt payment of all such rates and charges and to prevent unjust discrimination: *Provided*, That the provisions of this paragraph shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any State or Territory or political subdivision thereof, or for the District of Columbia.

(3) All carriers, engaged in the transportation of pas-

sengers or property, subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic, between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.

"(4) If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including mainline track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be."

SEC. 4. [Summary. Provides that it shall be unlawful to charge more for a "short haul" than for a long haul, except in special cases approved by Interstate Commerce Commission.]

SEC. 5. (1) That, except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of section 1 of this Act, it shall be unlawful for any common carrier subject to this Act to enter

into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid each day of its continuance shall be deemed a separate offense; *Provided*, That whenever the Commission is of the opinion, after hearing upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this Act, or upon its own initiative, that the division of their traffic or earnings, to the extent indicated by the Commission, will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition, the Commission shall have authority by order to approve and authorize, if assented to by all the carriers involved, such division of traffic or earnings, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises.

(2) Whenever the Commission is of opinion, after hearing, upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this Act, that the acquisition, to the extent indicated by the Commission, by one of such carriers of the control of any other such carrier or carriers either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, will be in the public interest, the Commission shall have authority by order to approve and authorize such acquisition, under such rules and regulations and for such consideration and on such terms and conditions as shall be found by the Commission to be just and reasonable in the premises.

(3) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1) or (2), as it may deem necessary or appropriate.

(4) The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan, competition shall be preserved as fully

as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirements, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.

(5) When the Commission has agreed upon a tentative plan, it shall give the same due publicity and upon reasonable notice, including notice to the Governor of each State, shall hear all persons who may file or present objections thereto. The Commission is authorized to prescribe a procedure for such hearings and to fix a time for bringing them to a close. After the hearings are at an end, the Commission shall adopt a plan for such consolidation and publish the same; but it may at any time thereafter, upon its own motion or upon application, reopen the subject for such changes or modifications as in its judgment will promote the public interest. The consolidations herein provided for shall be in harmony with such plan.

(6) It shall be lawful for two or more carriers by railroad, subject to this Act, to consolidate their properties or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership, management, and operation, under the following conditions:

(*a*) The proposed consolidation must be in harmony with and in furtherance of the complete plan of consolidation mentioned in paragraph (5) and must be approved by the Commission.

(*b*) The bonds at par of the corporation which is to become the owner of the consolidated properties, together with the outstanding capital stock at par of such corporation, shall not exceed the value of the consolidated properties as determined by the Commission. The value of the properties sought to be consolidated shall be ascertained by the Commission under section 19a of this Act, and it shall be the duty of the Commission to proceed immediately to the ascertainment of such value for the properties involved in a proposed consolidation upon the filing of the application for such consolidation.

(c) Whenever two or more carriers propose a consolidation under this section, they shall present their application therefor to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties sought to be consolidated is situated and the carriers involved in the proposed consolidation, of the time and place for a public hearing. If after such hearing the Commission finds that the public interest will be promoted by the consolidation and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, with such modifications and upon such terms and conditions as it may prescribe, and thereupon upon such consolidation may be effected, in accordance with such order, if all the carriers involved assent thereto, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

(7) The power and authority of the Commission to approve and authorize the consolidation of two or more carriers shall extend and apply to the consolidation of four express companies into the American Railway Express Company, a Delaware corporation, if application for such approval and authority is made to the Commission within thirty days after the passage of this amendatory Act; and pending the decision of the Commission such consolidation shall not be dissolved.

(8) The carriers affected by any order made under the foregoing provisions of this section and any corporation organized to effect a consolidation approved and authorized in such order shall be, and they are hereby, relieved from the operation of the 'antitrust laws,' as designated in section 1 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and of all other restraints or prohibitions by law, State or Federal, in so far as may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the foregoing provisions of this section.

SEC. 6. [Summary. That the common carriers shall file with the Interstate Commerce Commission and make public their schedules showing all the rates, fares, and charges for transportation, that rates shall not be changed without due notice to the Commission, and that in time of war or threatened war preference and precedence shall be given to military needs.]

SEC. 7. [Summary. That it shall be unlawful to combine to prevent continuous shipment.]

SEC. 8. [Summary. That common carriers are liable to damages and costs in case of failure to observe the provisions of the law.]

SEC. 9. [Summary. That persons may complain to the Interstate Commerce Commission or bring suit in any district or circuit court in case they feel damaged by any common carrier.]

SEC. 10. [Summary. Prescribes the penalties for violations of the Act.]

SEC. 11. That a commission is hereby created and established to be known as the Interstate Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this Act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, Anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this Act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

NOTE.—By subsequent legislation (June 29, 1906) the Commission was enlarged to seven members, the terms were made seven years, and the pay was raised to $10,000 each.

SEC. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain

from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this Act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation. . . .

SEC. 13. [Summary. Provides for the manner of making complaints to the Commission and the manner in which complaints are to be served upon the carriers.]

SEC. 14. [Summary. Provides for reports to be made by the Commission.]

SEC. 15. (1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint, or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or

minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

(2) Except as otherwise provided in this Act, all orders of the Commission, other than orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force until, its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint, or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers, or property, or the maxima or minima, or maxima and minima, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the division of such rates, fares, or charges as herein after provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character; nor shall the Commission have the right to establish any route, classification, or practice, or any rate, fare, or charge when

the transportation is wholly by water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water.

(4) In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line), require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established: *Provided*, That in time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.

(5) Transportation wholly by railroad of ordinary livestock in car-load lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route, delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee or owner, except in cases where the unloading or reloading en route is at the request of the shipper, consignee or owner, or to try an intermediate market, or to comply with quarantine regulations. The Commission may prescribe or approve just and reasonable rules governing each of such excepted services. Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers now existing by virtue of law respecting the transportation of other than ordinary livestock, or the duty of performing service as to shipments other than those to or from public stockyards.

(6) When ever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust,

unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares, and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

(7) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, fare, or

charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If any such hearing cannot be concluded within the period of suspension, as above stated, the Commission may extend the time of suspension for a further period not exceeding thirty days, and if the proceeding has not been concluded and an order made at the expiration of such thirty days, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period, but, in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail to all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate, fare, or charge increased after January 1, 1910, or of a rate, fare, or charge sought to be increased after the passage of this Act, the burden of proof to show that the increased rate, fare, or charge, or proposed increased rate, fare, or charge, is just and reasonable shall be upon the carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

(8) In all cases where at the time of delivery of property to any railroad corporation being a common carrier for transportation subject to the provisions of this Act to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this Act provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Com-

merce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the same line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: *Provided,* however, That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported. . . .

(11) It shall be unlawful for any common carrier subject to the provisions of this Act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: *Provided,* That nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any state or federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

(12) Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars.

(13) If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

(14) The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act.

SEC. 16. [Summary. Provides means whereby the Commission may enforce its orders.]

SEC. 17. [Summary. Provides for rehearings of cases.]

SEC. 18. [Summary. Provides for salaries and expenses of Commission.]

SEC. 19. [Summary. Provides for principal office of Commission, and for special sessions and inquiries.]

SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, and from the owners of all railroads engaged in interstate commerce as defined in this Act; to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the numbers of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes there-

of; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first day of December in each year if the Commission by order substitute that period for the year ending June thirtieth, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required to do so, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the Commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within

the time fixed by the Commission, it shall be subject to the forfeitures last above provided.

Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this Act.

The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act.

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall wilfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or

approved by the Commission, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents or carriers which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them.

And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed.

Provided: That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

SEC. 20a. (1) That as used in this section the term "carrier" means a common carrier by railroad (except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation) which is subject to this Act, or any corporation organized for the purpose of engaging in transportation by railroad subject to this Act.

(2) From and after one hundred and twenty days after this section takes effect it shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed "securities") or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (*a*) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (*b*) is reasonably necessary and appropriate for such purpose.

(3) The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny

it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any securities so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of the foregoing paragraph (2).

(4) Every application for authority shall be made in such form and contain such matters as the Commission may prescribe. Every such application, as also every certificate of notification hereinafter provided for, shall be made under oath, signed and filed on behalf of the carrier by its president, a vice-president, auditor, comptroller, or other executive officer having knowledge of the matters therein set forth and duly designated for that purpose by the carrier.

(5) Whenever any securities set forth and described in any application for authority or certificate of notification as pledged or held unencumbered in the treasury of the carrier shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of by the carrier, such carrier shall, within ten days after such sale, pledge, repledge, or other disposition, file with the Commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the Commission.

(6) Upon receipt of any such application for authority the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which the applicant carrier operates. The railroad commissions, public service or utilities commissions, or other appropriate State authorities of the State shall have the right to make before the Commission such representations as they may deem just and proper for preserving and conserving the rights and interests of their people and the States, respectively, involved in such proceedings. The Commission may hold hearings, if it sees fit, to enable it to determine its decision upon the application for authority.

(7) The jurisdiction conferred upon the Commission by this section shall be exclusive and plenary, and a carrier may issue

securities and assume obligations or liabilities in accordance with the provisions of this section without securing approval other than as specified herein.

(8) Nothing herein shall be construed to imply any guaranty or obligation as to such securities on the part of the United States.

(9) The foregoing provisions of this section shall not apply to notes to be issued by the carrier maturing not more than two years after the date thereof and aggregating (together with all other then outstanding notes of a maturity of two years or less) not more than 5 per centum of the par value of the securities of the carrier then outstanding. In the case of securities having no par value, the par value for the purposes of this paragraph shall be the fair market value as of the date of issue. Within ten days after the making of such notes the carrier issuing the same shall file with the Commission a certificate of notification, in such form as may from time to time be determined and prescribed by the Commission, setting forth as nearly as may be the same matters as those required in respect of applications for authority to issue other securities: *Provided*, That in any subsequent funding of such notes the provisions of this section respecting other securities shall apply.

(10) The Commission shall require periodical or special reports from each carrier hereafter issuing any securities, including such notes, which shall show, in such detail as the Commission may require, the disposition made of such securities and the application of the proceeds thereof.

(11) Any security issued or any obligation or liability assumed by a carrier, for which under the provisions of this section the authorization of the Commission is required, shall be void, if issued or assumed without such authorization therefor having first been obtained, or if issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption; but no security issued or obligation or liability assumed in accordance with all the terms and conditions of such an order of authorization therefor as modified by any order supplemental thereto entered prior to such issuance or assumption, shall be rendered void because of failure to comply with any provision of this section relating to procedure and other matters preceding the entry of such order of authorization. If any security so made void or any security

in respect to which the assumption of obligation or liability is so made void, is acquired by any person for value and in good faith and without notice that the issue or assumption is void, such person may in a suit or action in any court of competent jurisdiction hold jointly and severally liable for the full amount of the damage sustained by him in respect thereof, the carrier which issued the security so made void, or assumed the obligation or liability so made void, and its directors, officers, attorneys, and other agents, who participated in any way in the authorizing, issuing, hypothecating, or selling of the security so made void or in the authorizing of the assumption of the obligation or liability so made void. In case any security so made void was directly acquired from the carrier issuing it the holder may at his option rescind the transaction and upon the surrender of the security recover the consideration given therefor. Any director, officer, attorney or agent of the carrier who knowingly assents to or concurs in any issue of securities or assumptions of obligation or liability forbidden by this section, or any sale or other disposition of securities contrary to the provisions of the Commission's order or orders in the premises, or any application not authorized by the Commission of the funds derived by the carrier through such sale or other disposition of such securities, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $1,000 nor more than $10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

(12) After December 31, 1921, it shall be unlawful for any person to hold the position of officer or director of more than one carrier, unless such holding shall have been authorized by order of the Commission, upon due showing, in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby. After this section takes effect it shall be unlawful for any officer or director of any carrier to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of an operating carrier from any funds properly included in capital account. Any violation of these provisions shall be a misdemeanor, and on conviction in any United

States court having jurisdiction shall be punished by a fine of not less than $1,000 nor more than $10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

SEC. 21. [Summary. Provides for annual reports.]

SEC. 22. [Summary. Provides for carrying of certain classes of persons or property that may be carried free or at reduced rates.]

SEC. 23. [Summary. Provides for the jurisdiction of the United States courts to issue writs of mandamus commanding common carriers to move traffic, or furnish transportation for an applicant.]

IV

EXCERPTS FROM THE TRANSPORTATION ACT, 1920

New Loans to Railroads

SEC. 210. (*a*) For the purpose of enabling carriers by railroad subject to the Interstate Commerce Act properly to serve the public during the transition period immediately following the termination of Federal control, any such carrier may, at any time after the passage of this Act and before the expiration of two years after the termination of Federal control, make application to the Commission for a loan from the United States, setting forth the amount of the loan and the term for which it is desired, the purpose of the loan and the uses to which it will be applied, the present and prospective ability of the applicant to repay the loan and meet the requirements of its obligations in that regard, the character and value of the security offered, and the extent to which the public convenience and necessity will be served. The application shall be accompanied by statements showing such facts and details as the Commission may require with respect to the physical situation, ownership, capitalization, indebtedness, contract obligations, operation, and earning power of the applicant, together with such other facts relating to the propriety and expediency of granting the loan applied for and the ability of the applicant to make good the obligation, as the Commission may deem pertinent to the inquiry.

(*b*) If the Commission, after such hearing and investigation, with or without notice, as it may direct, finds that the making, in whole or in part, of the proposed loan by the United States is necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant and the character and value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor, and to meet its other obligations in connection with such loan, the Commission may certify to the Secretary of the Treasury its findings of fact and its recommendations as to: the amount of the loan which is to be made; the time, not exceeding five years from the making thereof, within which it is to be repaid; the character of the security which is to be offered therefor; and the terms and conditions of the loan.

(*c*) Upon receipt of such certificate from the Commission, the Secretary of the Treasury, at any time before the expiration of twenty-six months after the termination of Federal control, is authorized to make a loan, not exceeding the maximum amount recommended in such certificate, out of any moneys in the revolving fund provided for in this section. All such loans shall bear interest at the rate of 6 per centum per annum, payable semiannually to the Secretary of the Treasury and to be placed to the credit of the revolving fund provided for in this section. The time, not exceeding five years from the making thereof, within which such loan is to be repaid, the security which is to be taken therefor, which shall be adequate to secure the loan, the terms and conditions of the loan, and the form of the obligation to be entered into, shall be prescribed by the Secretary of the Treasury.

(*d*) The Commission or the Secretary of the Treasury may call upon the Federal Reserve Board for advice and assistance with respect to any such application or loan.

(*e*) There is hereby appropriated out of any moneys in the Treasury not otherwise appropriated the sum of $300,000,000, which shall be used as a revolving fund for the purpose of making the loans provided for in this section, and for paying the judgments, decrees, and awards referred to in subdivision (e) of section 206.

(*f*) A carrier may issue evidences of indebtedness to the United States pursuant to this section without the authorization or approval of any authority, State or Federal, and with-

out compliance with any requirement, State or Federal, as to notification.

SEC. 301. It shall be the duty of all carriers, and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the board which under the provisions of this title is authorized to hear and decide such dispute.

SEC. 302. Railroad Boards of Labor Adjustment may be established by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees or subordinate officials of carriers, or organization or group of organizations thereof.

SEC. 303. Each such Adjustment Board shall, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon the written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, (3) upon the Adjustment Board's own motion, or (4) upon the request of the Labor Board whenever such board is of the opinion that the dispute is likely substantially to interrupt commerce, receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving only grievances, rules, or working conditions, not decided as provided in section 301, between the carrier and its employees or subordinate officials, who are, or any organization thereof which is, in accordance with the provisions of section 302, represented upon any such Adjustment Board.

SEC. 304. There is hereby established a board to be known as the "Railroad Labor Board" and to be composed of nine members as follows:

(1) Three members constituting the labor group, representing the employees and subordinate officials of the carriers, to be appointed by the President, by and with the advice and con-

sent of the Senate, from not less than six nominees whose nominations shall be made and offered by such employees in such manner as the Commission shall by regulation prescribe;

(2) Three members, constituting the management group, representing the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by the carriers in such manner as the Commission shall by regulation prescribe; and

(3) Three members, constituting the public group, representing the public, to be appointed directly by the President, by and with the advice and consent of the Senate.

Any vacancy on the Labor Board shall be filled in the same manner as the original appointment.

SEC. 305. If either the employees or the carriers fail to make nominations and offer nominees in accordance with the regulations of the Commission, as provided in paragraphs (1) and (2) of section 304, within thirty days after the passage of this Act in case of any original appointment to the office of member of the Labor Board, or in case of a vacancy in any such office within fifteen days after such vacancy occurs, the President shall thereupon directly make the appointment, by and with the advice and consent of the Senate. In making any such appointment the President shall, as far as he deems it practicable, select an individual associated in interest with the carriers or employees thereof, whichever he is to represent.

SEC. 306. (*a*) Any member of the Labor Board who during his term of office is an active member or in the employ of or holds any office in any organization of employees or subordinate officials, or any carrier, or owns any stock or bond thereof, or is pecuniarily interested therein, shall at once become ineligible for further membership upon the Labor Board; but no such member is required to relinquish honorary membership in, or his rights in any insurance or pension or other benefit fund maintained by, any organization of employees or subordinate officials or by a carrier.

(*b*) Of the original members of the Labor Board, one from each group shall be appointed for a term of three years, one for two years, and one for one year. Their successors shall hold office for terms of five years, except that any member appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Each

member shall receive from the United States an annual salary of $10,000. A member may be removed by the President for neglect of duty or malfeasance in office, but for no other cause.

SEC. 307. (*a*) The Labor Board shall hear, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions, in respect to which any Adjustment Board certifies to the Labor Board that in its opinion the Adjustment Board has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board has so failed or is not using due diligence in its consideration thereof. In case the appropriate Adjustment Board is not organized under the provisions of section 302, the Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions which is not decided as provided in section 301 and which such Adjustment Board would be required to receive for hearing and decision under the provisions of section 303.

(*b*) The Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, all disputes with respect to the wages or salaries of employees or subordinate officials of carriers, not decided as provided in section 301. The Labor Board may upon its own motion within ten days after the decision, in accordance with the provisions of section 301, of any dispute with respect to wages or salaries of employees or subordinate officials of carriers, suspend the operation of such decision if the Labor

Board is of the opinion that the decision involves such an increase in wages or salaries as will be likely to necessitate a substantial readjustment of the rates of any carrier. The Labor Board shall hear any decision so suspended and as soon as practicable with due diligence decide to affirm or modify such suspended decision.

(*c*) A decision by the Labor Board under the provisions of paragraphs (a) or (b) of this section shall require the concurrence therein of at least 5 of the 9 members of the Labor Board: *Provided,* That in case of any decision under paragraph (b), at least one of the representatives of the public shall concur in such decision. All decisions of the Labor Board shall be entered upon the records of the board and copies thereof, together with such statement of facts bearing thereon as the board may deem proper, shall be immediately communicated to the parties to the dispute, the President, each Adjustment Board, and the Commission, and shall be given further publicity in such manner as the Labor Board may determine.

(*d*) All the decisions of the Labor Board in respect to wages or salaries and of the Labor Board or an Adjustment Board in respect to working conditions of employees or subordinate officials of carriers shall establish rates of wages and salaries and standards of working conditions which in the opinion of the board are just and reasonable. In determining the justness and reasonableness of such wages and salaries or working conditions the board shall, so far as applicable, take into consideration among other relevant circumstances:

(1) The scales of wages paid for similar kinds of work in other industries;

(2) The relation between wages and the cost of living;

(3) The hazards of the employment;

(4) The training and skill required;

(5) The degree of responsibility;

(6) The character and regularity of the employment; and

(7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments.

SEC. 308. The Labor Board—

(1) Shall elect a chairman by majority vote of its members;

(2) Shall maintain central offices in Chicago, Illinois, but the Labor Board may, whenever it deems it necessary, meet at such other place as it may determine;

(3) Shall investigate and study the relations between car-

riers and their employees, particularly questions relating to wages, hours of labor, and other conditions of employment and the respective privileges, rights, and duties of carriers and employees, and shall gather, compile, classify, digest, and publish, from time to time, data and information relating to such questions to the end that the Labor Board may be properly equipped to perform its duties under this title and that the members of the Adjustment Boards and the public may be properly informed;

(4) May make regulations necessary for the efficient execution of the functions vested in it by this title; and

(5) Shall at least annually collect and publish the decisions and regulations of the Labor Board and the Adjustment Boards and all court and administrative decisions and regulations of the Commission in respect to this title, together with a cumulative index-digest thereof.

SEC. 309. Any party to any dispute to be considered by an Adjustment Board or by the Labor Board shall be entitled to a hearing either in person or by counsel.

SEC. 310. (*a*) For the efficient administration of the functions vested in the Labor Board by this title, any member thereof may require, by subpœna issued and signed by himself, the attendance of any witness and the production of any book, paper, document, or other evidence from any place in the United States at any designated place of hearing, and the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition the testimony shall be reduced to writing by the person taking the deposition or, under his direction, and shall be subscribed to by the deponent. Any member of the Labor Board may administer oaths and examine any witness. Any witness summoned before the board and any witness whose deposition is taken shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(*b*) In case of failure to comply with any subpœna or in case of the contumacy of any witness appearing before the Labor Board, the board may invoke the aid of any United States district court. Such court may thereupon order the witness to comply with the requirements of such subpœna, or to give evidence touching the matter in question, as the case may be. Any failure to obey such order may be punished by such court as a contempt thereof.

(c) No person shall be excused from so attending and testifying or deposing, nor from so producing any book, paper, document, or other evidence on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, as to which in obedience to a subpœna and under oath, he may so testify or produce evidence, documentary or otherwise. But no person shall be exempt from prosecution or punishment for perjury committed in so testifying.

SEC. 311. (*a*) When necessary to the efficient administration of the functions vested in the Labor Board by this title, any member, officer, employee, or agent thereof, duly authorized in writing by the board, shall at all reasonable times for the purpose of examination have access to and the right to copy any book, account, record, paper, or correspondence relating to any matter which the board is authorized to consider or investigate. Any person who upon demand refuses any duly authorized member, officer, employee, or agent of the Labor Board such right of access or copying, or hinders, obstructs, or resists him in the exercise of such right, shall upon conviction thereof be liable to a penalty of $500 for each offense. Each day during any part of which such offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

(*b*) Every officer or employee of the United States, whenever requested by any member of the Labor Board or an Adjustment Board duly authorized by the board for the purpose, shall supply to such board any data or information pertaining to the administration of the functions vested in it by this title, which may be contained in the records of his office.

(*c*) The President is authorized to transfer to the Labor Board any books, papers, or documents pertaining to the administration of the functions vested in the board by this title, which are in the possession of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal

Control Act and which are no longer necessary to the administration of the affairs of such agency.

SEC. 312. Prior to September 1, 1920, each carrier shall pay to such employee or subordinate official thereof wages or salary at a rate not less than that fixed by the decision of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act, in effect in respect to such employee or subordinate official immediately preceding 12.01 a. m. March 1, 1920. Any carrier acting in violation of any provision of this section shall upon conviction thereof be liable to a penalty of $100 for each such offense. Each such action with respect to any such employee or subordinate official and each day or portion thereof during which the offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

SEC. 313. The Labor Board, in case it has reason to believe that any decision of the Labor Board or of an Adjustment Board is violated by any carrier, or employee or subordinate official, or organization thereof, may upon its own motion after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine.

SEC. 314. The Labor Board may (1) appoint a secretary, who shall receive from the United States an annual salary of $5,000; and (2) subject to the provisions of the civil-service laws, appoint and remove such officers, employees, and agents; and make such expenditures for rent, printing, telegrams, telephone, law books, books of reference, periodicals, furniture, stationery, office equipment, and other supplies and expenses, including salaries, traveling expenses of its members, secretary, officers, employees, and agents, and witness fees, as are necessary for the efficient execution of the functions vested in the board by this title and as may be provided for by Congress from time to time. All of the expenditures of the Labor Board shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the chairman of the Labor Board.

SEC. 315. There is hereby appropriated for the fiscal year

ending June 30, 1920, out of any money in the Treasury not otherwise appropriated, the sum of $50,000, or so much thereof as may be necessary, to be expended by the Labor Board, for defraying the expenses of the maintenance and establishment of the board, including the payment of salaries as provided in this title.

APPENDIX A

FRANCE

CONSTITUTIONAL LAWS

I

CONSTITUTIONAL LAW ON THE ORGANIZATION OF THE PUBLIC POWERS

(February 25, 1875)

ARTICLE 1. The legislative power shall be exercised by two assemblies: the Chamber of Deputies and the Senate.

The Chamber of Deputies shall be elected by universal suffrage, under the conditions determined by the electoral law.

The composition, the method of election, and the powers of the Senate shall be regulated by a special law.[1]

ART. 2. The President of the Republic shall be chosen by an absolute majority of votes of the Senate and Chamber of Deputies united in National Assembly.

He shall be elected for seven years. He is re-eligible.

ART. 3. The President of the Republic shall have the initiative of laws, concurrently with the members of the two chambers. He shall promulgate the laws when they have been voted by the two chambers; he shall look after and secure their execution.

He shall have the right of pardon; amnesty may only be granted by law.

He shall dispose of the armed force.

He shall appoint to all civil and military positions.

He shall preside over state functions; envoys and ambassadors of foreign powers shall be accredited to him.

[1] See constitutional law of February 24, 1875, and law of December 9, 1884, pp. 451, 456.

Every act of the President of the Republic shall be countersigned by a minister.

ART. 4. As vacancies occur on and after the promulgation of the present law, the President of the Republic shall appoint, in the Council of Ministers, the councilors of state in regular service.

The councilors of state thus chosen may be dismissed only by decree rendered in the Council of Ministers.

The councilors of state chosen by virtue of the law of May 24, 1872, shall not, before the expiration of their powers, be dismissed except in the manner provided by that law. After the dissolution of the National Assembly, they may be dismissed only by resolution of the Senate.[1]

ART. 5. The President of the Republic may, with the advice of the Senate, dissolve the Chamber of Deputies before the legal expiration of its term.

In that case the electoral colleges shall be summoned for new elections within the space of two months, and the Chamber within the ten days following the close of the elections.[2]

ART. 6. The ministers shall be collectively responsible to the chambers for the general policy of the government, and individually for their personal acts.

The President of the Republic shall be responsible only in case of high treason.[3]

ART. 7. In case of vacancy by death or for any other reason, the two chambers assembled together shall proceed at once to the election of a new President.

In the meantime the Council of Ministers shall be vested with the executive power.[4]

ART. 8. The chambers shall have the right by separate resolutions, taken in each by an absolute majority of votes, either upon their own initiative or upon the request of the President of the Republic, to declare a revision of the constitutional laws necessary.

After each of the two chambers shall have come to this de-

[1] By the law of May 24, 1872, councilors of state were elected by the National Assembly for a term of nine years. This clause therefore ceased to have any application after 1881.

[2] As amended by Art. 1 of the constitutional law of August 14, 1884. See p. 456.

[3] See Art. 12 of the constitutional law of July 16, 1875, p. 455.

[4] See Art. 3 of the constitutional law of July 16, 1875, p. 453.

cision, they shall meet together in National Assembly to proceed with the revision.

The acts affecting revision of the constitutional laws, in whole or in part, shall be passed by an absolute majority of the members composing the National Assembly.

During the continuance, however, of the powers conferred by the law of November 20, 1873, upon Marshal de MacMahon, this revision shall take place only upon the initiative of the President of the Republic. [The republican form of government shall not be made the subject of a proposed revision. Members of families that have reigned in France are ineligible to the presidency of the Republic.[1]]

ART. 9. The seat of the executive power and of the two chambers is at Versailles.[2]

II

CONSTITUTIONAL LAW ON THE ORGANIZATION OF THE SENATE[3]

(February 24, 1875)

ARTICLE 1. The Senate shall consist of three hundred members: two hundred and twenty-five elected by the departments and colonies, and seventy-five elected by the National Assembly.

ART. 2. The departments of the Seine and of the Nord shall each elect five senators.

The following departments shall elect four senators each: Seine-Inférieure, Pas-de-Calais, Gironde, Rhône, Finistère, Côtes-du-Nord.

The following departments shall elect three senators each: Loire-Inférieure, Saône-et-Loire, Ille-et-Vilaine, Seine-et-Oise, Isère, Puy-de-Dôme, Somme, Bouches-du-Rhône, Aisne, Loire, Manche, Maine-et-Loire, Morbihan, Dordogne, Haute-Garonne, Charente-Inférieure, Calvados, Sarthe, Hérault, Basses-Pyrénées, Gard, Aveyron, Vendée, Orne, Oise, Vosges, Allier.

[1] As amended by Art. 2 of the constitutional law of August 14, 1884.
[2] Repealed by constitutional law of June 21, 1879. See law of July 22, 1879, p. 456.
[3] Arts. 1 to 7 of this law were deprived of their constitutional character by the constitutional law of August 14, 1884, and were repealed by law of December 9, 1884. See pp. 456, 458ff.

All the other departments shall elect two senators each.

The following shall elect one senator each: the territory of Belfort, the three departments of Algeria, the four colonies of Martinique, Guadeloupe, Réunion, and the French Indies.

ART. 3. No one shall be a senator unless he is a French citizen at least forty years of age, and in the enjoyment of civil and political rights.

ART. 4. The senators of the departments and of the colonies shall be elected by an absolute majority and by *scrutin de liste*, by a college meeting at the capital of the department or colony and composed:

(1) of the deputies;

(2) of the general councilors;

(3) of the arrondissement councilors;

(4) of delegates elected, one by each municipal council, from among the voters of the commune.

In the French Indies the members of the colonial council or of the local councils are substituted for the general councilors, arrondissement councilors, and delegates from the municipal councils.

They shall vote at the seat of government of each district.

ART. 5. The senators chosen by the Assembly shall be elected by *scrutin de liste* and by an absolute majority of votes.

ART. 6. The senators of the departments and of the colonies shall be elected for nine years and renewable by thirds every three years.

At the beginning of the first session the departments shall be divided into three series containing each an equal number of senators. It shall be determined by lot which series shall be renewed at the expiration of the first and second triennial periods.

ART. 7. The senators elected by the Assembly are irremovable.

Vacancies by death, by resignation, or for any other cause, shall, within the space of two months, be filled by the Senate itself.

ART. 8. The Senate shall have, concurrently with the Chamber of Deputies, the power to initiate and to pass laws. Money bills, however, shall first be introduced in and passed by the Chamber of Deputies.

ART. 9. The Senate may be constituted a Court of Justice to try either the President of the Republic or the ministers, and

to take cognizance of attacks made upon the safety of the state.

ART. 10. Elections to the Senate shall take place one month before the time fixed by the National Assembly for its own dissolution. The Senate shall organize and enter upon its duties the same day that the National Assembly is dissolved.

ART. 11. The present law shall be promulgated only after the passage of the law on the public powers.

III

CONSTITUTIONAL LAW ON THE RELATIONS OF THE PUBLIC POWERS

(July 16, 1875)

ARTICLE 1. The Senate and the Chamber of Deputies shall assemble each year on the second Tuesday of January, unless convened earlier by the President of the Republic.

The two chambers shall continue in session at least five months each year. The sessions of the two chambers shall begin and end at the same time.

On the Sunday following the opening of the session, public prayers shall be addressed to God in the churches and temples, to invoke his aid in the labors of the chambers.[1]

ART. 2. The President of the Republic pronounces the closing of the session. He may convene the chambers in extraordinary session. He shall convene them if, during the recess, an absolute majority of the members of each chamber request it.

The President may adjourn the chambers. The adjournment, however, shall not exceed one month, nor take place more than twice in the same session.

ART. 3. One month at least before the legal expiration of the powers of the President of the Republic, the chambers shall be called together in National Assembly to proceed to the election of a new President.

In default of a summons, this meeting shall take place, as of right, the fifteenth day before the expiration of the term of the President.

[1] This clause was repealed by the constitutional law of August 14, 1884.

In case of the death or resignation of the President of the Republic, the two chambers shall assemble immediately, as of right.

In case the Chamber of Deputies, in consequence of Art. 5 of the law of February 25, 1875, is dissolved at the time when the presidency of the Republic becomes vacant, the electoral colleges shall be convened at once, and the Senate shall assemble as of right.

ART. 4. Every meeting of either of the two chambers which shall be held at a time when the other is not in session is illegal and void, except in the case provided for in the preceding article, and that when the Senate meets as a court of justice; in the latter case, judicial duties alone shall be performed.

ART. 5. The sittings of the Senate and of the Chamber of Deputies shall be public.

Nevertheless either chamber may meet in secret session, upon the request of a fixed number of its members, determined by the rules.

It shall then decide by absolute majority whether the sitting shall be resumed in public upon the same subject.

ART. 6. The President of the Republic communicates with the chambers by messages, which shall be read from the tribune by a minister.

The ministers shall have entrance to both chambers, and shall be heard when they request it. They may be assisted, for the discussion of a specific bill, by commissioners named by decree of the President of the Republic.

ART. 7. The President of the Republic shall promulgate the laws within the month following the transmission to the government of the law finally passed. He shall promulgate, within three days, laws the promulgation of which shall have been declared urgent by an express vote of each chamber.

Within the time fixed for promulgation the President of the Republic may, by a message with reasons assigned, request of the two chambers a new discussion, which cannot be refused.

ART. 8. The President of the Republic shall negotiate and ratify treaties. He shall give information regarding them to the chambers as soon as the interests and safety of the state permit.

Treaties of peace and of commerce, treaties which involve the finances of the state, those relating to the person and property

of French citizens in foreign countries, shall be ratified only after having been voted by the two chambers.

No cession, exchange, or annexation of territory shall take place except by virtue of a law.

ART. 9. The President of the Republic shall not declare war without the previous consent of the two chambers.

ART. 10. Each chamber shall be the judge of the eligibility of its members, and of the regularity of their election; it alone may receive their resignation.

ART. 11. The bureau[1] of each chamber shall be elected each year for the entire session, and for every extraordinary session which may be held before the regular session of the following year.

When the two chambers meet together as a National Assembly, their bureau shall be composed of the president, vice-presidents, and secretaries of the Senate.

ART. 12. The President of the Republic may be impeached by the Chamber of Deputies only, and may be tried only by the Senate.

The ministers may be impeached by the Chamber of Deputies for offenses committed in the performance of their duties. In this case they shall be tried by the Senate.

The Senate may be constituted into a court of justice, by a decree of the President of the Republic, issued in the Council of Ministers, to try all persons accused of attempts upon the safety of the state.

If proceedings should have been begun in the regular courts, the decree convening the Senate may be issued at any time before the granting of a discharge.

A law shall determine the method of procedure for the accusation, trial, and judgment.

ART. 13. No member of either chamber shall be prosecuted or held responsible on account of any opinions expressed or votes cast by him in the performance of his duties.

ART. 14. No member of either chamber shall, during the session, be prosecuted or arrested for any offense or misdemeanor,

[1] The bureau of the Senate consists of a president, four vice-presidents, eight secretaries, and three questors; the bureau of the Chamber of Deputies has the same composition.

except upon the authority of the chamber of which he is a member, unless he be taken in the very act.

The detention or prosecution of a member of either chamber shall be suspended for the session, and for the entire term of the chamber, if the chamber requires it.

IV

CONSTITUTIONAL LAW PARTIALLY REVISING THE CONSTITUTIONAL LAWS[1]

(August 14, 1884)

ARTICLE 1. Paragraph 2 of Art. 5 of the constitutional law of February 25, 1875, on the Organization of the Public Powers, is amended as follows:

"In that case the electoral colleges shall meet for new elections within two months and the Chamber within the ten days following the close of the elections."

ART. 2. To paragraph 3 of Art. 8 of the same law of February 25, 1875, is added the following:

"The republican form of government shall not be made the subject of a proposed revision.

"Members of families that have reigned in France are ineligible to the presidency of the Republic."

ART. 3. Arts. 1 to 7 of the constitutional law of February 24, 1875, on the Organization of the Senate, shall no longer have a constitutional character.[2]

ART. 4. Paragraph 3 of Art. 1 of the constitutional law of July 16, 1875, on the Relation of the Public Powers, is repealed.

V

LAW RELATING TO THE SEAT OF THE EXECUTIVE POWER AND OF THE TWO CHAMBERS AT PARIS

(July 22, 1879)

ARTICLE 1. The seat of the executive power and of the two chambers is at Paris.

[1] The amendments to the constitutional laws have also been inserted in their proper places.

[2] These articles were repealed by way of ordinary legislation, on December 9, 1884; see p. 458ff.

ART. 2. The palace of the Luxemburg and the Palais-Bourbon are assigned, the first to the use of the Senate, and the second to that of the Chamber of Deputies.

Nevertheless each of the chambers is authorized to choose, in the city of Paris, the palace which it wishes to occupy.

ART. 3. The various parts of the palace of Versailles now occupied by the Senate and the Chamber of Deputies shall preserve their arrangements.

Whenever, according to Arts. 7 and 8 of the law of February 25, 1875, on the organization of the public powers, a meeting of the National Assembly takes place, it shall sit at Versailles, in the present hall of the Chamber of Deputies.

Whenever, according to Art. 9 of the law of February 24, 1875, on the organization of the Senate, and Art. 12 of the constitutional law of July 16, 1875, on the relations of the public powers, the Senate shall be called upon to constitute itself a court of justice, it shall indicate the town and place where it proposes to sit.

ART. 4. The Senate and Chamber of Deputies shall sit at Paris on and after November 3 next.

ART. 5. The presidents of the Senate and of the Chamber of Deputies are charged with the duty of securing the external and internal safety of the chambers over which they preside.

For this purpose they shall have the right to call upon the armed forces and upon authorities whose assistance they consider necessary.

Such requisitions may be addressed directly to all officers, commanders, or officials, who are bound to obey immediately, under the penalties established by the laws.

The presidents of the Senate and of the Chamber of Deputies may delegate to the questors or to one of them their right of demanding aid.

ART. 6. Petitions to either of the chambers shall be made and presented only in writing. It is forbidden to present them in person or at the bar.

ART. 7. Every violation of the preceding article, every provocation, by public speeches, by writings, or by printed matter, posted or distributed, to a crowd upon the public ways, having for its object the discussion, drawing up, or carrying to the cham-

bers or to either of them, of petitions, declarations, or addresses, shall be punished by the penalties enumerated in paragraph 1 of Art. 5 of the law of June 7, 1848, whether or not any results follow from such actions.

ART. 8. The preceding provisions do not diminish the force of the law of June 7, 1848, on riotous assemblies.

ART. 9. Art. 463 of the Penal Code is applicable to the offenses mentioned in the present law.

VI

LAW AMENDING THE ORGANIC LAWS ON THE ORGANIZATION OF THE SENATE AND THE ELECTION OF SENATORS

(December 9, 1884)

ARTICLE 1. The Senate shall be composed of three hundred members, elected by the departments and the colonies.

The present members, without any distinction between senators elected by the National Assembly or by the Senate and those elected by the departments and colonies, shall retain their offices during the time for which they have been chosen.

ART. 2. The department of the Seine shall elect ten senators.

The department of the Nord shall elect eight senators.

The following departments shall elect five senators each: Côtes-du-Nord, Finistère, Gironde, Ille-et-Vilaine, Loire, Loire-Inférieure, Pas-de-Calais, Rhône, Saône-et-Loire, Seine-Inférieure.

The following departments shall elect four senators each: Aisne, Bouches-de-Rhône, Charente-Inférieure, Dordogne, Haute-Garonne, Isère, Maine-et-Loire, Manche, Morbihan, Puy-de-Dôme, Seine-et-Oise, Somme.

The following departments shall elect three senators each: Ain, Allier, Ardèche, Ardennes, Aube, Aude, Aveyron, Calvados, Charente, Cher, Corrèze, Corse, Côte-d'Or, Creuse, Doubs, Drôme, Eure, Eure-et-Loire, Gard, Gers, Hérault, Indre, Indre-et-Loire, Jura, Landes, Loire-et-Cher, Haute-Loire, Loiret, Lot, Lot-et-Garonne, Marne, Haute-Marne, Mayenne, Meurthe-et-Moselle, Meuse, Nièvre, Oise, Orne, Basses-Pyrénées, Haute-Saône, Sarthe,

Savoie, Haute-Savoie, Seine-et-Marne, Deux-Sèvres, Tern, Var, Vendée, Vienne, Haute-Vienne, Vosges, Yonne.

The following departments shall elect two senators each: Basses-Alpes, Hautes-Alpes, Alpes-Maritimes, Ariège, Cantal, Lozère, Hautes-Pyrénées, Pyrénées-Orientales, Tarn-et-Garonne, Vaucluse.

The following shall elect one senator each: The territory of Belfort, the three departments of Algeria, the four colonies: Martinique, Guadeloupe, Réunion, and French Indies.

ART. 3. In the departments where the number of senators is increased by the present law, the increase shall take effect as vacancies occur among the life senators.

For this purpose, within a week after the vacancy occurs, it shall be determined by lot in public session what department shall be called upon to elect a senator.

This election shall take place within three months of the determination by lot. However, if the vacancy occurs within six months preceding the triennial election, the vacancy shall not be filled until that election.

The term of office in case of a special election shall expire at the same time as that of the other senators belonging to the same department.

ART. 4. No one shall be a senator unless he is a French citizen at least forty years of age and in the enjoyment of civil and political rights.[1]

Members of families that have reigned in France are ineligible to the Senate.

ART. 5. The soldiers of the land and naval forces shall not be elected Senators.

There are excepted from this provision:

(1) The marshals of France and admirals.

(2) The general officers maintained without limit of age in the first section of the list of the general staff and not provided with a command.

(3) The general officers placed in the second section of the list of the general staff.

[1] By law of July 20, 1895, no one may become a member of Parliament unless he has complied with the law regarding military service.

(4) Members of the land and naval forces who belong either to the reserve of the active army or to the territorial army.

ART. 6. Senators shall be elected by *scrutin de liste,* by a college meeting at the capital of the department or of the colony, and composed:

(1) of the deputies;

(2) of the general councilors;

(3) of the councilors of the arrondissement;

(4) of delegates elected from among the voters of the commune, by each municipal council.

Councils composed of ten members shall elect one delegate.

Councils composed of twelve members shall elect two delegates.

Councils composed of sixteen members shall elect three delegates.

Councils composed of twenty-one members shall elect six delegates.

Councils composed of twenty-three members shall elect nine delegates.

Councils composed of twenty-seven members shall elect twelve delegates.

Councils composed of thirty members shall elect fifteen delegates.

Councils composed of thirty-two members shall elect eighteen delegates.

Councils composed of thirty-four members shall elect twenty-one delegates.

Councils composed of thirty-six members or more shall elect twenty-four delegates.

The Municipal Council of Paris shall elect thirty delegates.

In the French Indies the members of the local councils shall take the place of councilors of the arrondissement. The municipal council of Pondichéry shall elect five delegates. The municipal council of Karikal shall elect three delegates. All of the other communes shall elect two delegates each.

The balloting takes place at the seat of government of each district.

ART. 7. Members of the Senate shall be elected for nine years.

The Senate shall be renewed every three years according to the order of the present series of departments and colonies.

ART. 8. Arts. 2 (paragraphs 1 and 2), 3, 4, 5, 8, 14, 16, 19, and

23 of the organic law of August 2, 1875, on the elections of senators, are amended as follows:

"Art. 2 (paragraphs 1 and 2). In each municipal council the election of delegates shall take place without debate and by secret ballot, by *scrutin de liste,* and by an absolute majority of votes cast. After two ballots a plurality shall be sufficient, and in case of an equality of votes the oldest is elected.

"The procedure and method shall be the same for the election of alternates.

"Councils having one, two, or three delegates to choose shall elect one alternate.

"Those choosing six or nine delegates shall elect two alternates.

"Those choosing twelve or fifteen delegates shall elect three alternates.

"Those choosing eighteen or twenty-one delegates shall elect four alternates.

"Those choosing twenty-four delegates shall elect five alternates.

"The municipal council of Paris shall elect eight alternates.

"The alternates shall take the place of delegates in case of refusal or inability to serve, in the order determined by the number of votes received by each of them.

"Art. 3. In communes where the duties of the municipal council are performed by a special delegation organized by virtue of Art. 44 of the law of April 5, 1884, the senatorial delegates and alternates shall be chosen by the former council.

"Art. 4. If the delegates were not present at the election, notice shall be given them by the mayor within twenty-four hours. They shall within five days notify the prefect of their acceptance. In case of declination or silence they shall be replaced by the alternates, who shall then be placed upon the list as the delegates of the commune.

"Art. 5. The official report of the election of delegates and alternates shall be transmitted at once to the prefect. It shall indicate the acceptance or declination of the delegates and alternates, as well as the protests made by one or more members of the municipal council against the legality of the election. A copy of this official report shall be posted on the door of the town hall.

"Art. 8. Protests concerning the election of delegates or of

alternates shall be decided, subject to an appeal to the Council of State, by the council of the prefecture, and, in the colonies, by the privy council.

"Delegates whose elections may be set aside because they do not satisfy the conditions demanded by law, or because of informality, shall be replaced by the alternates.

"In case the election of a delegate and of an alternate is annulled, or in the case of the refusal or death of both of them after their acceptance, new elections shall be held by the municipal council on a day fixed by an order of the prefect.

"Art. 14. The first ballot shall begin at eight o'clock in the morning and close at noon. The second shall begin at two o'clock and close at five o'clock. The third shall begin at seven o'clock and close at ten o'clock. The results of the balloting shall be canvassed by the bureau and announced immediately by the president of the electoral college.

"Art. 16. Political meetings for the nomination of senators may be held from the date of the promulgation of the decree summoning the electors up to the day of the election, inclusive.

"The declaration prescribed by Article 2 of the law of June 30, 1881, shall be made by two voters, at least.[1]

"The forms and regulations of this article, as well as those of Article 3, shall be observed.

"The members of Parliament elected or electors in the department, the senatorial electors, delegates and alternates, and the candidates, or their representatives, may alone be present at these meetings.

"The municipal authorities shall see to it that no other person is admitted.

"Delegates and alternates shall present as a means of identification a certificate from the mayor of the commune; candidates or their representatives, a certificate from the official who shall have received the declaration mentioned in paragraph 2.

"Art. 19. Every attempt at corruption or constraint by the employment of means enumerated in Arts. 177 and following of the Penal Code, to influence the vote of an elector or to keep him from voting, shall be punished by imprisonment of from

[1] The law of June 30, 1881, relates to notice which must be given to the authorities before any public meeting can be held.

three months to two years, and by a fine of from fifty francs to five hundred francs, or by either of these penalties.

"Art. 463 of the Penal Code is applicable to the penalties provided by the present article.

"Art. 23. Vacancies caused by the death or resignation of senators shall be filled within three months; however, if the vacancy occurs within six months preceding the triennial elections, it shall not be filled until those elections."

ART. 9. There are repealed:

(1) Arts. 1 to 7 of the law of February 24, 1875, on the organization of the Senate.

(2) Arts. 24 and 25 of the law of August 2, 1875, on the elections of senators.

APPENDIX B

GERMANY

THE CONSTITUTION OF THE GERMAN COMMONWEALTH [1]

PREAMBLE

The German People, united in all their branches, and inspired by the determination to renew and strengthen their Commonwealth in liberty and justice, to preserve peace both at home and abroad, and to foster social progress, have adopted the following Constitution.

CHAPTER I

STRUCTURE AND FUNCTIONS OF THE COMMONWEALTH

SECTION I

Commonwealth and States

ARTICLE 1. The German Commonwealth is a republic.

Political authority is derived from the People.

ART. 2. The territory of the Commonwealth consists of the territories of the German States. Other territories may be incorporated into the Commonwealth by national law, if their inhabitants, exercising the right of self-determination, so desire.

ART. 3. The national colors are black, red, and gold. The merchant flag is black, white, and red, with the national colors in the upper inside corner.

[1] Transl. by W. B. Munro and A. N. Holcombe, and published by the World Peace Foundation in *League of Nations*. Vol. II, No. 6, December, 1919.

ART. 4. The generally recognized principles of the law of nations are accepted as an integral part of the law of the German Commonwealth.

ART. 5. Political authority is exercised in national affairs by the National Government in accordance with the Constitution of the Commonwealth, and in State affairs by the State Governments in accordance with the State constitutions.

ART. 6. The Commonwealth has exclusive jurisdiction over:

1. Foreign relations;
2. Colonial affairs;
3. Citizenship, freedom of travel and residence, immigration and emigration, and extradition;
4. Organization for national defense;
5. Coinage;
6. Customs, including the consolidation of customs and trade districts and the free interchange of goods;
7. Posts and telegraphs, including telephones.

ART. 7. The Commonwealth has jurisdiction over:

1. Civil law;
2. Criminal law;
3. Judicial procedure, including penal administration, and official co-operation between the administrative authorities;
4. Passports and the supervision of aliens;
5. Poor relief and vagrancy;
6. The press, associations and public meetings;
7. Problems of population; protection of maternity, infancy, childhood and adolescence;
8. Public health, veterinary practice, protection of plants from disease and pests;
9. The rights of labor, social insurance, the protection of wage-earners and other employees, and employment bureaus;
10. The establishment of national organizations for vocational representation;
11. Provision for war-veterans and their surviving dependents;
12. The law of expropriation;
13. The socialization of natural resources and business enterprises, as well as the production, fabrication, distribution,

and price-fixing of economic goods for the use of the community;

14. Trade, weights and measures, the issue of paper money, banking, and stock and produce exchanges;
15. Commerce in foodstuffs and in other necessaries of daily life, and in luxuries;
16. Industry and mining;
17. Insurance;
18. Ocean navigation, and deep-sea and coast fisheries;
19. Railroads, internal navigation, communication by power-driven vehicles on land, on sea, and in the air; the construction of highways, in so far as pertains to general intercommunication and the national defense;
20. Theaters and cinematographs.

ART. 8. The Commonwealth also has jurisdiction over taxation and other sources of income, in so far as they may be claimed in whole or in part for its purposes. If the Commonwealth claims any source of revenue which formerly belonged to the States, it must have consideration for the financial requirements of the States.

ART. 9. Whenever it is necessary to establish uniform rules, the Commonwealth has jurisdiction over:

1. The promotion of social welfare;
2. The protection of public order and safety.

ART. 10. The Commonwealth may prescribe by law fundamental principles concerning:

1. The rights and duties of religious associations;
2. Education, including higher education and libraries for scientific use;
3. The law of officers of all public bodies;
4. The land law, the distribution of land, settlements and homesteads, restrictions on landed property, housing, and the distribution of population;
5. Disposal of the dead.

ART. 11. The Commonwealth may prescribe by law fundamental principles concerning the validity and mode of collection of State taxes, in order to prevent:

1. Injury to the revenues or to the trade relations of the Commonwealth;

2. Double taxation;
3. The imposition of excessive burdens, or burdens in restraint of trade on the use of the means and agencies of public communication;
4. Tax discriminations against the products of other States in favor of domestic products in interstate and local commerce; or
5. Export bounties;

or in order to protect important social interests.

ART. 12. So long and in so far as the Commonwealth does not exercise its jurisdiction, such jurisdiction remains with the States. This does not apply in cases where the Commonwealth possesses exclusive jurisdiction.

The National Cabinet may object to State laws relating to the subjects of Article 7, Number 13, whenever the general welfare of the Commonwealth is affected thereby.

ART. 13. The laws of the Commonwealth are supreme over the laws of the States which conflict with them.

If doubt arises, or difference of opinion, whether State legislation is in harmony with the law of the Commonwealth, the proper authorities of the Commonwealth or the central authorities of the States, in accordance with more specific provisions of a national law, may have recourse to the decision of a supreme judicial court of the Commonwealth.

ART. 14. The laws of the Commonwealth will be executed by the State authorities, unless otherwise provided by national law.

ART. 15. The National Cabinet supervises the conduct of affairs over which the Commonwealth has jurisdiction.

In so far as the laws of the Commonwealth are to be carried into effect by the State authorities, the National Cabinet may issue general instructions. It has the power to send commissioners to the central authorities of the States, and, with their consent, to the subordinate State authorities, in order to supervise the execution of national laws.

It is the duty of the State Cabinets, at the request of the National Cabinet, to correct any defects in the execution of the national laws. In case of dispute, either the National Cabinet or that of the State may have recourse to the decision of the

Supreme Judicial Court, unless another court is prescribed by national law.

ART. 16. The officers directly charged with the administration of national affairs in any State shall, as a rule, be citizens of that State. The officers, employees and workmen of the national administration shall, if they so desire, be employed in the districts where they reside as far as is possible and not inconsistent with their training and with the requirements of the service.

ART. 17. Every State must have a republican constitution. The representatives of the People must be elected by the universal, equal, direct and secret suffrage of all German citizens, both men and women, according to the principles of proportional representation. The State Cabinet shall require the confidence of the representatives of the People.

The principles in accordance with which the representatives of the People are chosen apply also to municipal elections; but by State law a residence qualification not exceeding one year of residence in the municipality may be imposed in such elections.

ART. 18. The division of the Commonwealth into States shall serve the highest economic and cultural interests of the People after most thorough consideration of the wishes of the population affected. State boundaries may be altered and new States may be created within the Commonwealth by the process of constitutional amendment.

With the consent of the States directly affected, it requires only an ordinary law of the Commonwealth.

An ordinary law of the Commonwealth will also suffice, if one of the States affected does not consent, provided that the change of boundaries or the creation of a new State is desired by the population concerned and is also required by a preponderant national interest.

The wishes of the population shall be ascertained by a referendum. The National Cabinet orders a referendum on demand of one-third of the inhabitants qualified to vote for the National Assembly in the territory to be cut off.

Three-fifths of the votes cast, but at least a majority of the qualified voters, are required for the alteration of a boundary or the creation of a new State. Even if a separation of only a

part of a Prussian administrative district, a Bavarian circle, or, in other States, a corresponding administrative district, is involved, the wishes of the population of the whole district must be ascertained. If there is no physical contact between the territory to be cut off and the rest of the district, the wishes of the population of the district to be cut off may be pronounced conclusive by a special law of the Commonwealth.

After the consent of the population has been ascertained the National Cabinet shall introduce into the National Assembly a bill suitable for enactment.

If any controversy arises over the division of property in connection with such a union or separation, it will be determined upon complaint of either party by the Supreme Judicial Court of the German Commonwealth.

ART. 19. If controversies concerning the Constitution arise within a State in which there is no court competent to dispose of them, or if controversies of a public nature arise between different States or between a State and the Commonwealth, they will be determined upon complaint of one of the parties by the Supreme Judicial Court of the German Commonwealth, unless another judicial court of the Commonwealth is competent.

The President of the Commonwealth executes judgments of the Supreme Judicial Court.

SECTION II

The National Assembly

ARTICLE 20. The National Assembly is composed of the delegates of the German people.

ART. 21. The delegates are representatives of the whole People. They are subject only to their own consciences and are not bound by any instructions.

ART. 22. The delegates are elected by universal, equal, direct and secret suffrage by all men and women over twenty years of age, in accordance with the principles of proportional representation. The day for elections must be a Sunday or a public holiday.

The details will be regulated by the national election law.

ART. 23. The National Assembly is elected for four years.

New elections must take place at the latest on the sixtieth day after its term comes to an end.

The National Assembly convenes at the latest on the thirtieth day after the election.

ART. 24. The National Assembly meets each year on the first Wednesday in November at the seat of the National Government. The President of the National Assembly must call it earlier if the President of the Commonwealth, or at least one-third of the members of the National Assembly, demand it.

The National Assembly determines the close of its session and the day of re-assembling.

ART. 25. The President of the Commonwealth may dissolve the National Assembly, but only once for the same cause.

The new election occurs at the latest on the sixtieth day after such dissolution.

ART. 26. The National Assembly chooses its President, Vice-President and its Secretaries. It regulates its own procedure.

ART. 27. During the interval between sessions, or while elections are taking place, the President and Vice-President of the preceding session conduct its affairs.

ART. 28. The President administers the regulations and policing of the National Assembly building. The management of the building is subject to his direction; he controls its receipts and expenses in accordance with the provisions of the budget, and represents the Commonwealth in all legal affairs and in litigation arising during his administration.

ART. 29. The proceedings of the National Assembly are public. At the request of fifty members the public may be excluded by a two-thirds vote.

ART. 30. True and accurate reports of the proceedings in public sittings of the National Assembly, of a State Assembly, or of their committees, are absolutely privileged.

ART. 31. An Electoral Commission to decide disputed elections will be organized in connection with the National Assembly. It will also decide whether a delegate has forfeited his seat.

The Electoral Commission consists of members of the National Assembly, chosen by the latter for the life of the Assembly, and of members of the National Administrative Court, to be ap-

pointed by the President of the Commonwealth on the nomination of the presidency of this court.

This Electoral Commission pronounces judgment after public hearings through a quorum of three members of the National Assembly and two judicial members.

Proceedings apart from the hearings before the Electoral Commission will be conducted by a National Commissioner appointed by the President of the Commonwealth. In other respects the procedure will be regulated by the Electoral Commission.

ART. 32. The National Assembly acts by majority vote unless otherwise provided in the Constitution. For the conduct of elections by the National Assembly it may, in its rules of procedure, make exceptions.

The quorum to do business will be regulated by the rules of procedure.

ART. 33. The National Assembly and its committees may require the presence of the National Chancellor and of any National Minister.

The National Chancellor, the National Ministers, and Commissioners designated by them, have the right to be present at the sittings of the National Assembly and of its committees. The States are entitled to send their plenipotentiaries to these sittings to submit the views of their Cabinets on matters under consideration.

At their request the representatives of the Cabinets shall be heard during the deliberations, and the representatives of the National Cabinet shall be heard even outside the regular order of business.

They are subject to the authority of the presiding officer in matters of order.

ART. 34. The National Assembly has the right, and, on proposal of one-fifth of its members, the duty to appoint committees of investigation. These committees, in public sittings, inquire into the evidence which they, or the proponents, consider necessary. The public may be excluded by a two-thirds vote of the committee of investigation. The rules of procedure regulate the proceedings of the committee and determine the number of its members.

The judicial and administrative authorities are required to

comply with requests by these committees for information, and the record of the authorities shall on request be submitted to them.

The provisions of the code of criminal procedure apply as far as is suitable to the inquiries of these committees and of the authorities assisting them, but the secrecy of letter and other post, telegraph, and telephone services will remain inviolate.

ART. 35. The National Assembly appoints a Standing Committee on foreign affairs which may also act outside of the sittings of the National Assembly and after its expiration or dissolution until a new National Assembly convenes. Its sittings are not public, unless the committee by a two-thirds vote otherwise provides.

The National Assembly also appoints a Standing Committee for the protection of the rights of the representatives of the People against the National Cabinet during a recess and after the expiration of the term for which it was elected.

These committees have the rights of committees of investigation.

ART. 36. No member of the National Assembly or of a State Assembly shall at any time whatsoever be subject to any judicial or disciplinary prosecution or be held responsible outside of the House to which he belongs on account of his vote or his opinions uttered in the performance of his duty.

ART. 37. No member of the National Assembly or of a State Assembly shall during the session, without the consent of the House to which he belongs, be subject to investigation or arrest on account of any punishable offense, unless he is caught in the act, or apprehended not later than the following day.

Similar consent is required in the case of any other restraint of personal liberty which interferes with the performance by a delegate of his duties.

Any criminal proceeding against a member of the National Assembly or of a State Assembly, and any arrest or other restraint of his personal liberty shall, at the demand of the House to which he belongs, be suspended for the duration of the session.

ART. 38. The members of the National Assembly and the State Assemblies are entitled to refuse to give evidence concerning persons who have given them information in their official capacity, or to whom they have given information in the performance of their official duties, or concerning the information itself. In re-

gard also to the seizure of papers their position is the same as that of persons who have by law the right to refuse to give evidence.

A search or seizure may be proceeded with in the precincts of the National Assembly or of a State Assembly only with the consent of its President.

ART. 39. Civil officers and members of the armed forces need no leave to perform their duties as members of the National Assembly or of a State Assembly.

If they become candidates for election to these bodies, the necessary leave shall be granted them to prepare for their election.

ART. 40. The members of the National Assembly shall have the right of free transportation over all German railroads, and also compensation as fixed by national law.

SECTION III

The National President and the National Cabinet

ARTICLE 41. The National President is chosen by the whole German People.

Every German who has completed his thirty-fifth year is eligible for election.

The details will be regulated by a national law.

ART. 42. The National President, on assuming his office, takes before the National Assembly the following oath:

I swear to devote all my energy to the welfare of the German People, to increase their prosperity, to protect them from injury, to preserve the Constitution and the laws of the Commonwealth, to perform my duties conscientiously, and to deal justly with all.

The addition of a religious affirmation is permitted.

ART. 43. The term of the National President is seven years. He is eligible for re-election.

The President may be removed before the end of his term by vote of the People on proposal of the National Assembly. The act of the National Assembly in such case requires a two-thirds majority vote. Upon such action the President is suspended from further exercise of his office. A refusal by the People to remove

the President has the effect of a new election and entails the dissolution of the National Assembly.

The National President shall not be subject to criminal prosecution without the consent of the National Assembly.

ART. 44. The National President may not at the same time be a member of the National Assembly.

ART. 45. The National President represents the Commonwealth in matters of international law. He concludes in the name of the Commonwealth alliances and other treaties with foreign powers. He accredits and receives ambassadors.

War is declared and peace concluded by national law.

Alliances and treaties with foreign States, relating to subjects within the jurisdiction of the Commonwealth, require the consent of the National Assembly.

ART. 46. The President appoints and dismisses the civil and military officers of the Commonwealth if not otherwise provided by law. He may delegate this right of appointment or dismissal to other authorities.

ART. 47. The National President has supreme command over all the armed forces of the Commonwealth.

ART. 48. If any State does not perform the duties imposed upon it by the Constitution or by national laws, the National President may hold it to the performance thereof by force of arms.

If public safety and order in the German Commonwealth is materially disturbed or endangered, the National President may take the necessary measures to restore public safety and order, and, if necessary, to intervene by force of arms. To this end he may temporarily suspend, in whole or in part, the fundamental rights established in Articles 114, 115, 117, 118, 123, 124 and 153.

The National President must immediately inform the National Assembly of all measures adopted by authority of Paragraphs 1 or 2 of this Article. These measures shall be revoked at the demand of the National Assembly.

If there is danger from delay, the State Cabinet may for its own territory take provisional measures as specified in Paragraph 2. These measures shall be revoked at the demand of the National President or of the National Assembly.

The details will be regulated by a national law.

ART. 49. The National President exercises the right of pardon for the Commonwealth.

National amnesties require a national law.

ART. 50. All orders and directions of the National President, including those concerning the armed forces, require for their validity the countersignature of the National Chancellor or of the appropriate National Minister. By the countersignature responsibility is assumed.

ART. 51. The National President is represented temporarily in case of disability by the National Chancellor. If such disability seems likely to continue for any considerable period, he shall be represented as may be determined by a national law.

The same procedure shall be followed in case of a premature vacancy of the Presidency until the completion of the new election.

ART. 52. The National Cabinet consists of the National Chancellor and the National Ministers.

ART. 53. The National Chancellor and, on his proposal, the National Ministers are appointed and dismissed by the National President.

ART. 54. The National Chancellor and the National Ministers require for the administration of their offices the confidence of the National Assembly. Each of them must resign if the National Assembly by formal resolution withdraws its confidence.

ART. 55. The National Chancellor presides over the National Cabinet and conducts its affairs in accordance with rules of procedure, which will be framed by the National Cabinet and approved by the National President.

ART. 56. The National Chancellor determines the general course of policy and assumes responsibility therefor to the National Assembly. In accordance with this general policy each National Minister conducts independently the particular affairs intrusted to him and is held individually responsible to the National Assembly.

ART. 57. The National Ministers shall submit to the National Cabinet for consideration and decision all drafts of bills and other matters for which this procedure is prescribed by the Constitution or by law, as well as differences of opinion over ques-

tions which concern the departments of several National Ministers.

ART. 58. The National Cabinet will make its decisions by majority vote. In case of a tie the vote of the presiding officer will be decisive.

ART. 59. The National Assembly is empowered to impeach the National President, the National Chancellor, and the National Ministers before the Supreme Judicial Court of the German Commonwealth for any wrongful violation of the Constitution or laws of the Commonwealth. The proposal to bring an impeachment must be signed by at least one hundred members of the National Assembly and requires the approval of the majority prescribed for amendments to the Constitution. The details will be regulated by the national law relating to the Supreme Judicial Court.

SECTION IV

The National Council

ARTICLE 60. A National Council will be organized to represent the German States in national legislation and administration.

ART. 61. In the National Council each State has at least one vote. In the case of the larger States one vote is accorded for every million inhabitants. Any excess equal at least to the population of the smallest State is reckoned as equivalent to a full million. No State shall be accredited with more than two-fifths of all votes.

[German-Austria after its union with the German Commonwealth will receive the right of participation in the National Council with the number of votes corresponding to its population. Until that time the representatives of German-Austria have a deliberate voice.] [1]

[1] Stricken out at the demand of the Supreme Council of the Allied and Associated Powers. The Supreme Council addressed the following demand to Germany on September 2, 1919:

"The Allied and Associated Powers have examined the German Constitution of August 11, 1919. They observe that the provisions of the second paragraph of Article 61 constitute a formal violation of Article 80 of the Treaty of Peace signed at Versailles on June 28, 1919. This violation is twofold:

"1. Article 61 by stipulating for the admission of Austria to the Reichsrat assimilates that Republic to the German States composing

The number of votes is determined anew by the National Council after every general census.

ART. 62. In committees formed by the National Council from its own members no State will have more than one vote.

ART. 63. The States will be represented in the National Council by members of their Cabinets. Half of the Prussian votes, however, will be at the disposal of the Prussian provincial administrations in accordance with a State law.

the German Empire—an assimilation which is incompatible with respect to the independence of Austria.

"2. By admitting and providing for the participation of Austria in the Council of the Empire Article 61 creates a political tie and a common political action between Germany and Austria in absolute opposition to the independence of the latter.

"In consequence the Allied and Associated Powers, after reminding the German Government that Article 178 of the German Constitution declares that 'the provisions of the Treaty of Versailles can not be affected by the Constitution,' invite the German Government to take the necessary measures to efface without delay this violation by declaring Article 61, Paragraph 2, to be null and void.

"Without prejudice to subsequent measures in case of refusal, and in virtue of the Treaty of Peace (and in particular Article 29), the Allied and Associated Powers inform the German Government that this violation of its engagements on an essential point will compel them, if satisfaction is not given to their just demand within 15 days from the date of the present note, immediately to order the extension of their occupation on the right bank of the Rhine."

Article 29 of the Treaty of Peace refers to Map No. 1 which shows the boundaries of Germany and provides that the text of Articles 27 and 28 will be final as to those boundaries. Article 80 reads as follows:

"Germany acknowledges and will respect strictly the independence of Austria, within the frontiers which may be fixed in a Treaty between that State and the Principal Allied and Associated Powers; she agrees that this independence shall be inalienable, except with the consent of the Council of the League of Nations.

A diplomatic act was signed at Paris on September 22, 1919, by the representatives of the Principal Allied and Associated Powers and Germany in the following terms:

"The undersigned, duly authorized and acting in the name of the German Government, recognizes and declares that all the provisions of the German Constitution of August 11, 1919, which are in contradiction of the terms of the Treaty of Peace signed at Versailles on June 28, 1919, are null.

"The German Government declares and recognizes that in consequence Paragraph 2 of Article 61 of the said Constitution is null, and that in particular the admission of Austrian representatives to the Reichstag could only take place in the event of the consent of the Council of the League of Nations to a corresponding modification of Austria's international situation.

"The present declaration shall be approved by the competent German legislative authority, within the fortnight following the entry into force of the Peace Treaty.

"Given at Versailles, September 22, 1919, in the presence of the undersigned representatives of the Principal Allied and Associated Powers."

The States have the right to send as many representatives to the National Council as they have votes.

ART. 64. The National Cabinet must summon the National Council on demand by one-third of its members.

ART. 65. The chairmanship of the National Council and of its committees is filled by a member of the National Cabinet. The members of the National Cabinet have the right and on request [of the National Council] the duty to take part in the proceedings of the National Council and its committees. They must at their request be heard at any time during its deliberations.

ART. 66. The National Cabinet, as well as every member of the National Council, is entitled to make proposals in the National Council.

The National Council regulates its order of business through rules of procedure.

The plenary sittings of the National Council are public. In accordance with the rules of procedure the public may be excluded during the discussion of particular subjects.

Decisions are taken by a majority of those present.

ART. 67. The National Council shall be kept informed by the National Departments of the conduct of national business. At deliberations on important subjects the appropriate committees of the National Council shall be summoned by the National Departments.

SECTION V

National Legislation

ARTICLE 68. Bills are introduced by the National Cabinet or by members of the National Assembly.

National laws are enacted by the National Assembly.

ART. 69. The introduction of bills by the National Cabinet requires the concurrence of the National Council. If an agreement between the National Cabinet and the National Council is not reached, the National Cabinet may nevertheless introduce the bill, but must state the dissent of the National Council.

If the National Council resolves upon a bill to which the National Cabinet does not assent, the latter must introduce

the bill in the National Assembly together with a statement of its attitude.

ART. 70. The National President shall compile the laws which have been constitutionally enacted and within one month publish them in the National Bulletin of Laws.

ART. 71. National laws go into effect, unless otherwise specified, on the fourteenth day following the date of their publication in the National Bulletin of Laws at the national capital.

ART. 72. The promulgation of a national law may be deferred for two months, if one-third of the National Assembly so demands. Laws which the National Assembly and the National Council declare to be urgent may be promulgated by the National President regardless of this demand.

ART. 73. A law enacted by the National Assembly shall be referred to the People before its promulgation, if the National President so orders within a month.

A law whose promulgation is deferred at the demand of at least one-third of the National Assembly shall be submitted to the People, if one-twentieth of the qualified voters so petition.

A popular vote shall further be resorted to on a measure initiated by the People if one-tenth of the qualified voters so petition. A fully elaborated bill must accompany such petition. The National Cabinet shall lay the bill together with a statement of its attitude before the National Assembly. The popular vote does not take place if the desired bill is enacted without amendment by the National Assembly.

A popular vote may be taken on the budget, tax laws, and laws relating to the classification and payment of public officers only by authority of the National President.

The procedure in connection with the popular referendum and initiative will be regulated by national law.

ART. 74. The National Council has the right to object to laws passed by the National Assembly.

The objection must be filed with the National Cabinet within two weeks after the final vote in the National Assembly and must be supported by reasons within two more weeks at the latest.

In case of objection, the law is returned to the National Assembly for reconsideration. If an agreement between the National Assembly and the National Council is not reached, the

National President may within three months refer the subject of the dispute to the People. If the President makes no use of this right, the law does not go into effect. If the National Assembly disapproves by a two-thirds majority the objection of the National Council, the President shall promulgate the law in the form enacted by the National Assembly within three months or refer it to the People.

ART. 75. An act of the National Assembly may be annulled by a popular vote, only if a majority of those qualified take part in the vote.

ART. 76. The Constitution may be amended by process of legislation. But acts of the National Assembly relating to the amendment of the Constitution are effective only if two-thirds of the legal membership are present, and at least two-thirds of those present give their assent. Acts of the National Council relating to the amendment of the Constitution also require a two-thirds majority of all the votes cast. If an amendment to the Constitution is to be adopted by the People by popular initiative, the assent of a majority of the qualified voters is required.

If the National Assembly adopts an amendment to the Constitution against the objection of the National Council, the President may not promulgate this law, if the National Council within two weeks demands a popular vote.

ART. 77. The National Cabinet issues the general administrative regulations necessary for the execution of the national laws so far as the laws do not otherwise provide. It must secure the assent of the National Council if the execution of the national laws is assigned to the State authorities.

SECTION VI

The National Administration

ARTICLE 78. The conduct of relations with foreign countries is exclusively a function of the Commonwealth.

The States, in matters subject to their jurisdiction, may conclude treaties with foreign countries; such treaties require the assent of the Commonwealth.

Agreements with foreign countries regarding changes of national boundaries will be concluded by the Commonwealth with

the consent of the State concerned. Changes of boundaries may be made only by authority of a national law, except in cases where a mere adjustment of the boundaries of uninhabited districts is in question.

To assure the representation of interests arising from the special economic relations of individual States to foreign countries or from their proximity to foreign countries, the Commonwealth determines the requisite arrangements and measures in agreement with the States concerned.

ART. 79. The national defense is a function of the Commonwealth. The organization of the German People for defense will be uniformly regulated by a national law with due consideration for the peculiarities of the people of the separate States.

ART. 80. Colonial policy is exclusively a function of the Commonwealth.

ART. 81. All German merchant ships constitute a unified merchant marine.

ART. 82. Germany forms a customs and trade area surrounded by a common customs boundary.

The customs boundary is identical with the international boundary. At the seacoast the shore of the mainland and of the islands belonging to the national territory constitutes the customs boundary. Deviations may be made for the course of the customs boundary at the ocean and at other bodies of water.

Foreign territories or parts of territories may be incorporated in the customs area by international treaties or agreements.

Portions of territory may be excluded from the customs area in accordance with special requirements. In the case of free ports this exclusion may be discontinued only by an amendment to the Constitution.

Districts excluded from the customs area may be included within a foreign customs area by international treaties or agreements.

All products of nature or industry, as well as works of art, which are subjects of free commerce within the Commonwealth, may be transported in any direction across State and municipal boundaries. Exceptions are permissible by authority of national law.

ART. 83. Customs duties and taxes on articles of consumption are administered by the national authorities.

In connection with national tax administration by the national authorities, arrangements shall be provided which will enable the States to protect their special agricultural, commercial, trade and industrial interests.

ART. 84. The Commonwealth has authority to regulate by law:

1. The organization of the State tax administrations so far as is required for the uniform and impartial execution of the national tax laws;

2. The organization and functions of the authorities charged with the supervision of the execution of the national tax laws;

3. The accounting with the States;

4. The reimbursement of the costs of administration in connection with the execution of the national tax laws.

ART. 85. All revenues and expenditures of the Commonwealth must be estimated for each fiscal year and entered in the budget.

The budget is adopted by law before the beginning of the fiscal year.

Appropriations are ordinarily granted for one year; in special cases they may be granted for a longer period. Otherwise, provisions extending beyond the fiscal year or not relating to the national revenues and expenditures or their administration, are inadmissible in the national budget law.

The National Assembly may not increase appropriations in the budget bill or insert new items without the consent of the National Council.

The consent of the National Council may be dispensed with in accordance with the provisions of Article 74.

ART. 86. In the following fiscal year the National Minister of Finance will submit to the National Council and to the National Assembly an account concerning the disposition of all national revenue so as to discharge the responsibility of the National Cabinet. The auditing of this account will be regulated by national law.

ART. 87. Funds may be procured by borrowing only in case of extraordinary need and in general for expenditures for productive purposes only. Such procurement of funds as well as

the assumption by the Commonwealth of any financial obligation is permissible only by authority of a national law.

ART. 88. The postal and telegraph services, together with telephone service, are exclusively functions of the Commonwealth.

The postage stamps are uniform for the whole Commonwealth.

The National Cabinet, with the consent of the National Council, issues the regulations prescribing the conditions and charges for the use of the means of communication. With the consent of the National Council it may delegate this authority to the Postmaster General.

The National Cabinet, with the consent of the National Council, establishes an advisory council to coöperate in deliberations concerning the postal, telegraph and telephone services and rates.

The Commonwealth alone concludes treaties relating to communication with foreign countries.

ART. 89. It is the duty of the Commonwealth to acquire ownership of the railroads which serve as means of general public communication, and to operate them as a single system of transportation.

The rights of the States to acquire private railroads shall be transferred to the Commonwealth on its demand.

ART. 90. With the taking over of the railroads the Commonwealth also acquires the right of expropriation and the sovereign powers of the States pertaining to railroad affairs. The Supreme Judicial Court decides controversies relating to the extent of these rights.

ART. 91. The National Cabinet, with the consent of the National Council, issues the regulations governing the construction, operation and traffic of railroads. With the consent of the National Council it may delegate this authority to the appropriate national minister.

ART. 92. The national railroads, irrespective of the incorporation of their budget and accounts in the general budget and accounts of the Commonwealth, shall be administered as an independent economic enterprise which shall defray its own expenses, including interest and the amortization of the railroad debt, and accumulate a railroad reserve fund. The amount of the amortization and of the reserve fund, as well as the purpose to which the reserve fund may be applied, shall be regulated by special law.

ART. 93. The National Cabinet with the consent of the National Council establishes advisory councils for the national railroads to coöperate in deliberations concerning railroad service and rates.

ART. 94. If the Commonwealth takes over the operation of railroads which serve as means of general public communication in any district, additional railroads to serve as means of general public communication within this district may only be built by the Commonwealth or with its consent. If new construction or the alteration of existing national railroad systems encroaches upon the sphere of authority of the State police, the national railroad administration, before its decision, shall grant a hearing to the State authorities.

Where the Commonwealth has not yet taken over the operation of the railroads, it may lay out on its own account by virtue of national law railroads deemed necessary to serve as means of general public communication or for the national defense, even against the opposition of the States, whose territory they will traverse without however, impairing the sovereign powers of the States, or it may turn over the construction to another to execute, together with a grant of the right of expropriation if necessary.

Each railroad administration must consent to connection with other roads at the expense of the latter.

ART. 95. Railroads serving as means of general public communication which are not operated by the Commonwealth are subject to supervision by the Commonwealth.

The railroads subject to national supervision shall be laid out and equipped in accordance with uniform standards established by the Commonwealth. They sball be maintained in safe operating condition and developed according to the requirements of traffic. Facilities and equipment for passenger and freight traffic shall be maintained and developed in keeping with the demand.

The supervision of rates is designed to secure non-discriminatory and moderate railroad charges.

ART. 96. All railroads, including those not serving as means of general public communication, must comply with the requirements of the Commonwealth so far as concerns the use of the roads for purposes of national defense.

ART. 97. It is the duty of the Commonwealth to acquire ownership of and to operate all waterways serving as means of general public communication.

After they have been taken over, waterways serving as means of general public communication may be constructed or extended only by the Commonwealth or with its consent.

In the administration, development, or construction of such waterways the requirements of agriculture and water-supply shall be protected in agreement with the States. Their improvement shall also be considered.

Each waterways administration shall consent to connection with other inland waterways at the expense of the latter. The same obligation exists for the construction of a connection between inland waterways and railroads.

In taking over the waterways the Commonwealth acquires the right of expropriation, control of rates, and the police power over waterways and navigation.

The duties of the river improvement associations in relation to the development of natural waterways in the Rhine, Weser, and Elbe basins shall be assumed by the Commonwealth.

ART. 98. Advisory national waterways councils will be formed in accordance with detailed regulations issued by the National Cabinet with the consent of the National Council to coöperate in the management of the waterways.

ART. 99. Charges may be imposed on natural waterways only for such works, facilities, and other accommodations as are designed for the relief of traffic. In the case of state and municipal public works they may not exceed the necessary costs of construction and maintenance. The construction and maintenance costs of works designed not exclusively for the relief of traffic, but also for serving other purposes, may be defrayed only to a proportionate extent by navigation tolls. Interest and amortization charges on the invested capital are included in the costs of construction.

The provisions of the preceding paragraph apply to the charges imposed for artificial waterways and for accommodations in connection therewith and in harbors.

The total costs of a waterway, a river basin, or a system of waterways may be taken into consideration in determining navigation tolls in the field of inland water transportation.

These provisions apply also to the floating of timber on navigable waterways.

Only the Commonwealth imposes on foreign ships and their cargoes other or higher charges than on German ships and their cargoes.

For the procurement of means for the maintenance and development of the German system of waterways the Commonwealth may by law call on the shipping interests for contributions also in other ways [than by tolls].

ART. 100. To cover the cost of maintenance and construction of inland navigation routes any person or body of persons who in other ways than through navigation derives profit from the construction of dams may also be called upon by national law for contributions, if several States are involved or the Commonwealth bears the costs of construction.

ART. 101. It is the duty of the Commonwealth to acquire ownership of and to operate all aids to navigation, especially lighthouses, lightships, buoys, floats and beacons. After they are taken over, aids to navigation may be installed or extended only by the Commonwealth or with its consent.

SECTION VII

The Administration of Justice

ART. 102. Judges are independent and subject only to the law.

ART. 103. Ordinary jurisdiction will be exercised by the National Judicial Court and the courts of the States.

ART. 104. Judges of ordinary jurisdiction are appointed for life. They may against their wishes be permanently or temporarily removed from office, or transferred to another position, or retired, only by virtue of a judicial decision and for the reasons and in the forms provided by law. The law may fix an age limit on reaching which judges may be retired.

Temporary suspension from office in accordance with law is not affected by this Article.

If there is a reorganization of the courts or of the judicial districts, the State department of justice may order involuntary transfers to another court or removal from office, but only with allowance of full salary.

These provisions do not apply to judges of commercial tribunals, lay associates, and jurymen.

ART. 105. Extraordinary courts are illegal. No one may be removed from the jurisdiction of his lawful judge. Provisions of law relating to military courts and courts-martial are not affected hereby. Military courts of honor are abolished.

ART. 106. Military jurisdiction is abolished except in time of war and on board war-vessels. Details will be regulated by national law.

ART. 107. There shall be administrative courts both in the Commonwealth and in the States, in accordance with the laws, to protect the individual against orders and decrees of administrative authorities.

ART. 108. In accordance with a national law a Supreme Judicial Court will be established for the German Commonwealth.

CHAPTER II

FUNDAMENTAL RIGHTS AND DUTIES OF GERMANS

SECTION I

The Individual

ARTICLE 109. All Germans are equal before the law.

Men and women have fundamentally the same civil rights and duties.

Privileges or discriminations due to birth or rank and recognized by law are abolished. Titles of nobility will be regarded merely as part of the name and may not be granted hereafter.

Titles may be conferred only when they designate an office or profession; academic degrees are not affected by this provision.

Orders and honorary insignia may not be conferred by the state.

No German may accept a title or order from a foreign Government.

ART. 110. Citizenship in the Commonwealth and in the States will be acquired and lost in accordance with the provisions of a national law. Every citizen of a State is at the same time a citizen of the Commonwealth.

Every German has the same rights and duties in each State of the Commonwealth as the citizens of that State.

ART. 111. All Germans enjoy the right to travel and reside freely throughout the whole Commonwealth. Every one has the right of sojourn and settlement in any place within the Commonwealth, the right to acquire land and to pursue any gainful occupation. No limitations may be imposed except by authority of a national law.

ART. 112. Every German has the right to emigrate to foreign countries. Emigration may be limited only by national law.

All German citizens, both within and without the territory of the Commonwealth, have a right to its protection with respect to foreign countries.

No German may be surrendered to a foreign Government for prosecution or punishment.

ART. 113. Those elements of the People which speak a foreign language may not be interfered with by legislative or administrative action in their free and characteristic development, especially in the use of their mother tongue in the schools or in matters of internal administration and the administration of justice.

ART. 114. Personal liberty is inviolable. An interference with or abridgement of personal liberty through official action is permissible only by authority of law.

Persons, who are deprived of their liberty, shall be informed at latest on the following day by what authority and on what grounds they have been deprived of liberty, and they shall without delay receive an opportunity to present objections against such loss of liberty.

ART. 115. The house of every German is his sanctuary and is inviolable. Exceptions are permissible only by authority of law.

ART. 116. An act can be punishable only if the penalty was fixed by law before the act was committed.

ART. 117. The secrecy of postal, telegraphic, and telephonic communications is inviolable. Exceptions may be permitted only by national law.

ART. 118. Every German has a right within the limits of the general laws to express his opinion freely by word, in writing, in print, by picture, or in any other way. No relationship arising out of his employment may hinder him in the exercise of this right, and no one may discriminate against him if he makes use of this right.

There is no censorship, although exceptional provisions may be

made by law in the case of moving pictures. Legal measures are also permissible for combatting obscene and indecent literature as well as for the protection of youth at public plays and spectacles.

SECTION II

Community Life

ART. 119. Marriage, as the foundation of family life and of the maintenance and increase of the nation, is under the special protection of the Constitution. It is based on the equal rights of both sexes.

The maintenance of the purity, the health, and the social advancement of the family is the task of the state and of the municipalities. Families with numerous children have a claim to equalizing assistance.

Motherhood has a claim to the protection and care of the State.

ART. 120. The physical, mental, and moral education of their offspring is the highest duty and the natural right of parents, whose activities are supervised by the political community.

ART. 121. Illegitimate children shall be provided by law with the same opportunities for their physical, mental, and moral development as legitimate children.

ART. 122. Youth shall be protected against exploitation as well as against neglect of their moral, mental, or physical welfare. The necessary arrangements shall be made by state and municipality.

Compulsory protective measures may be ordered only by authority of the law.

ART. 123. All Germans have the right of meeting peaceably and unarmed without notice or special permission.

Previous notice may be required by national law for meetings in the open, and such meetings may be forbidden in case of immediate danger to the public safety.

ART. 124. All Germans have the right to form associations or societies for purposes not contrary to the criminal law. This right can not be limited by preventive measures. The same provisions apply to religious associations and societies.

Every association has the right of incorporation in accordance with the civil law. No association may be denied this right on

the ground that it pursues a political, social-political, or religious object.

ART. 125. The liberty and secrecy of the suffrage are guaranteed. Details will be regulated by the election laws.

ART. 126. Every German has the right to petition or to complain in writing to the appropriate authorities or to the representatives of the People. This right may be exercised by individuals as well as by several persons together.

ART. 127. Municipalities and unions of municipalities have the right of self-government within the limits of the laws.

ART. 128. All citizens without distinction are eligible for public office in accordance with the laws and according to their ability and services.

All discriminations against women in the civil service are abolished.

The principles of the official relation shall be regulated by national law.

ART. 129. Civil officers are appointed for life, in so far as is not otherwise provided by law. Pensions and provisions for surviving dependents will be regulated by law. The duly acquired rights of the civil officers are inviolable. Claims of civil officers based upon property rights may be established by process of law.

Civil officers may be suspended, temporarily or permanently retired, or transferred to other positions at a smaller salary only under the legally prescribed conditions and forms.

A process of appeal against disciplinary sentence and opportunity for reconsideration shall be established. Reports of an unfavorable character concerning a civil officer shall not be entered in his official record, until he has had the opportunity to express himself. Civil officers shall also be permitted to inspect their official records.

The inviolability of the duly acquired rights and the benefit of legal processes for the establishment of claims based on property rights are also assured especially to regular soldiers. In other respects their position is regulated by national law.

ART. 130. The civil officers are servants of the whole community, not of a part of it.

To all civil officers freedom of political opinion and of association are assured.

The civil officers receive special representation in their official capacity in accordance with more precise provisions of national law.

ART. 131. If a civil officer in the exercise of the authority conferred upon him by law fails to perform his official duty toward any third person, the responsibility is assumed by the state or public corporation in whose service the officer is. The right of redress [by the state or public corporation] against the officer is reserved. The ordinary process of law may not be excluded.

Detailed regulations will be made by the appropriate law-making authority.

ART. 132. Every German, in accordance with the laws, has the duty of accepting honorary offices.

ART. 133. All citizens are obliged, in accordance with the laws, to render personal services to the state and the municipality.

The duty of military service will be defined in accordance with the provisions of the national defense law. This will determine also how far particular fundamental rights shall be restricted in their application to the members of the armed forces in order that the latter may fulfill their duties and discipline may be maintained.

ART. 134. All citizens, without distinction, contribute according to their means to the support of all public burdens, as may be provided by law.

SECTION III

Religion and Religious Societies

ART. 135. All inhabitants of the Commonwealth enjoy complete liberty of belief and conscience. The free exercise of religion is assured by the Constitution and is under public protection. This Article leaves the general laws undisturbed.

ART. 136. Civil and political rights and duties are neither conditioned upon nor limited by the exercise of religious liberty.

The enjoyment of civil and political rights as well as eligibility to public office is independent of religious belief.

No one is under any obligation to reveal his religious convictions.

The authorities have a right to inquire about religious affiliation only so far as rights and duties are dependent thereon or in pursuance of a statistical enumeration prescribed by law.

No one may be forced to attend any church ceremony or festivity, to take part in any religious exercise, or to make use of any religious oath.

ART. 137. There is no state church.

Freedom of association in religious societies is guaranteed. The combination of religious societies within the Commonwealth is not subject to any limitations.

Every religious society regulates and administers its affairs independently within the limits of the general law. It appoints its officers without interference by the state or the civil municipality.

Religious societies may be incorporated in accordance with the general provisions of the civil law.

Existing religious societies remain, to the same extent as heretofore, public bodies corporate. The same rights shall be accorded to other religious societies if by their constitution and the number of their members they offer a guaranty of permanence. If a number of such public religious societies unite, this union is also a public body corporate.

The religious societies, which are recognized by law as bodies corporate, are entitled on the basis of the civil tax rolls to raise taxes according to the provisions of the laws of the respective States.

The associations, which have as their aim the cultivation of a system of ethics, have the same privileges as the religious societies.

The issuance of further regulations necessary for carrying out these provisions comes under the jurisdiction of the States.

ART. 138. State contributions to religious societies authorized by law, contract, or any special grant, will be commuted by State legislation. The general principles of such legislation will be defined by the Commonwealth.

The property of religious societies and unions and other rights to their cultural, educational, and charitable institutions, foundations, and other possessions are guaranteed.

ART. 139. Sundays and legal holidays remain under the protection of law as days of rest and spiritual edification.

ART. 140. The members of the armed forces shall be granted the necessary leave for the performance of their religious duties.

ART. 141. In so far as there is need for religious services and spiritual care in hospitals, prisons or other public institutions, the

religious societies shall be permitted to perform the religious offices, but all compulsion shall be avoided.

SECTION IV

Education and Schools

ART. 142. Art, science, and the teaching thereof are free. The state guarantees their protection and takes part in fostering them.

ART. 143. The education of the young shall be provided for through public institutions. In their establishment the Commonwealth, States and municipalities coöperate.

The training of teachers shall be regulated in a uniform manner for the Commonwealth according to the generally recognized principles of higher education.

The teachers in the public schools have the rights and duties of state officers.

ART. 144. The entire school system is under the supervision of the state; it may grant a share therein to the municipalities. The supervision of schools will be exercised by technically trained officers who must devote their time principally to this duty.

ART. 145. Attendance at school is obligatory. This obligation is discharged by attendance at the elementary schools for at least eight school years and at the continuation schools until the completion of the eighteenth year. Instruction and school supplies in the elementary and continuation schools are free.

ART. 146. The public school system shall be systematically organized. Upon a foundation of common elementary schools the system of secondary and higher education is erected. The development of secondary and higher education shall be determined in accordance with the needs of all kinds of occupations, and the acceptance of a child in a particular school shall depend upon his qualifications and inclinations, not upon the economic and social position or the religion of his parents.

Nevertheless, within the municipalities, upon the petition of those entitled to instruction common schools shall be established of their faith or ethical system, in so far as this does not interfere with a system of school administration within the meaning of Paragraph 1. The wishes of those entitled to instruction shall be considered as much as possible. Details will be regulated by State

laws in accordance with principles to be prescribed by a national law.

To facilitate the attendance of those in poor circumstances at the secondary and higher schools, public assistance shall be provided by the Commonwealth, States, and municipalities, particularly, assistance to the parents of children regarded as qualified for training in the secondary and higher schools, until the completion of the training.

ART. 147. Private schools, as a substitute for the public schools, require the approval of the state and are subject to the laws of the States. Approval shall be granted if the private schools do not fall below the public schools in their educational aims and equipment as well as in the scientific training of their teachers, and if no separation of the pupils according to the wealth of their parents is fostered. Approval shall be withheld if the economic and legal status of the teachers is not sufficiently assured.

Private elementary schools shall be only permissible, if for a minority of those entitled to instruction whose wishes are to be considered according to Article 146, Paragraph 2, there is no public elementary school of their faith or ethical system in the municipality, or if the educational administration recognizes a special pedagogical interest.

Private preparatory schools shall be abolished.

The existing law remains in effect with respect to private schools which do not serve as substitutes for public schools.

ART. 148. All schools shall inculcate moral education, civic sentiment, and personal and vocational efficiency in the spirit of German national culture and of international conciliation.

In the instruction in public schools care shall be taken not to hurt the feelings of those of differing opinion.

Civics and manual training are included in the school curriculum. Every pupil receives a copy of the Constitution on completing the obligatory course of study.

The common school system, including university extension work, shall be cherished by the Commonwealth, States and municipalities.

ART. 149. Religious instruction is included in the regular school curriculum, except in the nonsectarian (secular) schools. The imparting of religious instruction is regulated by the school laws. Religious instruction is imparted in accordance with the principles

of the religious society concerned, without prejudice to the right of supervision of the state.

The imparting of religious instruction and the use of ecclesiastical ceremonies is optional with the teachers, and the participation of the pupils in religious studies and in ecclesiastical ceremonies and festivities is left to the decision of those who have the right to control the religious education of the child.

The theological faculties in the universities will be continued.

ART. 150. The artistic, historical and natural monuments and scenery enjoy the protection and care of the state.

The prevention of the removal of German art treasures from the country is a function of the Commonwealth.

SECTION V

Economic Life

ART. 151. The regulation of economic life must conform to the principles of justice, with the object of assuring humane conditions of life for all. Within these limits the economic liberty of the individual shall be protected.

Legal compulsion is permissible only for safeguarding threatened rights or in the service of predominant requirements of the common welfare.

The freedom of trade and industry is guaranteed in accordance with the national laws.

ART. 152. Freedom of contract prevails in economic relations in accordance with the laws.

Usury is forbidden. Legal practices which conflict with good morals are void.

ART. 153. The right of private property is guaranteed by the Constitution. Its nature and limits are defined by law.

Expropriation may be proceeded with only for the benefit of the community and by due process of law. There shall be just compensation in so far as is not otherwise provided by national law. If there is a dispute over the amount of the compensation, there shall be a right of appeal to the ordinary courts, in so far as not otherwise provided by national law. The property of the States, municipalities, and associations of public utility may be taken by the Commonwealth only upon payment of compensation.

Property-rights imply property-duties. Exercise thereof shall at the same time serve the general welfare.

ART. 154. The right of inheritance is guaranteed in accordance with the civil law.

The share of the state in inheritances is determined in accordance with the laws.

ART. 155. The distribution and use of the land is supervised by the state in such a way as to prevent its misuse and to promote the object of insuring to every German a healthful dwelling and to all German families, especially those with numerous children, homesteads corresponding to their needs. War-veterans shall receive special consideration in the enactment of a homestead law.

Landed property, the acquisition of which is necessary to satisfy the demand for housing, to promote settlement and reclamation, or to improve agriculture, may be expropriated. Entailments shall be dissolved.

The cultivation and utilization of the soil is a duty of the landowner toward the community. An increase of the value of land arising without the application of labor or capital to the property shall inure to the benefit of the community as a whole.

All mineral resources and all economically useful forces of nature are subject to the control of the state. Private royalties shall be transferred to the state, as may be provided by law.

ART. 156. The Commonwealth may by law, without impairment of the right to compensation, and with a proper application of the regulations relating to expropriation, transfer to public ownership private business enterprises adapted for socialization. The Commonwealth itself, the States, or the municipalities may take part in the management of business enterprises and associations, or secure a dominating influence therein in any other way.

Furthermore, in case of urgent necessity the Commonwealth, if it is in the interest of collectivism, may combine by law business enterprises and associations on the basis of administrative autonomy, in order to insure the coöperation of all producing elements of the people, to give to employers and employees a share in the management, and to regulate the production, preparation, distribution, utilization and pecuniary valuation, as well as the import and export, of economic goods upon collectivistic principles.

The coöperative societies of producers and of consumers and

associations thereof shall be incorporated, at their request and after consideration of their form of organization and peculiarities, into the system of collectivism.

ART. 157. Labor is under the special protection of the Commonwealth.

The Commonwealth will adopt a uniform labor law.

ART. 158. Intellectual labor, the rights of the author, the inventor and the artist enjoy the protection and care of the Commonwealth.

The products of German scholarship, art, and technical science shall also be recognized and protected abroad through international agreement.

ART. 159. The right of combination for the protection and promotion of labor and economic conditions is guaranteed to everybody and to all professions. All agreements and measures which attempt to limit or restrain this liberty are unlawful.

ART. 160. Any one employed on a salary or as a wage earner has the right to the leave necessary for the exercise of his civil rights and, so far as the business is not substantially injured thereby, for performing the duties of public honorary offices conferred upon him. To what extent his right to compensation shall continue will be determined by law.

ART. 161. For the purpose of conserving health and the ability to work, of protecting motherhood, and of guarding against the economic effects of age, invalidity and the vicissitudes of life, the Commonwealth will adopt a comprehensive system of insurance, in the management of which the insured shall predominate.

ART. 162. The Commonwealth commits itself to an international regulation of the legal status of the workers, which shall strive for a standard minimum of social rights for the whole working class of the world.

ART. 163. Every German has, without prejudice to his personal liberty, the moral duty so to use his intellectual and physical powers as is demanded by the welfare of the community.

Every German shall have the opportunity to earn his living by economic labor. So long as suitable employment can not be procured for him, his maintenance will be provided for. Details will be regulated by special national laws.

ART. 164. The independent agricultural, industrial, and com-

mercial middle class shall be fostered by legislation and administration, and shall be protected against oppression and exploitation.

ART. 165. Wage-earners and salaried employees are qualified to coöperate on equal terms with the employers in the regulation of wages and working conditions, as well as in the entire economic development of the productive forces. The organizations on both sides and the agreements between them will be recognized.

The wage-earners and salaried employees are entitled to be represented in local workers' councils, organized for each establishment in the locality, as well as in district workers' councils, organized for each economic area, and in a National Workers' Council, for the purpose of looking after their social and economic interests.

The district workers' councils and the National Workers' Council meet together with the representatives of the employers and with other interested classes of people in district economic councils and in a National Economic Council for the purpose of performing joint economic tasks and coöperating in the execution of the laws of socialization. The district economic councils and the National Economic Council shall be so constituted that all substantial vocational groups are represented therein according to their economic and social importance.

Drafts of laws of fundamental importance relating to social and economic policy before introduction [into the National Assembly] shall be submitted by the National Cabinet to the National Economic Council for consideration. The National Economic Council has the right itself to propose such measures for enactment into law. If the National Cabinet does not approve them, it shall, nevertheless, introduce them into the National Assembly together with a statement of its own position. The National Economic Council may have its bill presented by one of its own members before the National Assembly.

Supervisory and administrative functions may be delegated to the workers' councils and to the economic councils within their respective areas.

The regulation of the organization and duties of the workers' councils and of the economic councils, as well as their relation to other social bodies endowed with administrative autonomy, is exclusively a function of the Commonwealth.

Transitional and Final Provisions

ART. 166. Until the establishment of the National Administrative Court, the National Judicial Court takes its place in the organization of the Electoral Commission.

ART. 167. The provisions of Article 18, Paragraphs 3 to 6, become effective two years after the promulgation of the national Constitution.

ART. 168. Until the adoption of the State law as provided in Article 63, but at the most for only one year, all the Prussian votes in the National Council may be cast by members of the State Cabinet.

ART. 169. The National Cabinet will determine when the provisions of Article 83, Paragraph 1, shall become effective.

Temporarily, for a reasonable period, the collection and administration of customs-duties and taxes on articles of consumption may be left to the States at their discretion.

ART. 170. The Postal and Telegraphic Administrations of Bavaria and Wurtemberg will be taken over by the Commonwealth not later than April 1, 1921.

If no understanding has been reached over the terms thereof by October 1, 1920, the matter will be decided by the Supreme Judicial Court.

The rights and duties of Bavaria and Wurtemberg remain in force as heretofore until possession is transferred to the Commonwealth. Nevertheless, the postal and telegraphic relations with neighboring foreign countries will be regulated exclusively by the Commonwealth.

ART. 171. The state railroads, canals and aids to navigation will be taken over by the Commonwealth not later than April 1, 1921.

If no understanding has been reached over the terms thereof by October 1, 1920, the matter will be decided by the Supreme Judicial Court.

ART. 172. Until the national law regarding the Supreme Judicial Court becomes effective its powers will be exercised by a Senate of seven members, four of whom are to be elected by the National Assembly and three by the National Judicial Court, each choosing among its own members. The Senate will regulate its own procedure.

ART. 173. Until the adoption of a national law according to Article 138, the existing state contributions to the religious societies, whether authorized by law, contract or special grant, will be continued.

ART. 174. Until the adoption of the national law provided for in Article 146, Paragraph 2, the existing legal situation will continue. The law shall give special consideration to parts of the Commonwealth where provision for separate schools of different religious faiths is not now made by law.

ART. 175. The provisions of Article 109 do not apply to orders and decorations conferred for services in the war-years 1914-1919.

ART. 176. All public officers and members of the armed forces shall be sworn upon this Constitution. Details will be regulated by order of the National President.

ART. 177. Wherever by existing laws it is provided that the oath be taken in the form of a religious ceremony, the oath may be lawfully taken in the form of a simple affirmation by the person to be sworn: "I swear." Otherwise the content of the oath provided for in the laws remains unaltered.

ART. 178. The Constitution of the German Empire of April 16, 1871, and the law of February 10, 1919, relating to the provisional government of the Commonwealth, are repealed.

The other laws and regulations of the Empire remain in force, in so far as they do not conflict with this Constitution. The provisions of the Treaty of Peace signed on June 28, 1919, at Versailles, are not affected by the Constitution.

Official regulations, legally issued on the authority of laws heretofore in effect, retain their validity until superseded by other regulations or legislation.

ART. 179. In so far as reference is made in laws or executive orders to provisions and institutions which are abolished by this Constitution, their places are taken by the corresponding provisions and institutions of this Constitution. In particular, the National Assembly takes the place of the National Convention, the National Council that of the Committee of the States, and the National President elected by authority of this Constitution that of the National President elected by authority of the law relating to the provisional government.

The power to issue executive orders, conferred upon the Commit-

tee of the States in accordance with the provisions heretofore in effect, is transferred to the National Cabinet; in order to issue executive orders it requires the consent of the National Council in accordance with the provisions of this Constitution.

ART. 180. Until the convening of the first National Assembly, the National Convention will function as the National Assembly. Until the inauguration of the first National President the office will be filled by the National President elected by authority of the law relating to the provisional government.

ART. 181. The German People have ordained and established this Constitution by their National Convention. It goes into effect upon the day of its promulgation.

SCHWARZBURG, August 11, 1919

(Signed)

The National President
EBERT

The National Cabinet
BAUER

ERZBERGER HERMANN MÜLLER DR. DAVID
NOSKE SCHMIDT SCHLICKE GIESBERTS
DR. MAYER DR. BELL

APPENDIX C

JAPAN

CONSTITUTION OF JAPAN

(February 11, 1889)

CHAPTER I

THE EMPEROR

ARTICLE 1. The Empire of Japan shall be reigned over and governed by a line of emperors unbroken for ages eternal.

ART. 2. The imperial throne shall be succeeded to by imperial male descendants, according to the provisions of the Imperial House Law.

ART. 3. The Emperor is sacred and inviolable.

ART. 4. The Emperor is the head of the Empire, combining in himself the rights of sovereignty, and exercises them, according to the provisions of the present constitution.

ART. 5. The Emperor exercises the legislative power with the consent of the Imperial Diet.

ART. 6. The Emperor gives sanction to laws, and orders them to be promulgated and executed.

ART. 7. The Emperor convokes the Imperial Diet, opens, closes, and prorogues it, and dissolves the House of Representatives.

ART. 8. The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, imperial ordinances in the place of laws.

Such imperial ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve the said ordinances, the government shall declare them to be invalid for the future.

ART. 9. The Emperor issues, or causes to be issued, the ordi-

nances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of his subjects. But no ordinance shall in any way alter any of the existing laws.

ART. 10. The Emperor determines the organization of the different branches of the administration, and the salaries of all civil and military officers, and appoints and dismisses the same. Exceptions especially provided for in the present constitution or in other laws shall be in accordance with the respective provisions (bearing thereon).

ART. 11. The Emperor has the supreme command of the army and navy.

ART. 12. The Emperor determines the organization and peace standing of the army and navy.

ART. 13. The Emperor declares war, makes peace, and concludes treaties.

ART. 14. The Emperor proclaims a state of siege.

The conditions and effects of a state of siege shall be determined by law.

ART. 15. The Emperor confers titles of nobility, rank, orders, and other marks of honor.

ART. 16. The Emperor orders amnesty, pardon, commutation of punishment, and rehabilitation.

ART. 17. A regency shall be instituted in conformity with the provisions of the Imperial House Law.

The regent shall exercise the powers appertaining to the Emperor, in his name.

CHAPTER II

RIGHTS AND DUTIES OF SUBJECTS

ART. 18. The conditions necessary for being a Japanese subject shall be determined by law.

ART. 19. Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military offices equally, and may fill any other public offices.

ART. 20. Japanese subjects are amenable to service in the army or navy, according to the provisions of law.

ART. 21. Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law.

ART. 22. Japanese subjects shall have the liberty of abode and of changing the same within the limits of law.

ART. 23. No Japanese subject shall be arrested, detained, tried, or punished, unless according to law.

ART. 24. No Japanese subject shall be deprived of his right of being tried by the judges determined by law.

ART. 25. Except in the cases provided for in the law, the house of no Japanese subject shall be entered or searched without his consent.

ART. 26. Except in the cases mentioned in the law, the secrecy of the letters of every Japanese subject shall remain inviolable.

ART. 27. The right of property of every Japanese subject shall remain inviolable.

Measures necessary to be taken for the public benefit shall be provided for by law.

ART. 28. Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief.

ART. 29. Japanese subjects shall, within the limits of law, enjoy the liberty of speech, writing, publication, public meeting, and association.

ART. 30. Japanese subjects may present petitions, by observing the proper forms of respect, and by complying with the rules specially provided for the same.

ART. 31. The provisions in the present chapter shall not affect the exercise of the powers appertaining to the Emperor, in times of war or in cases of national emergency.

ART. 32. Each and every one of the provisions contained in the preceding articles of the present chapter, that are not in conflict with the laws or rules and discipline of the army and navy, shall apply to the officers and men of the army and navy.

CHAPTER III

THE IMPERIAL DIET

ART. 33. The Imperial Diet shall consist of two houses, a House of Peers and a House of Representatives.[1]

[1] The internal organization of the two houses is regulated by the law of the Houses, of February 11, 1889. By Art. 3 of this law it is provided that "the president and vice-president of the House of Repre-

ART. 34. The House of Peers shall, in accordance with the ordinance concerning the House of Peers, be composed of the members of the imperial family, of the orders of nobility, and of those persons who have been nominated thereto by the Emperor.

ART. 35. The House of Representatives shall be composed of members elected by the people, according to the provisions of the election law.[1]

ART. 36. No one shall at one and the same time be a member of both houses.

ART. 37. Every law requires the consent of the Imperial Diet.

ART. 38. Both houses shall vote upon projects of law submitted to them by the government, and may respectively initiate projects of law.

ART. 39. A bill, which has been rejected by either the one or the other of the two houses, shall not be again brought in during the same session.

ART. 40. Both houses may make representations to the government as to laws or upon any other subject. When, however, such representations are not accepted, they cannot be made a second time during the same session.

ART. 41. The Imperial Diet shall be convoked every year.

ART. 42. A session of the Imperial Diet shall last during three months. In case of necessity, the duration of a session may be prolonged by imperial order.

ART. 43. When urgent necessity arises, an extraordinary session may be convoked, in addition to the ordinary one.

The duration of an extraordinary session shall be determined by imperial order.

ART. 44. The opening, closing, prolongation of session, or prorogation of the Imperial Diet shall be effected simultaneously for both houses.

sentatives shall both of them be nominated by the Emperor from among three candidates respectively elected by the House of each of those offices."

[1] The election law of 1889 was amended in 1900. At present the right to vote is enjoyed by male subjects twenty-five years of age, who have resided in the election district for one year, and pay a tax of ten yen (about five dollars). Before 1900 the tax qualification was fifteen yen. On account of the relative poverty of the people the present tax qualification limits the suffrage to a small proportion of the adult male population. In general all male subjects thirty years of age are eligible as representatives; the representatives are chosen in single election districts.

In case the House of Representatives has been ordered to dissolve, the House of Peers shall at the same time be prorogued.

ART. 45. When the House of Representatives has been ordered to dissolve, members shall be caused by imperial order to be newly elected, and the new House shall be convoked within five days from the day of dissolution.

ART. 46. No debate shall be opened and no vote shall be taken in either house of the Imperial Diet, unless not less than one-third of the whole number of the members thereof is present.

ART. 47. Votes shall be taken in both houses by absolute majority. In the case of a tie, the president shall have the casting vote.

ART. 48. The deliberations of both houses shall be held in public. The deliberations may, however, upon demand of the government or by resolution of the house, be held in secret sitting.

ART. 49. Both houses of the Imperial Diet may respectively present addresses to the Emperor.

ART. 50. Both houses may receive petitions presented by the subjects.

ART. 51. Both houses may enact, besides what is provided for in the present constitution and in the Law of the Houses, rules necessary for the management of their internal affairs.

ART. 52. No member of either house shall be held responsible outside the respective houses, for any opinion uttered or for any vote given in the house. When, however, a member himself has given publicity to his opinions by public speech, by documents in print or in writing, or by any other similar means, he shall, in the matter, be amenable to the general law.

ART. 53. The members of both houses shall, during the session, be free from arrest, unless with the consent of the house, except in cases where taken *in flagrante delicto*, or of offenses connected with a state of internal commotion or with a foreign trouble.

ART. 54. The ministers of state and the delegates of the government may, at any time, take seats and speak in either house.

CHAPTER IV

THE MINISTERS OF STATE AND THE PRIVY COUNCIL

ART. 55. The respective ministers of state shall give their advice to the Emperor, and be responsible for it.

All laws, imperial ordinances and imperial rescripts of whatever kind, that relate to the affairs of state, require the countersignature of a minister of state.

ART. 56. The Privy Council shall, in accordance with the provisions for the organization of the Privy Council, deliberate upon important matters of state, when they have been consulted by the Emperor.

CHAPTER V

THE JUDICIAL POWER

ART. 57. The judicial power shall be exercised by the courts of law according to law, in the name of the Emperor.

The organization of the courts of law shall be determined by law.

ART. 58. The judges shall be appointed from among those who possess proper qualifications according to law.

No judge shall be deprived of his position, unless by way of criminal sentence or disciplinary punishment.

Rules for disciplinary punishment shall be determined by law.

ART. 59. Trials and judgments of a court shall be conducted publicly. When, however, there exists any fear that such publicity may be prejudicial to peace and order, or to the maintenance of public morality, the public trial may be suspended by provision of law or by the decision of the court.

ART. 60. All matters that fall within the competency of special tribunals shall be specially provided for by law.

ART. 61. No suit which relates to rights alleged to have been infringed by the illegal measures of the executive authorities, and which should come within the competency of the Court of Administrative Litigation specially established by law, shall be taken cognizance of by a court of law.

CHAPTER VI

FINANCE

ART. 62. The imposition of a new tax or the modification of the rates (of an existing one) shall be determined by law.

However, all such administrative fees or other revenue having the nature of compensation shall not fall within the category of the above clause.

The raising of national loans and the contracting of other

liabilities to the charge of the national treasury, except those that are provided in the budget, shall require the consent of the Imperial Diet.

ART. 63. The taxes levied at present shall, in so far as they are not remodeled by a new law, be collected according to the old system.

ART. 64. The expenditure and revenue of the state require the consent of the Imperial Diet by means of an annual budget.

Any and all expenditures exceeding the appropriations set forth in the titles and paragraphs of the budget, or that are not provided for in the budget, shall subsequently require the approbation of the Imperial Diet.

ART. 65. The budget shall first be laid before the House of Representatives.

ART. 66. The expenditures of the Imperial House shall be defrayed every year out of the national treasury, according to the present fixed amount for the same, and shall not require the consent thereto of the Imperial Diet, except an increase thereto is found necessary.

ART. 67. Those expenditures already fixed and based upon the powers belonging to the Emperor by the constitution, or that relate to the legal obligations of the government, shall neither be rejected nor reduced by the Imperial Diet, without the concurrence of the government.

ART. 68. In order to meet special requirements, the government may ask the consent of the Imperial Diet to a certain amount as a continuing expenditure fund, for a previously fixed number of years.

ART. 69. In order to supply deficiencies, which are unavoidable, in the budget, and to meet requirements unprovided for in the same, a reserve fund shall be provided in the budget.

ART. 70. When the Imperial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety the government may enact all necessary financial measures, by means of an imperial ordinance.

In the case mentioned in the preceding clause, the matter shall be submitted to the Imperial Diet at its next session, and its approbation shall be obtained thereto.

ART. 71. When the Imperial Diet has not voted on the budget, or when the budget has not been brought into actual existence, the government shall carry out the budget of the preceding year.

ART. 72. The final account of the expenditures and revenue of the state shall be verified and confirmed by the Board of Audit, and it shall be submitted by the government to the Imperial Diet, together with the report of verification of the said board.

The organization and competency of the Board of Audit shall be determined by special law.

CHAPTER VII

SUPPLEMENTARY RULES

ART. 73. When it may become necessary in future to amend the provisions of the present constitution, a project to that effect shall be submitted to the Imperial Diet by imperial order.

In the above case, neither house shall open the debate, unless not less than two-thirds of the whole number of members are present, and no amendment shall be passed, unless a majority of not less than two-thirds of the members present is obtained.

ART. 74. No modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet.

No provision of the present constitution can be modified by the Imperial House Law.

ART. 75. No modification shall be introduced into the constitution, or into the Imperial House Law, during the time of a regency.

ART. 76. Existing legal enactments, such as laws, regulations, ordinances, or by whatever names they may be called, shall, so far as they do not conflict with the present constitution, continue in force.

All existing contracts or orders, that entail obligations upon the government, and that are connected with expenditure, shall come within the scope of Article 67.

IMPERIAL ORDINANCE CONCERNING THE HOUSE OF PEERS

ARTICLE 1. The House of Peers shall be composed of the following members:

(1) The members of the imperial family.

(2) Princes and marquises.

(3) Counts, viscounts, and barons who have been elected thereto by the members of their respective orders.

(4) Persons who have been specially nominated by the Emperor, on account of meritorious services to the state or of erudition.

(5) Persons who have been elected, one member for each Fu (city) and Ken (prefecture), by and from among the tax payers of the highest amount of direct national taxes on land, industry, or trade therein, and who have afterward been appointed thereto by the Emperor.

ART. 2. The male members of the imperial family shall take seats in the House on reaching their majority.

ART. 3. The members of the orders of princes and of marquises shall become members on reaching the full age of twenty-five years.

ART. 4. The members of the orders of counts, viscounts, and barons, who after reaching the full age of twenty-five years, have been elected by the members of their respective orders, shall become members for a term of seven years. Rules for their election shall be specially determined by imperial ordinance.

The number of members mentioned in the preceding clause shall not exceed one-fifth of the entire number of the respective orders of counts, viscounts, and barons.

ART. 5. Any man of above the age of thirty years, who has been appointed a member by the Emperor for meritorious services to the state or for erudition, shall be a life member.

ART. 6. One member shall be elected in each Fu and Ken from among and by the fifteen male inhabitants thereof of above the full age of thirty years, paying therein the highest amount of direct national taxes on land, industry, or trade. When the person thus elected receives his appointment from the Emperor, he shall become a member for the term of seven years. Rules for such elections shall be specially determined by imperial ordinance.

ART. 7. The number of members appointed by the Emperor for meritorious services to the state, or for erudition, or from among men paying the highest amount of direct national taxes on land, industry, or trade in each Fu or Ken, shall not exceed the number of the members having the title of nobility.

ART. 8. The House of Peers shall, when consulted by the Emperor, pass upon rules concerning the privileges of the nobility.

ART. 9. The House of Peers decides upon the qualification of its members and upon disputes concerning elections thereto. The rules for these decisions shall be resolved upon by the House of Peers and submitted to the Emperor for his sanction.

ART. 10. When a member has been sentenced to confinement, or for any severer punishment, or has been declared bankrupt, he shall be expelled by imperial order.

With respect to the expulsion of a member, as a disciplinary punishment in the House of Peers, the president shall report the facts to the Emperor for his decision.

Any member who has been expelled shall be incapable of again becoming a member, unless permission so to do has been granted by the Emperor.

ART. 11. The president and vice-president shall be nominated by the Emperor, from among the members, for a term of seven years.

If an elected member is nominated president or vice-president, he shall serve in that capacity for the term of his membership.

ART. 12. Every matter, other than those for which provision has been made in the present imperial ordinance, shall be dealt with according to the provisions of the Law of the Houses.

ART. 13. When in the future any amendment or addition is to be made to the provisions of the present imperial ordinance, the matter shall be submitted to the vote of the House of Peers.

APPENDIX D

RUSSIA

THE RUSSIAN CONSTITUTION[1]

CONSTITUTION
(Fundamental Law)

THE RUSSIAN SOCIALIST FEDERATED SOVIET REPUBLIC

Resolution of the 5th All-Russian Congress of Soviets, adopted on July 10, 1918

The declaration of rights of the laboring and exploited people (approved by the third All-Russian Congress of Soviets in January, 1918), together with the Constitution of the Soviet Republic, approved by the fifth Congress, constitutes a single fundamental law of the Russian Socialist Federated Soviet Republic.

This fundamental law becomes effective upon the publication of the same in its entirety in the "Izvestia of the All-Russian General Executive Committee." It must be published by all organs of the Soviet Government and must be posted in a prominent place in every Soviet institution.

The fifth Congress instructs the People's Commissariat of Education to introduce in all schools and educational institutions of the Russian Republic the study and explanation of the basic principles of this Constitution.

[1] From The New York *Nation*, issue of Jan. 4, 1919.

ARTICLE I

DECLARATION OF RIGHTS OF THE LABORING AND EXPLOITED PEOPLE

CHAPTER I

1. Russia is declared to be a Republic of the Soviets of Workers', Soldiers', and Peasants' Deputies. All the central and local power belongs to these Soviets.

2. The Russian Soviet Republic is organized on the basis of a free union of free nations, as a federation of Soviet national Republics.

CHAPTER II

3. Bearing in mind as its fundamental problem the abolition of exploitation of men by men, the entire abolition of the division of the people into classes, the suppression of exploiters, the establishment of a Socialist society, and the victory of socialism in all lands, the third All-Russian Congress of Soviets of Workers', Soldiers', and Peasants' Deputies further resolves:

(*a*) for the purpose of realizing the socialization of land, all private property in land is abolished, and the entire land is declared to be national property and is to be apportioned among husbandmen without any compensation to the former owners, in the measure of each one's ability to till it.

(*b*) all forests, treasures of the earth, and waters of general public utility, all implements whether animate or inanimate, model farms and agricultural enterprises, are declared to be national property.

(*c*) as a first step towards complete transfer of ownership to the Soviet Republic of all factories, mills, mines, railways, and other means of production and transportation, the Soviet law for the control by workmen and the establishment of the Supreme Soviet of National Economy is hereby confirmed, so as to assure the power of the workers over the exploiters.

(*d*) with reference to international banking and finance, the third Congress of Soviets is discussing the Soviet decree regarding the annulment of loans made by the Government of the Czar, by landowners and the bourgeoisie, and it trusts that the Soviet

Government will firmly follow this course, until the final victory of the international workers' revolt against the oppression of capital.

(*e*) the transfer of all banks into the ownership of the Workers' and Peasants' Government, as one of the conditions of the liberation of the toiling masses from the yoke of capital, is confirmed.

(*f*) universal obligation to work is introduced for the purpose of eliminating the parasitic strata of society and organizing the economic life of the country.

(*g*) for the purpose of securing the working class in the possession of the complete power, and in order to eliminate all possibility of restoring the power of the exploiters, it is decreed that all toilers be armed, and that a Socialist Red Army be organized and the propertied class be disarmed.

CHAPTER III

4. Expressing its absolute resolve to liberate mankind from the grip of capital and imperialism, which flooded the earth with blood in this present most criminal of all wars, the third Congress of Soviets fully agrees with the Soviet Government in its policy of breaking secret treaties, of organizing on a wide scale the fraternization of the workers and peasants of the belligerent armies, and of making all efforts to conclude a general democratic peace without annexations or indemnities, upon the basis of the free determination of the peoples.

5. It is also to this end that the third Congress of Soviets insists upon putting an end to the barbarous policy of the bourgeois civilization which enables the exploiters of a few chosen nations to enslave hundreds of millions of the toiling population of Asia, of the colonies, and of small countries generally.

6. The third Congress of Soviets hails the policy of the Council of People's Commissars in proclaiming the full independence of Finland, in withdrawing troops from Persia, and in proclaiming the right of Armenia to self-determination.

CHAPTER IV

7. The third All-Russian Congress of Soviets of Workers', Soldiers', and Peasants' Deputies believes that now, during the progress of the decisive battle between the proletariat and its

exploiters, the exploiters cannot hold a position in any branch of the Soviet Government. The power must belong entirely to the toiling masses and to their plenipotentiary representatives—the Soviets of Workers', Soldiers', and Peasants' Deputies.

8. In its effort to create a league—free and voluntary, and for that reason all the more complete and secure—of the working classes of all the peoples of Russia, the third Congress of Soviets merely establishes the fundamental principles of the federation of Russian Soviet Republics, leaving to the workers and peasants of every people to decide the following question at their plenary sessions of their Soviets: whether or not they desire to participate, and on what basis, in the federal government and other federal Soviet institutions.

Article II

GENERAL PROVISIONS OF THE CONSTITUTION OF THE RUSSIAN SOCIALIST FEDERATED SOVIET REPUBLIC

CHAPTER V

9. The fundamental problem of the Constitution of the Russian Socialist Federated Soviet Republic involves, in view of the present transition period, the establishment of a dictatorship of the urban and rural proletariat and the poorest peasantry in the form of a powerful All-Russian Soviet authority, for the purpose of abolishing the exploitation of men by men and of introducing Socialism, in which there will be neither a division into classes nor a state of autocracy.

10. The Russian Republic is a free Socialist society of all the working people of Russia. The entire power, within the boundaries of the Russian Socialist Federated Soviet Republic, belongs to all the working people of Russia, united in urban and rural Soviets.

11. The Soviets of those regions which differentiate themselves by a special form of existence and national character may unite in autonomous regional unions, ruled by the local Congress of the Soviets and their executive organs.

These autonomous regional unions participate in the Russian Socialist Federated Soviet Republic upon the basis of a federation.

12. The supreme power of the Russian Socialist Federated Soviet Republic belongs to the All-Russian Congress of Soviets, and, in periods between the convocation of the Congress, to the All-Russian Central Executive Committee.

13. For the purpose of securing to the toilers real freedom of conscience, the church is to be separated from the state and the school from the church, and the right of religious and anti-religious propaganda is accorded to every citizen.

14. For the purpose of securing the freedom of expression to the toiling masses, the Russian Socialist Federated Soviet Republic abolishes all dependence of the press upon capital, and turns over to the working people and the poorest peasantry all technical and material means of publication of newspapers, pamphlets, books, etc., and guarantees their free circulation throughout the country.

15. For the purpose of enabling the workers to hold free meetings, the Russian Socialist Federated Soviet Republic offers to the working class and to the poorest peasantry furnished halls, and takes care of their heating and lighting appliances.

16. The Russian Socialist Federated Soviet Republic, having crushed the economic and political power of the propertied classes and having thus abolished all obstacles which interfered with the freedom of organization and action of the workers and peasants, offers assistance, material and other, to the workers and the poorest peasantry in their effort to unite and organize.

17. For the purpose of guaranteeing to the workers real access to knowledge, the Russian Socialist Federated Soviet Republic sets itself the task of furnishing full and general free education to the workers and the poorest peasantry.

18. The Russian Socialist Federated Soviet Republic considers work the duty of every citizen of the Republic, and proclaims as its motto: "He shall not eat who does not work."

19. For the purpose of defending the victory of the great peasants' and workers' revolution, the Russian Socialist Federated Soviet Republic recognizes the duty of all citizens of the Republic to come to the defense of their Socialist Fatherland, and it, therefore, introduces universal military training. The honor of defending the revolution with arms is given only to the toilers, and the non-toiling elements are charged with the performance of other military duties.

20. In consequence of the solidarity of the toilers of all nations, the Russian Socialist Federated Soviet Republic grants all political rights of Russian citizens to foreigners who live in the territory of the Russian Republic and are engaged in toil and who belong to the toiling class. The Russian Socialist Federated Soviet Republic also recognizes the right of local Soviets to grant citizenship to such foreigners without complicated formality.

21. The Russian Socialist Federated Soviet Republic offers shelter to all foreigners who seek refuge from political or religious persecution.

22. The Russian Socialist Federated Soviet Republic, recognizing equal rights of all citizens, irrespective of their racial or national connections, proclaims all privileges on this ground, as well as of national minorities, to be in contradiction with the fundamental laws of the Republic.

23. Being guided by the interests of the working class as a whole, the Russian Socialist Federated Soviet Republic deprives all individuals and groups of rights which could be utilized by them to the detriment of the Socialist Revolution.

ARTICLE III

CONSTRUCTION OF THE SOVIET POWER

A. ORGANIZATION OF THE CENTRAL POWER

CHAPTER VI

The All-Russian Congress of Soviets of Workers', Peasants', Cossacks', and Red Army Deputies

24. The All-Russian Congress of Soviets is the supreme power of the Russian Socialist Federated Soviet Republic.

25. The All-Russian Congress of Soviets is composed of representatives of urban Soviets (one delegate for 21,000 voters), and of representatives of the provincial (Gubernia) congresses of Soviets (one delegate for 125,000 inhabitants).

NOTE. 1. In case the Provincial Congress is not called before the All-Russian Congress is convoked, delegates for the latter are sent directly from the county (Ouezd) Congress.

NOTE 2. In case the Regional (Oblast) Congress is convoked indirectly, previous to the convocation of the All-Russian Congress, delegates for the latter may be sent by the Regional Congress.

26. The All-Russian Congress is convoked by the All-Russian Central Executive Committee at least twice a year.

27. A special All-Russian Congress is convoked by the All-Russian Central Executive Committee upon its own initiative, or upon the request of local Soviets having not less than one-third of the entire population of the Republic.

28. The All-Russian Congress elects an All-Russian Central Executive Committee of not more than 200 members.

29. The All-Russian Central Executive Committee is entirely responsible to the All-Russian Congress of Soviets.

30. In the periods between the convocation of the Congresses, the All-Russian Central Executive Committee is the supreme power of the Republic.

CHAPTER VII

The All-Russian Central Executive Committee

31. The All-Russian Central Executive Committee is the supreme legislative, executive, and controlling organ of the Russian Socialist Federated Soviet Republic.

32. The All-Russian Central Executive Committee directs in a general way the activity of the workers' and peasants' Government and of all organs of the Soviet authority in the country, and it coördinates and regulates the operation of the Soviet Constitution and of the resolutions of the All-Russian Congresses and of the central organs of the Soviet power.

33. The All-Russian Central Executive Committee considers and enacts all measures and proposals introduced by the Soviet of People's Commissars or by the various departments, and it also issues its own decrees and regulations.

34. The All-Russian Central Executive Committee convokes the All-Russian Congress of Soviets, at which time the Executive Committee reports on its activity and on general questions.

35. The All-Russian Central Executive Committee forms a Council of People's Commissars for the purpose of general management of the affairs of the Russian Socialist Federated Soviet Republic, and it also forms departments (People's Commissariats) for the purpose of conducting various branches.

36. The members of the All-Russian Central Executive Committee work in the various departments (People's Commissariats)

or execute special orders of the All-Russian Central Executive Committee.

CHAPTER VIII

The Council of People's Commissars

37. The Council of People's Commissars is entrusted with the general management of the affairs of the Russian Socialist Federated Soviet Republic.

38. For the accomplishment of this task the Council of People's Commissars issues decrees, resolutions, orders, and, in general, takes all steps necessary for the proper and rapid conduct of government affairs.

39. The Council of People's Commissars notifies immediately the All-Russian Central Executive Committee of all its orders and resolutions.

40. The All-Russian Central Executive Committee has the right to revoke or suspend all orders and resolutions of the Council of People's Commissars.

41. All orders and resolutions of the Council of People's Commissars of great political significance are turned over for consideration and final approval to the All-Russian Central Executive Committee.

NOTE.—Measures requiring immediate execution may be enacted directly by the Council of People's Commissars.

42. The members of the Council of People's Commissars stand at the head of the various People's Commissariats.

43. There are seventeen People's Commissars:

(*a*) Foreign Affairs.
(*b*) Army.
(*c*) Navy.
(*d*) Interior.
(*e*) Justice.
(*f*) Labor.
(*g*) Social Welfare.
(*h*) Education.
(*i*) Post and Telegraph.
(*j*) National Affairs.
(*k*) Finances.

(*l*) Ways of Communication.
(*m*) Agriculture.
(*n*) Commerce and Industry.
(*o*) National Supplies.
(*p*) State Control.
(*q*) Supreme Soviet of National Economy.
(*r*) Public Health.

44. Every Commissar has a College (Committee) of which he is the President, and the members of which are appointed by the Council of People's Commissars.

45. A People's Commissar has the individual right to decide on all questions under the jurisdiction of his Commissariat, and he is to report on his decision to the College. If the College does not agree with the Commissar on some decisions, the former may, without stopping the execution of the decision, complain of it to the executive members of the Council of People's Commissars or to the All-Russian Central Executive Committee.

Individual members of the College have this right also.

46. The Council of People's Commissars is entirely responsible to the All-Russian Congress of Soviets and the All-Russian Central Executive Committee.

47. The People's Commissars and the Colleges of the People's Commissariats are entirely responsible to the Council of People's Commissars and the All-Russian Central Executive Committee.

48. The title of People's Commissar belongs only to the members of the Council of People's Commissars, which is in charge of general affairs of the Russian Socialist Federated Soviet Republic, and it cannot be used by any other representative of the Soviet power, either central or local.

CHAPTER IX

Affairs in the Jurisdiction of the All-Russian Congress and the All-Russian Central Executive Committee

49. The All-Russian Congress and the All-Russian Central Executive Committee deal with questions of state, such as:

(*a*) Ratification and amendment of the Constitution of the Russian Socialist Federated Soviet Republic.

(*b*) General direction of the entire interior and foreign policy of the Russian Socialist Federated Soviet Republic.

(*c*) Establishing and changing boundaries, also ceding territory belonging to the Russian Socialist Federated Soviet Republic.

(*d*) Establishing boundaries for regional Soviet unions belonging to the Russian Socialist Federated Soviet Republic, also settling disputes among them.

(*e*) Admission of new members to the Russian Socialist Federated Soviet Republic, and recognition of the secession of any parts of it.

(*f*) The general administrative division of the territory of the Russian Socialist Federated Soviet Republic and the approval of regional unions.

(*g*) Establishing and changing of weights, measures, and money denominations in the Russian Socialist Federated Soviet Republic.

(*h*) Foreign relations, declaration of war, and ratification of peace treaties.

(*i*) Making loans, signing commercial treaties, and financial agreements.

(*j*) Working out a basis and a general plan for the national economy and for its various branches in the Russian Socialist Federated Soviet Republic.

(*k*) Approval of the budget of the Russian Socialist Federated Soviet Republic.

(*l*) Levying taxes and establishing the duties of citizens to the state.

(*m*) Establishing the bases for the organization of armed forces.

(*n*) State legislation, judicial organization and procedure, civil and criminal legislation, etc.

(*o*) Appointment and dismissal of the individual People's Commissars or the entire Council; also approval of the President of the Council of People's Commissars.

(*p*) Granting and cancelling Russian citizenship and fixing rights of foreigners.

(*q*) The right to declare individual and general amnesty.

50. Besides the above-mentioned questions, the All-Russian

Congress and the All-Russian Central Executive Committee have charge of all other affairs which, according to their decision, require their attention.

51. The following questions are solely under the jurisdiction of the All-Russian Congress:

(*a*) Ratification and amendment of the fundamental principles of the Soviet Constitution.

(*b*) Ratification of peace treaties.

52. The decision of questions indicated in Items *c* and *h* of Paragraph 49 may be made by the All-Russian Central Executive Committee only in case it is impossible to convoke the Congress.

B. Organization of Local Soviets

CHAPTER X

The Congresses of the Soviets

53. Congresses of Soviets are composed as follows:

(*a*) Regional: of representatives of the urban and county Soviets, one representative for 25,000 inhabitants of the county, and one representative for 5,000 voters of the cities—but not more than 500 representatives for the entire region—or of representatives of the provincial Congresses, chosen on the same basis, if such a Congress meets before the regional Congress.

(*b*) Provincial (Gubernia): of representatives of urban and rural (Volost) Soviets, one representative for 10,000 inhabitants from the rural districts, and one representative for 2,000 voters in the city; altogether not more than 300 representatives for the entire province. In case the county Congress meets before the provincial, election takes place on the same basis, but by the county Congress instead of the rural.

(*c*) County: of representatives of rural Soviets, one delegate for each 1,000 inhabitants, but not more than 300 delegates for the entire county.

(*d*) Rural (Volost): of representatives of all village Soviets in the Volost, one delegate for ten members of the Soviet.

Note 1.—Representatives of urban Soviets which have a population of not more than 10,000 persons participate in the county Congress:

village Soviets of districts of less than 1,000 inhabitants unite for the purpose of electing delegates to the county Congress.

NOTE 2.—Rural Soviets of less than ten members send one delegate to the rural (Volost) Congress.

54. Congresses of the Soviets are convoked by the respective Executive Committees upon their own initiative, or upon request of local Soviets comprising not less than one-third of the entire population of the given district. In any case they are convoked at least twice a year for regions, every three months for provinces and counties, and once a month for rural districts.

55. Every Congress of Soviets (regional, provincial, county, and rural) elects its Executive organ—an Executive Committee the membership of which shall not exceed:

(*a*) for regions and provinces, 25; (*b*) for a county, 20; (*c*) for a rural district, 10. The Executive Committee is responsible to the Congress which elected it.

56. In the boundaries of the respective territories the Congress is the supreme power; during intervals between the convocations of the Congress, the Executive Committee is the supreme power.

CHAPTER XI

The Soviet of Deputies

57. Soviets of Deputies are formed:

(*a*) In cities, one deputy for each 1,000 inhabitants; the total to be not less than 50 and not more than 1,000 members.

(*b*) All other settlements (towns, villages, hamlets, etc.) of less than 10,000 inhabitants, one deputy for each 100 inhabitants; the total to be not less than 3 and not more than 50 deputies for each settlement.

Term of the deputy, three months.

NOTE.—In small rural sections, whenever possible, all questions shall be decided at general meetings of voters.

58. The Soviet of Deputies elects an Executive Committee to deal with current affairs; not more than 5 members for rural districts, one for every 50 members of the Soviets of cities, but not more than 15 and not less than 3 in the aggregate (Petrograd and Moscow not more than 40). The Executive Committee is entirely responsible to the Soviet which elected it.

59. The Soviet of Deputies is convoked by the Executive Com-

mittee upon its own initiative, or upon the request of not less than one-half of the membership of the Soviet; in any case at least once a week in cities, and twice a week in rural sections.

60. Within its jurisdiction the Soviet, and in cases mentioned in Paragraph 57, Note, the meeting of the voters, is the supreme power in the given district.

CHAPTER XII

Jurisdiction of the Local Organs of the Soviets

61. Regional, provincial, county, and rural organs of the Soviet power and also the Soviets of Deputies have to perform the following duties:

(*a*) Carry out all orders of the respective higher organs of the Soviet power.

(*b*) Take all steps towards raising the cultural and economic standard of the given territory.

(*c*) Decide all questions of local importance within their respective territory.

(*d*) Coördinate all Soviet activity in their respective territory.

62. The Congresses of Soviets and their Executive Committees have the right to control the activity of the local Soviets (*i. e.*, the regional Congress controls all Soviets of the respective regions; the provincial, of the respective province, with the exception of the urban Soviets, etc.); and the regional and provincial Congresses and their Executive Committees in addition have the right to overrule the decisions of the Soviets of their districts, giving notice in important cases to the central Soviet authority.

63. For the purpose of performing their duties, the local Soviets, rural and urban, and the Executive Committees form sections respectively.

ARTICLE IV

THE RIGHT TO VOTE

CHAPTER XIII

64. The right to vote and to be elected to the Soviets is enjoyed by the following citizens, irrespective of religion, nationality, domicile, etc., of the Russian Socialist Federated Soviet Republic, of

both sexes, who shall have completed their eighteenth year by the day of election:

(*a*) All who have acquired the means of living through labor that is productive and useful to society, and also persons engaged in housekeeping, which enables the former to do productive work, *i. e.*, laborers and employees of all classes who are employed in industry, trade, agriculture, etc.; and peasants and Cossack agricultural laborers who employ no help for the purpose of making profits.

(*b*) Soldiers of the army and navy of the Soviets.

(*c*) Citizens of the two preceding categories who have to any degree lost their capacity to work.

NOTE 1.—Local Soviets may, upon approval of the central power, lower the age standard mentioned herein.

NOTE 2.—Non-citizens mentioned in Paragraph 20 (Article Two, Chapter 5) have the right to vote.

65. The following persons enjoy neither the right to vote nor the right to be voted for, even though they belong to one of the categories enumerated above, namely:

(*a*) Persons who employ hired labor in order to obtain from it an increase in profits.

(*b*) Persons who have an income without doing any work, such as interest from capital, receipts from property, etc.

(*c*) Private merchants, trade and commercial brokers.

(*d*) Monks and clergy of all denominations.

(*e*) Employees and agents of the former police, the gendarme corps, and the Okhrana [Czar's secret service], also members of the former reigning dynasty.

(*f*) Persons who have in legal form been declared demented or mentally deficient, and also persons under guardianship.

(*g*) Persons who have been deprived by a Soviet of their rights of citizenship because of selfish or dishonourable offenses, for the period fixed by the sentence.

CHAPTER XIV

Elections

66. Elections are conducted according to custom on days fixed by the local Soviets.

67. Election takes place in the presence of an electing committee and the representative of the local Soviet.

68. In case the representative of the Soviet cannot be present for valid causes, the chairman of the electing committee takes his place, and in case the latter is absent, the chairman of the election meeting replaces him.

69. Minutes of the proceedings and results of elections are to be compiled and signed by the members of the electing committee and the representative of the Soviet.

70. Detailed instructions regarding the election proceedings and the participation in them of professional and other workers' organizations are to be issued by the local Soviets, according to the instructions of the All-Russian Central Executive Committee.

CHAPTER XV

The Checking and Cancellation of Elections and Recall of the Deputies

71. The respective Soviets receive all the records of the proceedings of the election.

72. The Soviet appoints a commission to verify the elections.

73. This commission reports on the results to the Soviets.

74. The Soviet decides the question when there is doubt as to which candidate is elected.

75. The Soviet announces a new election if the election of one candidate or another cannot be determined.

76. If an election was irregularly carried on in its entirety, it may be declared void by a higher Soviet authority.

77. The highest authority in relation to questions of elections is the All-Russian Central Executive Committee.

78. Voters who have sent a deputy to the Soviet have the right to recall him, and to have a new election, according to general provisions.

ARTICLE V

THE BUDGET

CHAPTER XVI

79. The financial policy of the Russian Socialist Federated Soviet Republic in the present transition period of dictatorship of

the proletariat, facilitates the fundamental purpose of expropriation of the bourgeoisie and the preparation of conditions necessary for the equality of all citizens of Russia in the production and distribution of wealth. To this end it sets forth as its task the supplying of the organs of the Soviet power with all necessary funds for local and state needs of the Soviet Republic, without regard to private property rights.

80. The state expenditure and income of the Russian Socialist Federated Soviet Republic are combined in the state budget.

81. The All-Russian Congress of Soviets or the All-Russian Central Executive Committee determine what matters of income and taxation shall go to the state budget and what shall go to the local Soviets; they also set the limits of taxes.

82. The Soviets levy taxes only for the local needs. The state needs are covered by the funds of the state treasury.

83. No expenditure out of the state treasury not set forth in the budget of income and expense shall be made without a special order of the central power.

84. The local Soviets shall receive credits from the proper People's Commissars out of the state treasury, for the purpose of making expenditures for general state needs.

85. All credits allotted to the Soviets from the state treasury, and also credits approved for local needs, must be expended according to the estimates, and cannot be used for any other purposes without a special order of the All-Russian Central Executive Committee and the Soviet of People's Commissars.

86. Local Soviets draw up semi-annual and annual estimates of income and expenditure for local needs. The estimates of urban and rural Soviets participating in county congresses, and also the estimates of the county organs of the Soviet power, are to be approved by provincial and regional congresses or by their executive committees; the estimates of the urban, provincial, and regional organs of the Soviets are to be approved by the All-Russian Central Executive Committee and the Council of People's Commissars.

87. The Soviets may ask for additional credits from the respective People's Commissariats for expenditures not set forth in the estimate, or where the allotted sum is insufficient.

88. In case of an insufficiency of local funds for local needs, the

necessary subsidy may be obtained from the state treasury by applying to the All-Russian Central Executive Committee or the Council of People's Commissars.

Article VI

THE COAT OF ARMS AND FLAG OF THE RUSSIAN SOCIALIST FEDERATED SOVIET REPUBLIC

CHAPTER XVII

89. The coat of arms of the Russian Socialist Federated Soviet Republic consists of a red background on which a golden scythe and a hammer are placed (crosswise, handles downward) in sunrays and surrounded by a wreath, inscribed:

Russian Socialist Federated Soviet Republic
Workers of the World, Unite!

90. The commercial, naval, and army flag of the Russian Socialist Federated Soviet Republic consists of a red cloth, in the left corner of which (on top, near the pole) there are in golden characters the letters R. S. F. S. R., or the inscription: Russian Socialist Federated Soviet Republic.

Chairman of the fifth All-Russian Congress of Soviets and of the All-Russian Central Executive Committee, J. Sverdloff.

Executive Officers, All-Russian Central Executive Committee: T. I. Teodorowitch, F. A. Rosin, A. P. Rosenholz, A. C. Mitrofanoff, K. G. Maximoff.

Secretary of the All-Russian Central Executive Committee, V. A. Avanessoff.

APPENDIX E

IRELAND

CONSTITUTION OF THE IRISH FREE STATE

PRELIMINARY

These presents shall be construed with reference to the articles of agreement for a treaty between Great Britain and Ireland set forth in the schedule hereto annexed (hereinafter referred to as "the Scheduled Treaty") which are hereby given the force of law, and if any provision of this constitution or of any amendment thereof or of any law made thereunder is in any respect repugnant to any of the provisions of the Scheduled Treaty, it shall, to the extent only of such repugnancy be absolutely void and inoperative and the Parliament and the Executive Council of the Irish Free State shall respectively pass such further legislation and do all such other things as may be necessary to implement the Scheduled Treaty.

SECTION I

FUNDAMENTAL RIGHTS

ARTICLE 1. The Irish Free State (Saorstat Eireann) is a co-equal member of the community of nations forming the British Commonwealth of Nations.

ART. 2. All powers of government and all authority, legislative, executive, and judicial, are derived from the people and the same shall be exercised in the Irish Free State (Saorstat Eireann) through the organizations established by or under, and in accord with, this constitution.

ART. 3. Every person domiciled in the Irish Free State (Saorstat Eireann) at the time of the coming into operation of this consti-

[1] Text published in The N. Y. *Nation*, issue of July 26, 1922.

tution who was born in Ireland or either of whose parents was born in Ireland or who has been so domiciled in the area of the jurisdiction of the Irish Free State (Saorstat Eireann) for not less than seven years is a citizen of the Irish Free State (Saorstat Eireann) and shall within the limits of the Irish Free State (Saorstat Eireann) enjoy the privileges and be subject to the obligations of such citizenship, provided that any such person being a citizen of another state may elect not to accept the citizenship hereby conferred; and the conditions governing the future acquisition and termination of citizenship in the Irish Free State (Saorstat Eireann) shall be determined by law. Men and women have equal rights as citizens.

ART. 4. The national language of the Irish Free State (Saorstat Eireann) is the Irish language, but the English language shall be equally recognized as an official language. Nothing in this article shall prevent special provisions being made by the Parliament (Oireachtas) for districts or areas in which only one language is in use.

ART. 5. No title of honor in respect of any services rendered in or in relation to the Irish Free State (Saorstat Eireann) may be conferred on any citizen of the Irish Free State (Saorstat Eireann) except with the approval or upon the advice of the Executive Council of the state.

ART. 6. The liberty of the person is inviolable and no person shall be deprived of his liberty except in accordance with law. Upon complaint made by or on behalf of any person that he is being unlawfully detained, the High Court (Ard Chuirt) and any and every judge thereof shall forthwith inquire into the same and may make an order requiring the person in whose custody such person shall be detained to produce the body of the person so detained before such court or judge without delay and to certify in writing as to the cause of the detention, and such court or judge shall thereupon order the release of such person unless satisfied that he is being detained in accordance with the law.

ART. 7. The dwelling of each citizen is inviolable and shall not be forcibly entered except in accordance with law.

ART. 8. Freedom of conscience and the free profession and practice of religion are inviolable rights of every citizen, and no law may be made either directly or indirectly to endow any

religion, or prohibit or restrict the free exercise thereof, or give any preference, or impose any disability on account of religious belief or religious status, or affect prejudicially the right of any child to attend a school receiving public money without attending the religious instruction at the school, or make any discrimination as respects state aid between schools under the management of different religious denominations, or divert from any religious denomination or any educational institution any of its property except for the purpose of roads, railways, lighting, water, or drainage works or other works of public utility, and on payment of compensation.

ART. 9. The right of free expression of opinion as well as the right to assemble peaceably and without arms, and to form associations or unions is guaranteed for purposes not opposed to public morality. Laws regulating the manner in which the right of forming associations and the right of free assembly may be exercised shall contain no political, religious, or class distinction.

ART. 10. All citizens of the Irish Free State (Saorstat Eireann) have the right to free elementary education.

ART. 11. The rights of the state in and to natural resources, the use of which is of national importance, shall not be alienated. Their exploitation by private individuals or associations shall be permitted only under state supervision and in accordance with conditions and regulations approved by legislation.

SECTION II

LEGISLATIVE PROVISIONS

A. *The Legislature*

ART. 12. A Legislature is hereby created to be known as the Parliament of the Irish Free State (Oireachtas). It shall consist of the King and two houses: the Chamber of Deputies (Dail Eireann) and the Senate (Seanad Eireann). The power of making laws for the peace, order, and good government of the Irish Free State (Saorstat Eireann) is vested in the Parliament (Oireachtas).

ART. 13. The Parliament (Oireachtas) shall sit in or near the city of Dublin or in such other place as from time to time it may determine.

ART. 14. All citizens of the Irish Free State (Saorstat Eireann) without distinction of sex, who have reached the age of twenty-one years and who comply with the provisions of the prevailing electoral laws, shall have the right to vote for members of the Chamber of Deputies (Dail Eireann), and to take part in the referendum or initiative. All citizens of the Irish Free State (Saorstat Eireann) without distinction of sex who have reached the age of thirty years and who comply with the provisions of the prevailing electoral laws, shall have the right to vote for members of the Senate (Seanad Eireann). No voter may exercise more than one vote and the voting shall be by secret ballot. The mode and place of exercising this right shall be determined by law.

ART. 15. Every citizen who has reached the age of twenty-one years and who is not placed under disability or incapacity by the constitution or by law shall be eligible to become a member of the Chamber of Deputies (Dail Eireann).

ART. 16. No person may be at the same time a member both of the Chamber (Dail Eireann) and of the Senate (Seanad Eireann).

ART. 17. The oath to be taken by Members of Parliament (Oireachtas) shall be in the following form:

> I ..... do solemnly swear true faith and allegiance to the constitution of the Irish Free State as by law established, and that I will be faithful to H. M. King George V, his heirs and successors by law in virtue of the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of nations forming the British Commonwealth of Nations.

Such oath shall be taken and subscribed by every member of the Parliament (Oireachtas) before taking his seat therein before the Representative of the Crown or some person authorized by him.

ART. 18. Every member of the Parliament (Oireachtas) shall, except in case of treason, felony, or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of either house, and shall not be amenable to any action or proceeding at law in respect of any utterance in either house.

ART. 19. All reports and publications of the Parliament (Oireachtas) or of either house thereof shall be privileged and utterances made in either house, wherever published, shall be privileged.

ART. 20. Each house shall make its own rules and standing orders, with power to attach penalties for their infringement and shall have power to insure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting, or attempting to corrupt its members in the exercise of their duties.

ART. 21. Each house shall elect its own chairman and deputy chairman and shall prescribe their powers, duties, and terms of office.

ART. 22. All matters in each house shall, save as otherwise provided by this constitution, be determined by a majority of the votes of the members present other than the chairman or presiding member, who shall have and exercise a casting vote in the case of an equality of votes. The number of members necessary to constitute a meeting of either house for the exercise of its powers shall be determined by its standing orders.

ART. 23. The Parliament (Oireachtas) shall make provision for the payment of its members and may, in addition, provide them with free traveling facilities in any part of Ireland.

ART. 24. The Parliament (Oireachtas) shall hold at least one session each year. The Parliament (Oireachtas) shall be summoned and dissolved by the Representative of the Crown in the name of the King and subject as aforesaid the Chamber (Dail Eireann) shall fix the date of reassembly of the Parliament (Oireachtas) and the date of the conclusion of the session of each house provided that the sessions of the Senate (Seanad Eireann) shall not be concluded without its own consent.

ART. 25. Sittings of each house of the Parliament (Oireachtas) shall be public. In cases of special emergency either house may hold a private sitting with the assent of two-thirds of the members present.

B. The Chamber of Deputies (Dail Eireann)

ART. 26. The Chamber (Dail Eireann) shall be composed of members who represent constituencies determined by law. The number of members shall be fixed from time to time by the Parliament (Oireachtas) but the total number of members of the Chamber (Dail Eireann) shall not be fixed at less than one member

for each thirty thousand of the population, or at more than one member for each twenty thousand of the population: Provided that the proportion between the number of members to be elected at any time for each constituency and the population of each constituency, as ascertained at the last preceding census, shall, so far as possible, be identical throughout the country. The members shall be elected upon principles of proportional representation. The Parliament (Oireachtas) shall revise the constituencies at least once in every ten years, with due regard to changes in distribution of the population, but any alterations in the constituencies shall not take effect during the life of the Chamber (Dail Eireann) sitting when such revision is made.

ART. 27. At a general election for the Chamber (Dail Eireann) the polls shall be held on the same day throughout the country and that day shall be a day not later than thirty days after the date of the dissolution and shall be proclaimed a public holiday. The Chamber (Dail Eireann) shall meet within one month of such day, and shall unless earlier dissolved continue for four years from the date of its first meeting and not longer. The Chamber (Dail Eireann) may not at any time be dissolved except on the advice of the Executive Council.

ART. 28. In case of death, resignation, or disqualification of a member of the Chamber (Dail Eireann), the vacancy shall be filled by election in manner to be determined by law.

C. The Senate (Seanad Eireann)

ART. 29. The Senate (Seanad Eireann) shall be composed of citizens who have done honor to the nation by reason of useful public service or who, because of special qualifications or attainments, represent important aspects of the nation's life.

ART. 30. Every university in the Irish Free State (Saorstat Eireann) shall be entitled to elect two representives to the Senate (Seanad Eireann). The number of Senators exclusive of the university members shall be fifty-six. A citizen to be eligible for membership of the Senate (Seanad) must be a person eligible to become a member of the Chamber (Dail Eireann) and must have have reached the age of thirty-five years. Subject to any provision for the constitution of the first Senate (Seanad) the term of office of a member of the Senate (Seanad) shall be twelve years.

ART. 31. One-fourth of the members of the Senate (Seanad Eireann) exclusive of the university members shall be elected every three years from a panel constituted as hereinafter mentioned at an election at which the Irish Free State (Saorstat Eireann) shall form one electoral area, and the elections shall be held on principles of proportional representation. One member shall be elected by each university entitled to representation in the Senate (Seanad) every six years.

ART. 32. Before each election of members of the Senate (Seanad Eireann)—other than university members—a panel shall be formed consisting of:

(*a*) Three times as many qualified persons as there are members to be elected of whom two-thirds shall be nominated by the Chamber (Dail Eireann) voting according to principles of proportional representation and one-third shall be nominated by the Senate (Seanad Eireann) voting according to principles of proportional representation; and

(*b*) Such persons who have at any time been members of the Senate (Seanad)—including members about to retire—as signify by notice in writing addressed to the president of the Executive Council their desire to be included in the panel.

The method of proposal and selection for nomination shall be decided by the Chamber (Dail) and Senate (Seanad) respectively with special reference to the necessity for arranging for the representation of important interests and institutions in the country: Provided that each proposal shall be in writing and shall state the qualifications of the person proposed. As soon as the panel has been formed a list of the names of the members of the panel arranged in alphabetical order with their qualifications shall be published.

ART. 33. In case of the death, resignation, or disqualification of a member of the Senate (Seanad Eireann)—other than a university member—his place shall be filled by a vote of the Senate (Seanad). Any Senator so chosen shall retire from office at the conclusion of the three-year period then running and the vacancy or vacancies thus created shall be additional to the places to be filled under Article 31. The term of office of the members chosen at the election after the first fourteen elected shall conclude at the end of the period or periods at which the Senator or Senators

by whose death or withdrawal the vacancy or vacancies was or were originally created would be due to retire: Provided that the fifteenth member shall be deemed to have filled the vacancy first created in order of time and so on.

In case of the death, resignation, or disqualification of a university member of the Senate (Seanad), the university by which he was elected shall elect a person to fill his place, and the member so elected shall hold office so long as the member in whose place he was elected would have held office.

D. Legislation

ART. 34. The Chamber (Dail Eireann) shall in relation to the subject matter of money bills as hereinafter defined have legislative authority exclusive of the Senate (Seanad Eireann).

A money bill means a bill which contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on public moneys or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue, or audit of accounts of public money; the raising or guaranty of any loan or the repayment thereof; subordinate matters incidental to those subjects or any of them. In this definition the expression "taxation," "public money," and "loan" respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.

The chairman of the Chamber (Dail) shall certify any bill which in his opinion is a money bill to be a money bill, but if within three days after a bill has been passed by the Chamber (Dail) two-fifths of the members of either house by notice in writing addressed to the chairman of the house of which they are members so require, the question whether the bill is or is not a money bill shall be referred to a committee of privileges consisting of three members elected by each house with a chairman who shall be the senior judge of the Supreme Court able and willing to act, and who, in the case of an equality of votes, but not otherwise, shall be entitled to vote. The decision of the committee on the question shall be final and conclusive.

ART. 35. The Chamber (Dail Eireann) shall as soon as possible

after the commencement of each financial year consider the budget of receipts and expenditure of the Irish Free State (Saorstat Eireann) for that year, and, save in so far as may be provided by specific enactment in each case, the legislation required to give effect to the budget of each year shall be enacted within that year.

ART. 36. Money shall not be appropriated by vote, resolution, or law, unless the purpose of the appropriation has in the same session been recommended by a message from the Representative of the Crown acting on the advice of the Executive Council.

ART. 37. Every bill initiated in and passed by the Chamber (Dail Eireann) shall be sent to the Senate (Seanad Eireann) and may, unless it be a money bill, be amended in the Senate (Seanad Eireann) and the Chamber (Dail Eireann) shall consider any such amendment; but a bill passed by the Chamber (Dail Eireann) and considered by the Senate (Seanad Eireann) shall, not later than two hundred and seventy days after it shall have been first sent to the Senate (Seanad), or such longer period as may be agreed upon by the two houses, be deemed to be passed by both houses in its form as last passed by the Chamber (Dail): Provided that any money bill shall be sent to the Senate (Seanad) for its recommendations and at a period not longer than fourteen days after it shall have been sent to the Senate (Seanad) it shall be returned to the Chamber (Dail) which may pass it, accepting or rejecting all or any of the recommendations of the Senate (Seanad), and as so passed shall be deemed to have been passed by both houses. When a bill other than a money bill has been sent to the Senate (Seanad) a joint sitting of the members of both houses may on a resolution passed by the Senate (Seanad) be convened for the purpose of debating, but not of voting upon, the proposals of the bill or any amendment of the same.

ART. 38. A bill may be initiated in the Senate (Seanad Eireann) and if passed by the Senate (Seanad) shall be introduced into the Chamber (Dail Eireann). If amended by the Chamber (Dail) the bill shall be considered as a bill initiated in the Chamber (Dail). If rejected by the Chamber (Dail) it shall not be introduced again in the same session, but the Chamber (Dail) may reconsider it on its own motion.

ART. 39. A bill passed by either house and accepted by the other house shall be deemed to be passed by both houses.

ART. 40. So soon as any bill shall have been passed or deemed to have been passed by both houses, the Executive Council shall present the same to the Representative of the Crown for the signification by him, in the King's name, of the King's assent, and such Representative may withhold the King's assent or reserve the bill for the signification of the King's pleasure: Provided that the Representative of the Crown shall in the withholding of such assent to or the reservation of any bill, act in accordance with the law, practice, and constitutional usage governing the like withholding of assent or reservation in the Dominion of Canada.

A bill reserved for the signification of the King's Pleasure shall not have any force unless and until within one year from the day on which it was presented to the Representative of the Crown for the King's assent, the Representative of the Crown signifies by speech or message to each of the houses of the Parliament (Oireachtas), or by proclamation, that it has received the assent of the King in Council.

An entry of every such speech, message, or proclamation shall be made in the journal of each house and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the records of the Irish Free State (Saorstat Eireann).

ART. 41. As soon as may be after any law has received the King's Assent, the clerk, or such officer as the Chamber may appoint for the purpose, shall cause two fair copies of such law to be made, one being in the Irish language and the other in the English language (one of which copies shall be signed by the Representative of the Crown to be enrolled for record in the office of such officer of the Supreme Court as the Chamber [Dail Eireann] may determine), and such copies shall be conclusive evidence as to the provisions of every such law, and in case of conflict between the two copies so deposited, that signed by the Representative of the Crown shall prevail.

ART. 42. The Parliament (Oireachtas) shall have no power to declare acts to be infringements of the law which were not so at the date of their commission.

ART. 43. The Parliament (Oireachtas) may create subordinate legislatures, but it shall not confer thereon any powers in respect of the navy, army, or air force, alienage or naturalization, coinage, legal tender, trade marks, designs, merchandise marks, copyright,

patent rights, weights and measures, submarine cables, wireless telegraphy, post office, railways, aerial navigation, customs and excise.

ART. 44. The Parliament (Oireachtas) may provide for the establishment of functional or vocational councils representing branches of the social and economic life of the nation. A law establishing any such council shall determine its powers, rights, and duties, and its relation to the government of the Irish Free State (Saorstat Eireann).

ART. 45. The Parliament (Oireachtas) has the exclusive right to regulate the raising and maintaining of such armed forces as are mentioned in the Scheduled Treaty in the territory of the Irish Free State (Saorstat) and every such force shall be subject to the control of the Parliament (Oireachtas).

E. Referendum and Initiative

ART. 46. Any bill passed or deemed to have been passed by both houses may be suspended for a period of ninety days on the written demand of two-fifths of the members of the Chamber (Dail Eireann) or of a majority of the members of the Senate (Seanad Eireann) presented to the president of the Executive Council not later than seven days from the day on which such bill shall have been so passed or deemed to have been so passed. Such a bill shall be submitted by referendum to the decision of the people if demanded before the expiration of the ninety days either by a resolution of the Senate (Seanad Eireann) assented to by three-fifths of the members of the Senate (Seanad Eireann) or by a petition signed by not less than one-twentieth of the voters then on the register of voters, and the decision of the people on such referendum shall be conclusive. These provisions shall not apply to money bills or to such bills as shall be declared by both houses to be necessary for the immediate preservation of the public peace, health, or safety.

ART. 47. The Parliament (Oireachtas) may provide for the initiation by the people of proposals for laws or constitutional amendments. Should the Parliament (Oireachtas) fail to make such provision within two years, it shall on the petition of not less than one hundred thousand voters on the register of whom not more than twenty thousand shall be voters in any one constituency,

either make such provisions or submit the question to the people for decision in accordance with the ordinary regulations governing the referendum. Any legislation passed by the Parliament (Oireachtas) providing for such initiation by the people shall provide (1) that such proposals may be initiated on a petition of fifty thousand voters on the register, (2) that if the Parliament (Oireachtas) rejects a proposal so initiated it shall be submitted to the people for decision in accordance with the ordinary regulations governing the referendum; and (3) that if the Parliament (Oireachtas) enacts a proposal so initiated such enactment shall be subject to the provisions respecting ordinary legislation or amendments of the constitution as the case may be.

ART. 48. Save in the case of actual invasion, the Irish Free State (Saorstat Eireann) shall not be committed to active participation in any war without the assent of the Parliament (Oireachtas).

ART. 49. Amendments of this constitution within the terms of the Scheduled Treaty may be made by the Parliament (Oireachtas) but every such amendment must be submitted to a referendum of the people and shall not be passed unless a majority of the voters on the register record their votes and either a majority of the voters on the register or two-thirds of the votes recorded are in favor of the amendment.

SECTION III

THE EXECUTIVE

A. Executive Council (Aireacht)

ART. 50. The executive authority of the Irish Free State (Saorstat Eireann) is hereby declared to be vested in the King, and shall be exercisable, in accordance with the law, practice, and constitutional usage governing the exercise of the executive authority in the case of the Dominion of Canada, by the Representative of the Crown. There shall be a council to aid and advise in the government of the Irish Free State (Saorstat Eireann) to be styled the Executive Council (Aireacht). The Executive Council shall be responsible to the Chamber (Dail Eireann), and shall consist of not more than twelve ministers (Airi) appointed by the Representative of the Crown, of whom four ministers shall

be members of the Chamber (Dail Eireann) and a number not exceeding eight, chosen from all citizens eligible for election to the Chamber (Dail Eireann), who shall not be members of Parliament (Oireachtas) during their term of office, and who, if at the time of their appointment they are members of Parliament (Oireachtas), shall by virtue of such appointment vacate their seats: Provided that the Chamber (Dail Eireann) may from time to time on the motion of the president of the Executive Council determine that a particular minister or ministers not exceeding three may be members of Parliament (Oireachtas) in addition to the four members of the Chamber (Dail Eireann) above mentioned.

ART. 51. The ministers who are required to be members of the Chamber (Dail Eireann) shall include the president of the Executive Council (Uachtaran) and the vice-president of the Executive Council (Tanaist).

The president of the Executive Council shall be the chief of the Executive Council and shall be appointed on the nomination of the Chamber (Dail), and the vice-president of the Executive Council and the other ministers who are members of the Parliament (Oireachtas) shall be appointed on the nomination of the president of the Executive Council; and he and the ministers nominated by him shall retire from office should he fail to be supported by a majority in the Chamber (Dail), but the president of the Executive Council and such ministers shall continue to carry on their duties until their successors are appointed.

ART. 52. Ministers who are not members of the Parliament (Oireachtas) shall be nominated by a committee of members of the Chamber (Dail Eireann) chosen by a method to be determined by the Chamber (Dail) so as to be impartially representative of the Chamber (Dail). Such ministers shall be chosen with due regard to their suitability for office and should, as far as possible, be generally representative of the Irish Free State (Saorstat Eireann) as a whole rather than of groups or of parties. Should a nomination not be acceptable to the Chamber (Dail), the committee shall continue to propose names until one is found acceptable.

ART. 53. Each minister not a member of the Parliament (Oireachtas) shall be the responsible head of the executive depart-

ment or departments as head of which he has been appointed as aforesaid: Provided that should arrangements for functional or vocational councils be made by the Parliament (Oireachtas) these ministers or any of them may, should the Parliament (Oireachtas) so decide, be members of and be nominated on the advice of such councils. The term of office of any such minister shall be the term of the Chamber (Dail Eireann) existing at the time of his appointment or such other period as may be fixed by law, but he shall continue in office until his successor shall have been appointed; and no such minister shall be removed from office during his term unless the proposal to remove him has been previously submitted to a committee chosen by a method to be determined by the Chamber (Dail) so as to be impartially representative of the Chamber (Dail) and then only if the committee shall have reported that such minister has been guilty of malfeasance in office, or has not been performing his duties in a competent and satisfactory manner, or has failed to carry out the lawfully expressed will of Parliament (Oireachtas).

ART. 54. The ministers who are members of the Parliament (Oireachtas) shall alone be responsible for all matters relating to external affairs, whether policy, negotiations, or executive acts. Subject to the foregoing provision, the Executive Council shall meet and act as a collective authority: Provided, however, that each minister shall be individually responsible to the Chamber (Dail Eireann) for the administration of the department or departments of which he is head.

ART. 55. Ministers who are not members of the Chamber (Dail Eireann) shall by virtue of their office possess all the rights and privileges of a member of the Chamber (Dail) except the right to vote, and shall, if not members of the Parliament (Oireachtas), comply with the provisions of Article 17 as if they were members of the Chamber (Dail), and may be required by the Chamber (Dail) to attend and answer questions.

ART. 56. Should the president of the Executive Council die, resign, or be permanently incapacitated, the vice-president of the Executive Council shall act in his place until a president of the Executive Council shall be elected. The vice-president of the Executive Council shall also act in the place of the president of the Executive Council during his temporary absence.

ART. 57. The members of the Executive Council shall receive such remuneration as may from time to time be prescribed by law, but the remuneration of any minister shall not be diminished during his term of office.

ART. 58. The Representatives of the Crown, who shall be styled the Governor General of the Irish Free State, shall be appointed in like manner as the Governor General of Canada and in accordance with the practice observed in the making of such appointments. The salary of the Governor General of the Irish Free State shall be of the like amount as that now payable to the Governor General of the Commonwealth of Australia and shall be charged on the public funds of the Irish Free State (Saorstat Eireann) and suitable provision shall be made out of those funds for the maintenance of his official residence and establishment.

ART. 59. The Executive Council shall prepare the budget of receipts and expenditure of the Irish Free State (Saorstat Eireann) for each financial year and shall present it to the Chamber (Dail Eireann) before the close of the previous financial year.

B. Financial Control

ART. 60. All revenues of the Irish Free State (Saorstat Eireann) from whatever source arising shall, subject to such exception as may be provided by law, form one fund, and shall be appropriated for the purposes of the Irish Free State (Saorstat Eireann) in the manner and subject to the charges and liabilities imposed by law.

ART. 61. The Chamber (Dail Eireann) shall appoint a comptroller and auditor-general to act on behalf of the Irish Free State (Saorstat Eireann). He shall control all disbursements and shall audit all accounts of moneys administered by or under the authority of the Parliament (Oireachtas) and shall report to the Chamber (Dail) at stated periods to be determined by law.

ART. 62. The comptroller and auditor-general shall not be removed except for stated misbehavior or incapacity on resolutions passed by the Chamber (Dail Eireann) and the Senate (Seanad Eireann). Subject to this provision the terms and conditions of his tenure of office shall be fixed by law. He shall not be a member of the Parliament (Oireachtas) nor shall he hold any other office or position of emolument.

SECTION IV

THE JUDICIARY

ART. 63. The judicial power of the Irish Free State (Saorstat Eireann) shall be exercised and justice administered in the public courts established by Parliament (Oireachtas) by judges appointed in manner hereinafter provided. These courts shall comprise courts of first instance and a court of final appeal to be called the Supreme Court (Chuirt Uachtarach). The courts of first instance shall include a High Court (Ard Chuirt) invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal, and also courts of local and limited jurisdiction with a right of appeal as determined by law.

ART. 64. The judicial power of the High Court shall extend to the question of the validity of any law having regard to the provisions of the constitution. In all cases in which such matters shall come into question, the High Court alone shall exercise original jurisdiction.

ART. 65. The Supreme Court of the Irish Free State (Saorstat Eireann) shall, with such exceptions (not including cases which involve questions as to the validity of any law) and subject to such regulations as may be prescribed by law have appellate jurisdiction from all decisions of the High Court. The decision of the Supreme Court shall in all cases be final and conclusive, and shall not be reviewed or capable of being reviewed by any other court, tribunal, or authority whatsoever: Provided that nothing in this constitution shall impair the right of any person to petition His Majesty for special leave to appeal from the Supreme Court to His Majesty in Council or the right of His Majesty to grant such leave.

ART. 66. The number of judges, the constitution and organization of, and distribution of business and jurisdiction among, the said courts and judges, and all matters of procedure shall be as prescribed by the laws for the time being in force and the regulations made thereunder.

ART. 67. The judges of the Supreme Court and of the High Court and of all other courts established in pursuance of this constitution shall be appointed by the Representative of the Crown

on the advice of the Executive Council. The judges of the Supreme Court and of the High Court shall not removed except for stated misbehavior or incapacity and then only by resolutions passed by both the Chamber (Dail Eireann) and the Senate (Seanad Eireann). The age of retirement, the remuneration and the pension of such judges on retirement, and the declarations to be taken by them on appointment shall be prescribed by law. Such remuneration may not be diminished during their continuance in office. The terms of appointment of the judges of such other courts as may be created shall be prescribed by law.

ART. 68. All judges shall be independent in the exercise of their functions and subject only to the constitution and the law. A judge shall not be eligible to sit in Parliament (Oireachtas) and shall not hold any other office or position of emolument.

ART. 69. No one shall be tried save in due course of law and extraordinary courts shall not be established. The jurisdiction of courts martial shall not be extended to or exercised over the civil population save in time of war, and for acts committed in time of war, and in accordance with the regulations to be prescribed by law. Such jurisdiction shall not be exercised in any area in which the civil courts are open or capable of being held, and no person shall be removed from one area to another for the purpose of creating such jurisdiction.

ART. 70. A member of the armed forces of the Irish Free State (Saorstat Eireann) not on active service shall not be tried by any court martial for an offense cognizable by the civil courts.

ART. 71. No person shall, save in case of summary jurisdiction prescribed by law for minor offenses, be tried without a jury on any criminal charge.

SECTION V

TRANSITORY PROVISIONS

ART. 72. Subject to this constitution and to the extent to which they are not inconsistent therewith, the laws in force in the Irish Free State (Saorstat Eireann) at the date of the coming into operation of this constitution shall continue to be of full force and effect until the same or any of them shall have been repealed or amended by enactment of the Parliament (Oireachtas).

ART. 73. Until courts have been established for the Irish Free State (Saorstat Eireann) in accordance with this constitution, the Supreme Court of Judicature, County Courts, Courts of Quarter Session, and Courts of Summary Jurisdiction, as at present existing, shall for the time being continue to exercise the same jurisdiction as heretofore, and any judge or justice, being a member of any such court, holding office at the time when this constitution comes into operation, shall for the time being continue to be a member thereof and hold office by the like tenure and upon the like terms as heretofore, unless, in the case of a judge of the said Supreme Court or of a County Court, he signifies to the Representative of the Crown his desire to resign. Any vacancies in any of the said courts so continued may be filled by appointment made in like manner as appointments to judgeships in the courts established under this constitution: Provided that the provisions of Article 65 as to the decisions of the Supreme Court established under this constitution shall apply to decisions of the Court of Appeal continued by this article.

ART. 74. If any judge of the said Supreme Court of Judicature or of any of the said county courts resigns as aforesaid, or if any such judge, on the establishment of courts under this constitution, is not with his consent appointed to be a judge of any such court, he shall, for the purpose of Article 10 of the Scheduled Treaty, be treated as if he had retired in consequence of the change of government effected in pursuance of the said treaty, but the rights so conferred shall be without prejudice to any rights or claims that he may have against the British Government.

ART. 75. Every existing officer of the Provisional Government who has been transferred to that Government from the British Government, and every existing officer of the British Government who, at the date of the coming into operation of this constitution, is engaged or employed in the administration of public services which on that date become public services of the Irish Free State (Saorstat Eireann)—except those whose services have been lent by the British Government to the Provisional Government—shall on that date be transferred to and become an officer of the Irish Free State (Saorstat Eireann) and shall hold office by a tenure corresponding to his previous tenure, and shall be entitled to the benefit of Article 10 of the Scheduled Treaty.

ART. 76. As respects departmental property, assets, rights, and liabilities, the Government of the Irish Free State (Saorstat Eireann) shall be regarded as the successors of the Provisional Government, and, to the extent to which functions of any department of the British Government become functions of the Government of the Irish Free State (Saorstat Eireann), as the successors of such department of the British Government.

ART. 77. After the date on which this constitution comes into operation the House of the Parliament elected in pursuance of the Irish Free State (Agreement) Act, 1922 (being the constituent assembly for the settlement of this constitution) may, for a period not exceeding one year from that date, but subject to compliance by the members thereof with the provisions of Article 17 of this constitution, exercise all the powers and authorities conferred on the Chamber (Dail Eireann) by this constitution, and the first election for the Chamber (Dail Eireann) under Articles 26 and 27 hereof shall take place as soon as possible after the expiration of such period.

ART. 78. The first Senate (Seanad Eireann) shall be constituted immediately after the coming into operation of this constitution in the manner following, that is to say:

(*a*) The first Senate (Seanad) shall consist of two members elected by each of the universities in the Irish Free State (Saorstat Eireann) and fifty-six other members, of whom twenty-eight shall be elected and twenty-eight shall be nominated;

(*b*) The twenty-eight nominated members of the Senate (Seanad) shall be nominated by the president of the Executive Council who shall, in making such nominations, have special regard to the providing of representation for groups or parties not adequately represented in the Chamber (Dail);

(*c*) The twenty-eight elected members of the Senate (Seanad) shall be elected by the Chamber (Dail Eireann) voting on principles of proportional representation;

(*d*) Of the university members one member elected by each university, to be selected by lot, shall hold office for six years, the remaining university members shall hold office for the full period of twelve years;

(*e*) Of the twenty-eight nominated members fourteen, to be selected by lot, shall hold office for the full period of twelve years,

the remaining fourteen shall hold office for the period of six years;

(*f*) Of the twenty-eight elected members the first fourteen elected shall hold office for the period of nine years, the remaining fourteen shall hold office for the period of three years;

(*g*) At the termination of the period of office of any such members, members shall be elected in their place in manner provided by Article 31;

(*h*) Casual vacancies shall be filled in manner provided by Article 33;

(*i*) For the purpose of the election of members for any university under this article, all persons whose names appear on the register for the university in force at the date of the coming into operation of this constitution shall, notwithstanding anything in Article 14, be entitled to vote.

ART. 79. The passing and adoption of this constitution by the Constituent Assembly and the British Parliament shall be announced as soon as may be, and not later than the sixth day of December, nineteen hundred and twenty-two, by proclamation of His Majesty and this constitution shall come into operation on the issue of such proclamation.

APPENDIX F

UNITED STATES

THE CONSTITUTION OF THE UNITED STATES

(September 17, 1787[1])

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

SEC. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

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.

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

[1] This is the date upon which the constitution was agreed upon by the constitutional convention; according to the terms of the constitution it became effective on June 21, 1788, after ratification by nine states. The date set by Congress for proceedings to begin under the constitution was March 4, 1789, but the government was actually not organised until April of that year.

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.[1] 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.[2]

When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SEC. 3. 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.

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.

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.

[1] Amended by the second section of the fourteenth amendment, p. 564.
[2] According to the present apportionment, based on the 1910 census, there are now 435 members of the House of Representatives, there being approximately one member to 212,000 people.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

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.

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.

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.

SEC. 4. 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.

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.

SEC. 5. 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.

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.

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.

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.

SEC. 6. 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 peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for 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.

SEC. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

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.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on

a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SEC. 8. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

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;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively,

the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

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 building;—and

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.

SEC. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

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.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

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.

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.

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.

SEC. 10. No State shall enter into any treaty, alliance, or con-

federation; 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.

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. 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:

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.

The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number

be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.[1]

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.

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.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

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.

Before he enter on the execution of his office, he shall take the

[1] This clause has been superseded by the twelfth amendment, p. 562.

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."

SEC. 2. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

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.

SEC. 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.

SEC. 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.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases 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.

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.

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.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

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.

SEC. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, 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.

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.

SEC. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

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.

SEC. 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 cannot 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

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.

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.

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.

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA

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.[1]

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 offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

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

[1] The first ten amendments were proposed by the first Congress, on September 25, 1789, and were ratified by three-fourths of the States during the two succeeding years.

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 defence.

ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI

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.[1]

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

[1] The eleventh amendment was proposed to the states on March 12, 1794, and was declared adopted on January 8, 1798.

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 Representativs, 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.[1]

ARTICLE XIII

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.[2]

[1] The twelfth amendment was proposed to the states on December 12, 1803, and was declared adopted on September 25, 1804.

[2] The thirteenth amendment was proposed on February 1, 1865, and was declared adopted on December 18, 1865.

ARTICLE XIV

SECTION 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.[1]

ARTICLE XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.[2]

ARTICLE XVI[3]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ARTICLE XVII[4]

1. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

2. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the Legislature of any State may empower the executive thereof to make a temporary appointment until the people fill the vacancies by election as the Legislature may direct.

3. This amendment shall not be construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution.

[1] The fourteenth amendment was proposed to the states on June 16, 1866, and was declared adopted on July 21, 1868.
[2] The fifteenth amendment was proposed on February 27, 1869, and was declared adopted on March 30, 1870.
[3] Declared in force February 25, 1913.
[4] Declared in force May 31, 1913.

ARTICLE XVIII[1]

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

ARTICLE XIX[2]

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 sex.

Congress shall have power to enforce this article by appropriate legislation.

[1] Declared in force January 29, 1919.
[2] Declared in force August 26, 1920.

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