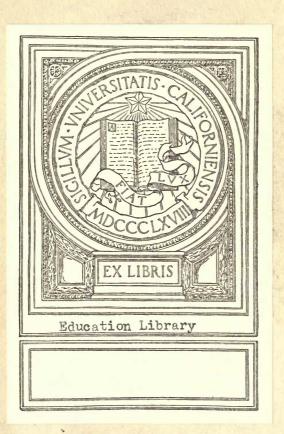


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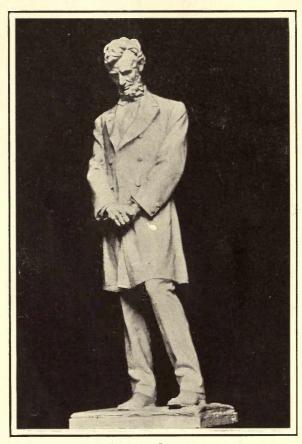


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ABRAHAM LINCOLN.

(The statue at Lincoln, Nebraska, unveiled September 2, 1912. Reproduced with the courteous permission of the sculptor, Daniel C. French.)

... that this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, and for the people, shall not perish from the earth.—Gettysburg Address.

## AMERICAN

# HISTORY AND GOVERNMENT

BY

#### WILLIS MASON WEST

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#### **FOREWORD**

This volume aims to fuse the study of social and industrial development with a study of political institutions. The primary purpose in the book is History, not Government. And yet I hope, even on the side of political institutions, compensation for minor detail may be found by presenting the vital organs of our government where each may be best understood as a product of progressive history — instead of treating the whole as a complex machine, unaccounted for save by perfunctory and costly digressions.

The "History" part is not merely political history. The growth of our political democracy has been intertwined with the development of our economic and industrial conditions. I have tried to make this interaction the pervading principle in determining the arrangement and selection of material. Some details on the industrial side have failed to find room; but the vital features, I hope, do stand out as conditioning our other progress.

The volume is not a special plea. American democracy needs no special pleading. Its weaknesses, sins, blunders, are here portrayed, on occasion. But I should not have cared to write the book at all, if I had not believed that a fair presentation of American history gives to American youth a robust and aggressive faith in democracy. At the same time, I have tried to correct the common delusion which looks back to Jefferson or John Winthrop for a golden age, and to show instead that democracy has as yet been tried only imperfectly among us.

These general considerations account for three features which appear in a degree peculiar among books of this class: the large place given to the study of Western development, with the interaction of the frontier upon the older parts of the

country; the emphasis laid upon the deeply significant labor movement of 1825–1840; and the detailed story of the recent "progressive" movement. In connection with the last, there is presented a survey of the economic and political conditions of to-day, with brief statements of the main problems now confronting our people.

Experienced teachers will, I trust, be patient with the profuse suggestions regarding methods of using the volume which appear in the early portion. These are merely suggestions, and are meant for young teachers and for others overburdened with work. Constant reference is made, through the first half of the volume, to the author's Source Book, which has been prepared as a companion volume. For the early part of our history, a careful use of such a collection may profitably take the place of other library work, provided library reference has its due attention during the rest of the year. The use of the Source Book, however, is by no means indispensable to the volume, if the teacher prefer to use a library instead.

It is impossible to acknowledge here all my indebtedness to friends and helpers. I must, however, take this opportunity to thank Professor Frank Maloy Anderson, of the University of Minnesota, both for constructive help and for the elimination of various faults. Miss Ethelyn Kemp, too, has saved me many hours of toil by her skill and trustworthiness in the use of documents.

WILLIS MASON WEST.

WINDAGO FARM, September, 1913.

<sup>&</sup>lt;sup>1</sup> No text-book has been able altogether to neglect this topic since the appearance of Frederick J. Turner's brilliant essays twenty years ago.

<sup>&</sup>lt;sup>2</sup>This chapter in our development had been practically lost until it was again made accessible two years ago by Dr. John R. Commons and Miss Helen Sumner in their "Labor Movements, 1825–1840" (volumes V and VI of the great Documentary History of American Industrial Society).

<sup>&</sup>lt;sup>3</sup> Willis Mason West, Source Book of American History to 1790: Illustrative Readings and Documents. 1913. Allyn and Bacon.

Like my Modern History, this Source Book is referred to in the following pages by title only, without repetition of the author's name.

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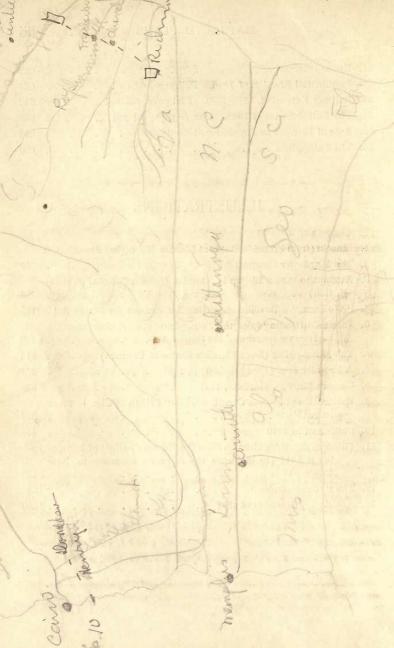
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# AMERICAN HISTORY AND GOVERNMENT

#### INTRODUCTION

#### I. AMERICA AS THE ENGLISH FOUND IT

#### A. GEOGRAPHY OF THE NORTH ATLANTIC COAST

- 1. Geographical Influence in our Colonial History less than in Early European History.—The character of a country has much to do with the life of its people. We cannot understand the early history of the Greeks or Romans without studying carefully the geography of Hellas and of Italy. But there are two reasons why the influence of geography upon early American history may be treated briefly.
- a. American history began when civilization was well advanced. The earliest colonists had command enough over nature not to be controlled by her to any such degree as the primitive Egyptians or Greeks or Latins were. Nature counted for less, and man for more, than in the early Old-World history.
- b. The Atlantic coast region (with which alone our colonial history is concerned) was more like the European homes of the colonists than any other part of America is. The life of the early settlers, therefore, was less modified by their transfer to that region than if they had colonized the Mississippi valley or the Pacific district.<sup>1</sup>
- 2. Important Contrasts between Colonial and European Geography. At the same time, there were some striking differences between the European and the American coasts of the Atlantic. Two of these contrasts were especially important.

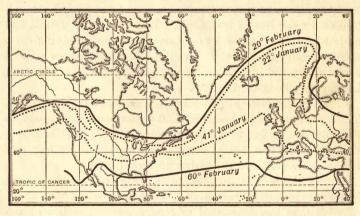
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<sup>&</sup>lt;sup>1</sup> The western half of the continent differs radically from Europe, and contains many striking diversities within itself; but these influences (§ 245) did not affect our history in its formative period.

a. At a place in America where the average temperature is the same as for a given part of England, the extremes are greater. The summers are hotter and the winters colder, and the changes are more sudden.

This feature of American climate involved the first settlers in unforeseen difficulties. Thus Weymouth, who came to the coast of Maine in the spring of 1605, found a beautiful climate which he described truly as like that of southern France; but the colonists who attempted settlement there two years later were cruelly disappointed by a winter like that of Norway (§ 45).

b. The true zones of climate are narrower in America than in Europe. For a given distance from north to south, the climate



LINES OF EQUAL TEMPERATURE.

changes more rapidly on the American coast than on the European. Between Nova Scotia and northern Florida the English colonists found as great variations of heat and cold as they would have found in the Old World if they had spread out from central Norway to the Sahara. Of course this variation was many times greater than they had known in their own little island.

 $<sup>^1\</sup>mathrm{See}$  , too, the experience of Lord Baltimore in Nova Scotia (§ 38 and Source Book, No. 42.)

- 3. Two Other Physical Factors tending to the Growth of Sectionalism.—This sharp difference in climate from north to south in America helped to make the Virginian Englishman different from his cousin whose father had settled in New England. Out of a common stock each section developed a distinct type. And this divergence was reinforced by the different pursuits of the two regions and by lack of intercourse.
- a. Natural products varied from north to south. Each section, therefore, had its peculiar industry. Along the southern coast the fertile soil was suited to the cultivation of tobacco or rice or cotton, in large tracts, by slaves or bond servants. The middle district was adapted to raising foodstuffs on a large scale. The north was relatively sterile; farming was not profitable there except in small holdings with trustworthy "help"; but the pine forests of that region, its harbors, and the fish in its seas, invited to other industries. These differences in the occupations of the inhabitants north and south resulted in different habits of life (cf. § 124).
- b. Communication from north to south was difficult. Colony was divided from colony, or, at best, groups of colonies were divided from one another, by arms of the sea. Even when two colonies lay side by side without intervening bays, still roads from north to south were lacking. At first the chief highways were the rivers. These ran from the mountains to the sea, and the early roads followed the same general course. In practice, as a rule, a colony found it about as convenient to hold communication with England as with its neighbor on either side. The consequent lack of intercourse made it easier for different types of character to develop in different sections, and harder for these types to understand or modify one another.
- 4. Advantages of the English Location. In many ways these tendencies toward sectionalism were a disadvantage to English colonization.

<sup>&</sup>lt;sup>1</sup>Rice came into prominence with the settlement of South Carolina. Cotton appeared much later as an important product. In the early days, tobacco was the staple for the south (cf. § 7).

Still they made for a useful variety in colonial life; and the evil in them was more than offset by certain advantages that geography gave to the English over their rivals in the contest for the continent. The territory colonized by England was at once more accessible and more compact than the American possessions of Frenchmen or Spaniards. It was easier for the English to get into America, and it was not so easy for them afterward to weaken themselves by wide dispersion.

a. (Accessibility.) The Atlantic coast from Maine to Georgia was marvelously open to the small sailing vessels of that day, and it invited European settlement much more than did the vast inland valleys of the St. Lawrence and the Mississippi, where the French cast their fortunes. Sometimes we speak of these great river systems as "gateways to the continent"; and so they are to the interior: but, in the early days of colonization, men did not care to go far into the interior. They preferred the fringe of the continent, where they could keep closer touch with the Old World. Moreover, in the districts near the mouths of the great rivers, neither climate nor soil was especially suitable for European settlers. The forest-covered banks of the lower Mississippi were particularly repellent.

b. (Compactness.) The Appalachian Mountains, whose many rivers made the Atlantic region so accessible, kept the colonists, as they grew numerous, from spreading too rapidly. The English in America found themselves shut in between the mountains and the sea. The Appalachians, for so slight a height, were singularly impassable, covered as they were with tangled forests. Four streams broke the mountain wall,—the Potomac, Delaware, Susquehanna, and Hudson-Mohawk; but, in the state of engineering of that day, only the last could be used as a road to the inner country, and that route was closed against the colonists by the powerful Iroquois (§§ 5-6).

#### B. NATIVES AND NATIVE PRODUCTS

5. Classification of Native Races.—To the student of our history the natives are of interest mainly as they affected the course of European settlement. Between the Mississippi and the Atlantic the colonists found three distinct groups of Indian peoples,—the Gulf Tribes, the Algonkins, and the Iroquois.

a. The gulf tribes (Choctaws, Seminoles, Creeks) were the most advanced. They were in a rude agricultural stage, and

they showed ability to pick up the somewhat better farming methods of the colonists. These tribes were too far south and west materially to affect white settlement until the beginnings of Georgia and Tennessee, almost at the end of the colonial period.

- b. The roaming Algonkins were the largest of the three groups, but also the most primitive and disunited. Numbering from 75,000 to 100,000 souls,—thinly scattered in a multitude of petty, mutually hostile tribes,—they "haunted, rather than inhabited, a vast hunting preserve" stretching from the Atlantic to the Mississippi and from the Ohio to the far north. To this group belonged the Powhatans, Delawares, Narragansetts, Pequods, Mohegans, and, indeed, nearly all the tribes with which the early English settlers came in hostile contact.
- c. The Iroquois Confederacy was the strongest native political organization north of Mexico. These tribes counted some 10,000 people, and occupied what is now western New York in comparatively compact villages.<sup>1</sup>
- 6. Important political results followed from the distribution of the natives. The Spaniards in South and Central America cast their adventure among races gentler than any of the North American Indians. Spanish conquest was too rapid. The continent was overrun faster than it could be occupied. Spanish rule was built upon the slavery of the natives. With this enslaved population the conquerors mixed their blood until the Spanish nationality was almost wholly absorbed. In Canada the French, in the weak days of their settlement, came into conflict with the formidable Iroquois; and the deadly blows inflicted by this warlike confederacy played an important part in preventing French mastery of the continent (§§ 12–13). The English, in their time of weakness, touched only the dis-

<sup>&</sup>lt;sup>1</sup>We have little accurate knowledge about the numbers of the natives. Scholars now agree that those east of the Mississippi could not have exceeded 200,000, and that many a single city in our country to-day contains more people (to say nothing of the grade of people) than dwelt in all North America when Europeans first touched its shores.

united Algonkins, by whom their settlement was never seriously threatened. At the same time, the Algonkins were untamable. They could not be enslaved to profit; hence the English did not mix blood with them. And they were dangerous enough to prevent the colonists from scattering rapidly into the interior.

These Indian foes, then, along with the Appalachian mountains, were the cause why, down to the Revolution, the English colonies remained fairly compact (§ 4). Such compact settlement afforded opportunity for a truer civilization, for more division of labor, and for more social intercourse. It made easier, also, the political union of the colonies and resistance to England, when the time came. Both nature and the natives, seeming unkind to the English colonist, were really kinder to him than to his French or Spanish rivals.

7. Maize and Tobacco. — At a later time the rich deposits of coal and metals were to influence history. At first the two native products of supreme value were maize and tobacco. One of these became the chief food supply of the colonist; the other he exchanged in Europe for European goods.

Maize (already the basis of a rising culture among the natives) made the foundation of successful European settlement. European grains failed in the new climate season after season, while the colonist was learning the new conditions. Moreover, to clear and prepare the soil for wheat took much time. Maize was a surer crop and needed less toil. The colonist learned from the Indian to raise it, at need, without even clearing the forest, — merely girdling the trees to kill the foliage, and planting among the standing trunks. It was no accident that this Indian grain came to be called "corn," the general name for European grains.

And if Indian corn enabled the colonist to live through the first hard years, it was tobacco that first made him rich and enabled him to secure European comforts. For the later northern colonies, the place of tobacco was taken by fur, fish, and lumber.

8. Economic Dependence upon the Natives. — The economic development of the colonies was intimately connected with the natives. Willingly or unwillingly, the Indians furnished the first settlements with the corn that warded off starvation. Soon they taught the colonists to plant both corn and tobacco. They were the chief means of securing furs. Their wampum, at times, made an important part of colonial money. The forest trails, worn into deep paths by many generations of Red men,

became the line of future highways.<sup>1</sup> The routes followed by the birch canoe became the lines of water communication for White men. And the stations for exchange of furs at the junction of leading trails and waterways, marked out by native surveyors and pilots, became the sites of mighty cities, like Milwaukee, Chicago, St. Louis, and Duluth.

#### H. THE EUROPEAN RIVALS OF ENGLAND

#### A. SPAIN

9. Progress and Early Decay. — After the crusades, Medieval Europe came to depend upon Asiatic articles for luxury and for much of daily comfort. Trade, to supply these commodities, was carried on by way of the Black Sea or by caravans from the southeastern Mediterranean into central Asia. In the fifteenth century the gradual rise of the Turks in Asia Minor almost closed these routes. To get into the rear of the Turkish barbarians, Europe, just then astir with an intellectual awakening, sought new routes. Portugal found one to the south around Africa. Columbus, in the interest of Spain, tried a still bolder western route — and stumbled upon America in his path.<sup>2</sup>

These discoveries marked the close of the fifteenth century. The next century, so far as the New World was concerned, was Spain's. The story of her conquest is a tale of heroic endeavor and almost superhuman endurance, marred by revolting ferocity. The details, as a Spanish chronicler said, are "all horrid transactions, nothing pleasant in any of them." Not till twenty years after the discovery, did the Spaniards advance to the mainland for settlement; but, once begun, her handfuls of adventurers swooped north and south, until, by 1550, she held not only all South America (save Portugal's

<sup>&</sup>lt;sup>1</sup> Cf. map facing page 8. The New York Central Railroad follows the old Iroquois trail from Lake Erie to the Hudson; and in Minneapolis one of the finest streets (Hennepin Avenue) is an ancient Indian trail from the neighboring Lake Harriet to a point on the Mississippi a little above the Falls of St. Anthony.

<sup>&</sup>lt;sup>2</sup> Modern History, §§ 89, 103 (with notes), 196, 197.

Brazil), but also all Central America, Mexico, the Californias far up the Pacific coast, and the Floridas. The Gulf of Mexico and the Caribbean were Spanish lakes, and the whole Pacific was a "closed sea." For other Europeans to intrude into these waters was a crime, to be punished by death. Not content with this huge empire on land and sea, Spain was planning grandly to occupy the Mississippi valley and the Appalachian slope, when she received a fatal check in Europe, at the hand of England, in the ruin of her "Invincible Armada" (1588).

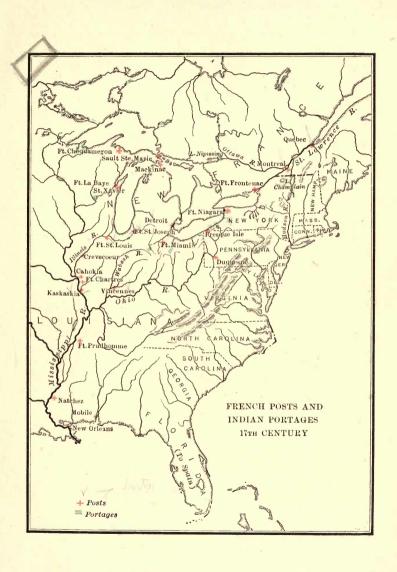
That event in Europe marks a parting of the ways in American colonization. Dread of Spain waned, and other European peoples were left free to try their fortunes in North America. During the next half century, every seaboard country of western Europe made attempts at colonizing the Atlantic coast; but the real rivals, then and for long after, were France and England.

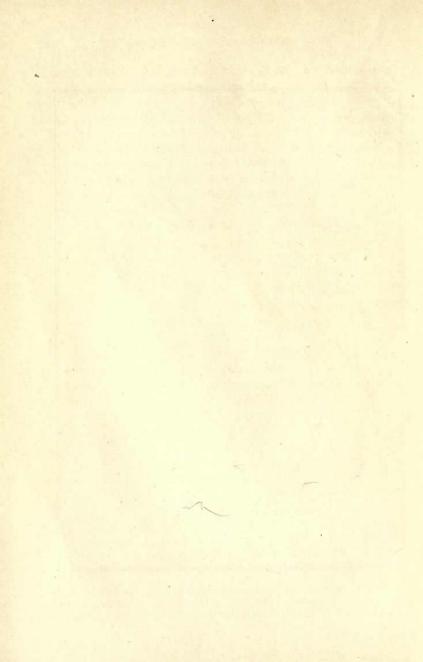
#### B. THE FRENCH IN AMERICA

10. Outline of the Story.—After a quarter century of exploration, a French colony was founded by Champlain at Quebec in 1608. Explorers, missionaries, and traders soon traversed the Great Lakes and established stations at various points still known by French names. In 1682, after years of splendid effort, LaSalle succeeded in following the Mississippi to the Gulf, setting up a French claim to the entire valley. In later years New France consisted of the colony on the St. Lawrence in the far north, and the semi-tropical colony of New Orleans, joined to each other by a slight chain of trading posts and military stations along the interior waterways,—Detroit, Sault Ste. Marie, Vincennes, Kaskaskia, St. Louis, and the like.

From the beginning of this colonization, it was apparent that France and England were rivals for the control of eastern North America; but the real struggle between them did not begin until 1689. The contest then lasted, in a series of wars, three quarters of a century, until 1763, when France was thrust out of the continent (§ 114). The story is a tale of romantic heroism and charm; but here we can note only certain characteristics of New France which helped to determine the result.

<sup>&</sup>lt;sup>1</sup> Modern History, § 223. This defeat alone did not ruin the might of Spain. Internal causes were at work to do that. The defeat checked her advance for the moment; and internal decay prevented her resuming that advance.





11. French Advantages. — At home French statesmen aimed deliberately to build a French empire in America. The inspiring thought of such an empire animated also French explorers in the wilderness, — splendid patriots like Champlain, Ribault, and LaSalle. France, too, sent forth the most zealous of missionaries to convert the savages. These two mighty motives, patriotism and missionary zeal, played a more prominent part in founding New France than in establishing either Spanish or English colonies. Moreover, the French could deal with the natives better than the less sympathetic English could; and their leaders were men of broad and far-reaching views.

"The French leaders showed a capacity for understanding the large questions of political geography . . . and a genius for exploration, and a talent for dominion, in singular contrast with the blundering, narrow processes of their English rivals."—Parkman.

- 12. External Causes of Failure. Why, then, did France fail? Two kinds of weakness may be noted, one external and accidental, the other inherent in the nature of French colonization (§ 14). Of the first kind, there are two striking particulars.
- a. In the south the Spaniards from St. Augustine barbarously exterminated a French attempt to colonize the Atlantic coast.
- b. In the north the Iroquois were relentless foes. Curiously enough, it was the ability of the French to make friends with the natives which brought upon them this terrible scourge. Champlain (§ 10) came first in touch with Algonkin tribes, and was warmly received by them. These tribes were at war with the Iroquois. Champlain accompanied his new allies on the warpath, and so incurred Iroquois hatred for New France.
  - 13. The Iroquois hindered French success in four distinct ways.
- a. They annihilated the Huron Indians, whom French missionaries, after many heroic martyrdoms, had christianized, and upon whom the French had hoped to build a native civilization.
  - b. At times they struck terrible blows at New France itself.1

<sup>&</sup>lt;sup>1</sup> Mrs. Catherwood's *Romance of Dollard* tells the glorious story of one critical conflict. Dollard and his band of heroes were to Quebec what Leonidas and his Three Hundred were to Greece.

c. They shielded the English colonies, during their weakness, from French attack. In the early intercolonial struggles, the French in Canada could strike at the English only by way of the route followed later by Burgoyne. Everywhere else the wilderness between Canada and the English settlements was impassable for military forces larger than prowling bands, which could do no permanent harm; and this one possible military road was warded by the Iroquois.

- d. The hostility of the Iroquois changed the whole course of French exploration, turning it to the north. The home of the confederacy was in western New York, - "the military key to the eastern half of the continent." 1 It commanded the headwaters of the Delaware, Susquehanna, and Mohawk-Hudson system, and the portage at Niagara from Erie to Ontario, as well as part of the headwaters of the Ohio. The French, with their keen eye for military geography (§ 11 close), would certainly have seized this position at any cost, if they had been able to learn its character. If they had then fortified the Ohio by a chain of posts, as they did their other waterways, this would have buttressed their position on the Mississippi and the Lakes so strongly as almost to defy attack. As things really were, they did not learn the importance of the Ohio valley until too late. Montreal was founded as early as 1611: but the French traders, instead of proceeding to the interior by the upper St. Lawrence and Lake Erie, turned up the Ottawa, so as to avoid the Iroquois, and reached Lake Huron by portage from Nipissing. Lake Erie was the last, instead of the first, of the Lakes to be explored. was practically unused until after 1700, and the country to the south remained unknown even longer.2 When the French awakened to its value, the slower but more numerous English traders had begun to push into the Ohio valley, and the great opportunity for France was already lost.
- 14. The inherent weakness in French colonization, however, was the fundamental cause of French failure. Three essentials were lacking: homes, individual enterprise, and political life.
- a. New France was not a country of homes or of agriculture. Except for a few leaders and the missionaries, the settlers were either unprogressive peasants or reckless adventurers. For the most part they did not bring families, and they remained unmarried or chose Indian wives. Agriculture was the only

<sup>1</sup> So Winfield Scott called it, and Ulysses S. Grant afterward.

<sup>&</sup>lt;sup>2</sup> Navigation was by fleets of canoes, which had to land frequently. The French could not follow the southern shore of Lake Erie, nor use the portage of Niagara, because the Iroquois controlled the shores.

safe basis for a permanent colony; but these colonists were averse to regular labor. Instead, they turned to trapping and the fur trade, and tended to adopt Indian habits.

The French government in Europe sought in vain to remedy this by sending over cargoes of "king's girls," and by offering bonuses for early marriages and large families. Parkman's Old Régime in Canada (ch. xiii) gives quaint details. The easiest remedy would have been to permit the Huguenots 1 to come to America. They were the most skillful artisans and agriculturalists of France, and they had shown some ability in self-government. Moreover, they were anxious to come, and to bring their families. But the government, which lavished money in sending out undesirable emigrants, refused to allow these heretics to establish a state in America.

- b. Government paternalism smothered private enterprise in industry. In all economic matters New France was taught to depend not upon herself, but upon the aid and direction of a government three thousand miles away. Trade was shackled by silly restrictions, and hampered almost as much by silly encouragements. The rulers did everything; the people did nothing. Aid was constantly asked from the king. "Send us money to build storehouses," ran the begging letters of Canadian officials; "Send us a teacher to make sailors"; "We want a surgeon"; and so, at various times, requests for brickmakers, ironworkers, pilots, and other skilled workers. Such requests were usually granted; but New France did not learn to walk alone.
- c. Political life was lacking. In the seventeenth century France itself was a centralized despotism; and in New France (to use the phrase of Tocqueville) this deformity was seen magnified as through a microscope. No public meetings were permitted without a special license; and such meetings, when held, could take no action worth while. All sorts of matters, like the regulation of inns and of pew rent, the order in which dignitaries should sit in church, the keeping of dogs and of cattle, the pay of chimney sweeps, were dealt with not by

<sup>&</sup>lt;sup>1</sup> Modern History, §§ 226, 229, 260, 282.

local legislatures or village councils, but by ordinances of the governors at Quebec, who were sent over by the French king. "It is of the greatest importance," wrote one official, "that the people should not be at liberty to speak their minds." Worse than this,—the people had no mind to speak.

It is not true that a new country of necessity breeds freedom. What a frontier life does is to emphasize former tendencies. As Theodore Roosevelt puts it, the frontier takes two men only a little way apart morally in an old community, and makes one of them a hero, and the other a horse thief. So it deals with nations. The French and the Spanish colonies developed despotic tendencies in America, and the English colonies developed political liberty,— each progressing along the direction of earlier movement at home.

- 15. A Striking Illustration. In 1672, Frontenac, the greatest governor of New France, tried to introduce the elements of self-government. He provided a system of "estates" to advise with him, a gathering of clergy, nobles, and commons (citizens and merchants); and he ordered that Quebec should have a sort of town meeting twice a year to elect aldermen and to discuss public business. The home government sternly disapproved these mild innovations, directing Frontenac to remember that it was "proper that each should speak for himself, and no one for the whole"; and the plan fell to pieces. The significant thing is, the people cared so little for it that they made no effort to save it. When some such plan was introduced in Virginia (which also, during its first years, had lacked such privileges), no mere paper decree could take it away again (§§ 29, 30, 33, 34).
- 16. Conclusion. Spite of all the fostering care of the home government, when the final contest for the continent began in 1754, France, with a home population three times as large as England's, had less than one twentieth as many colonists in America (60,000 to 1,300,000). French colonization did not produce numbers.

Moreover, despite the noble patriotism of great leaders, the mass of the French colonists possessed too little political activity to care much what country they belonged to, so long as they were treated decently. Centralization did enable a capable governor to wield effectively all the resources of the

colony; while with the English there were disastrous jealousies and delays interminable. But the English needed only one decisive victory. Had Montcalm conquered Wolfe, and had he been able to occupy Boston and New York, he could not have held them even as long as King George did a few years later; but on the other hand, Wolfe's victory at Quebec settled forever the fate of the continent. Two systems were at war; and, in the long run, the despotic governor proved no match for the democratic town meeting. The lack of political vitality and of individualism in industry was the fatal weakness of New France. The opposite qualities were to make the English successful. Says John Fiske, —"It is to the self-government of England, and to no lesser cause, that we are to look for the secret of that boundless vitality which has given to men of English speech the uttermost parts of the earth for an inheritance."

For Further Reading.—The plan of this volume forbids extended class work upon the topics touched in this Introduction; but a brief bibliography is added for the student who desires to read further.

ON THE DISCOVERY AND ITS PERIOD. — Payne, "Age of Discovery" in Cambridge Modern History, I (an admirable treatment in thirty pages); Fiske, Discovery of America; Cheyney, European Background of American History.

On England's Rivals. — Moses, Spanish Rule in America; Bourne, Spain in America; Thwaites, France in America; Parkman's Histories, especially, Montcalm and Wolfe, Half Century of Conflict, and The Old Régime in Canada. Gilbert Parker's earlier stories, especially The Trail of the Sword and parts of Pierre and His People, picture vividly the Canadian colonial type.

Exercise. — Brief, rapid answers (oral or written) on the following topics, — the answers to be given concisely and, as a rule, in single words or phrases, rather than in sentences.

<sup>&</sup>lt;sup>1</sup> This advantage was offset in part by the tendency to corruption which always threatens such a bureaucratic system. Says Parkman (Montcalm and Wolfe, II, 30), "Canada was the prey of official jackals." Parkman gives many illustrations of official corruption in New France at critical moments. For other illustrations, see Thwaites' France in America, 220–221. The student will be reminded of the way in which like causes weakened Russia at the opening of her war with Japan.

1. Two reasons why geography is less important in the study of American than of early European history? 2. Two contrasts between the Atlantic coast of Europe and that of North America which affected colonization materially? 3. How did each of these factors work? 4. Two advantages from physical geography to English colonization, as compared with French or Spanish colonization? (Two words suffice for this answer.) 5. Three distinct advantages possessed by the French in their attempt to occupy America? 6. Three causes of French failure? 9. Three distinct ways in which the Iroquois hindered French success?

(Let each student present four or five more questions of similar character and weight.)

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# PART I

### THE ENGLISH IN AMERICA

## CHAPTER I

### SOUTHERN COLONIES TO 1660

#### I CONDITIONS AND MOTIVES OF COLONIZATION

"Virginia was founded by a great liberal movement aiming at the spread of English freedom and of English empire." — HENRY ADAMS.

Through the first half century of colonization, the English colonies were practically an outlying part of England. The settlers were not yet Americans. They were enterprising Englishmen in new surroundings.

- (§§ 17-18 should be accompanied by a careful reading of Nos. 2-14 in West's Source Book. With regard to the use of that volume, students and teacher may, at this point, consult the bibliography on page 43, and see "Foreword.")
- 17. Motives of the English Promoters. In studying the motives of English colonization, it is well to look separately at the motives of the settlers and at those of the Englishmen at home who helped generously with their energies and fortunes. First, then, of these Englishmen in the Old World.
- a. Patriotism. During the last quarter of the sixteenth century, when Elizabeth's reign was half completed, England entered openly upon a daring rivalry with the overshadowing might of Spain. Out of that rivalry, English America was born. Reckless and picturesque freebooters, like Drake and Hawkins, sought profit and honor for themselves, and injury to the foe, by raiding the Spanish Main. More far-sighted statesmen, like Raleigh, saw that English colonies in America

would be "a great bridle to the Indies of the Kinge of Spaine" and began deliberate attempts so to "put a byt in the anchent enymy's mouth." 2

The first attempts were ruined by the death struggle with the Spanish Armada (§ 21) and by the long war that followed. Then James I became king (1603) and sought Spanish friendship; and, ere long, Englishmen began to feel their chance for empire slipping through their fingers. But splendid memories of the great Elizabethan days still stirred men's hearts; and, as a protest against the dastard Stuart policy in Europe, the fever for colonization awoke again in the hearts of the people. Men said a terrible mistake had been made when Henry VII refused to adopt the enterprise of Columbus; and they insisted vehemently that England should not now abandon Virginia, — "this one enterprise left unto these days." An enthusiastic determination to extend the glories of English freedom and to check Spanish tyranny runs through the literature and pamphlets of the early seventeenth century, in the days when Jamestown was being founded.

b. Missionary zeal. A second motive was a desire to christianize the savages. This purpose faded soon for most of the actual settlers (whose intercourse with the natives placed them quickly in the stern attitude of our later frontiersmen); but it continued long to be a powerful factor in England. The great clergymen who guided the Church of England (then recently cut off from Rome) could not rest content with "this little English paddock," while Rome was winning new continents

<sup>2</sup> This more concise figure was used by Dale, governor of Virginia, thirty

years after Raleigh's failure.

<sup>1</sup> This phrase heads a chapter in a pamphlet on Western Planting written in 1584, at Raleigh's request, by Richard Hakluyt. The text contains these words: "If you touch him [Spain] in the Indies, you touch him in the apple of his eye; for, take away his treasure, which is nervus belli, and which he has almost wholly out of his West Indies,—his olde bandes of souldiers will soon be dissolved, his purposes defeated, his power and strength diminished, his pride abated, and his tyranie utterly suppressed." See Source Book, No. 3, for more of this passage.

to herself by her devoted missionaries; nor could these good churchmen help squirming under the Catholic's taunt that the Roman Church alone converted the heathen.¹ The London Company, which sent out the Jamestown colony, was, in one leading aspect, a foreign missionary society, and the first such society in the Protestant world. It was this character of the Company that brought it some of its leading members, like the two Ferrars.² This, too, brought it a general moral support, and many gifts of money.³

- c. Financial gain. The colonizing Company was a commercial partnership, and it hoped for financial gain. For most stockholders this hope was a motive, but to few was it the sole motive. Many, too, who believed in ultimate profits, understood that there was little likelihood of gain in their own lifetime. And certainly it was not greed, but high enthusiasms, which, in days of discouragement and distress, brought the noblest of Englishmen by hundreds to the rescue of the enterprise and so finally carried it to success.<sup>4</sup>
- 18. Motives of the Colonists. In 1600, England needed an outlet for her crowded people. Population had doubled in the long peace since the Wars of the Roses, but the condition of the small farmers (the bulk of the people) had retrograded. The island had only a tenth as many inhabitants as it has to-day; but, with the poor industrial system of that age, it cared

<sup>1 &</sup>quot;Yea," said the worthy Hakluyt with chagrin, "I myself have been demanded of them how many infidels have been by us converted." Cf. note above, and see Source Book, No. 3.

Special topic; and see references to the Ferrars in Source Book, Nos. 26, 28.
 The Source Book (No. 26, c) gives the list for one year, with comment.

<sup>&</sup>lt;sup>4</sup> Cf. § 25. Francis Bacon, one of the stockholders in the London Company, in his essay "On Plantations," declares that "colonies are like trees; returns must not be looked for under twenty years." The pamphlets by the Company and by its friends, asking for subscriptions to stock, did not place emphasis on the prospects of large dividends, but rather on the meanness and avarice of the man who would "save" his money when such glorious issues were at stake as the enlargement of the kingdom of God and the extension of English empire. See Source Book, Nos. 5-7, for illustrations.

<sup>&</sup>lt;sup>5</sup> Cf. Modern History, §§ 233-234. Says William Harrison (1577) of these yeomen, "These were they that in times past made all France afraid."

for its four millions less efficiently than it cares now for forty millions.

The hard-pressed veomanry, who found material conditions cruel at home, furnished most of the manual labor in the colonies; but there was need also of captains and capitalists. Happily, new conditions in England at the opening of the seventeenth century turned some of the best elements of the middle class toward American adventure. Until the peace with Spain (1604), the high-spirited youth, and especially the younger sons of gentry families for whom there was no career at home, fought in the Low Countries for Dutch independence, or made the "gentlemen adventurers," who, under Drake, Hawkins, and their fellows, paralyzed the vast domain of New Spain with fear. When peace came, these men sought occupation and fortune in colonizing America. In the rapid economic changes of the time, too, some old families found themselves impoverished, or at least unable to keep sail with their former associates; and such men often preferred leadership in the New World to taking in sail at home. These young adventurers and broken gentlemen were unaccustomed to industry and were restless under discipline; and some of them drew down the wrath of stern commanders like Captain John Smith. But they were of "that restless, pushing material of which the world's best pathfinders have ever been made"; and, when they had learned somewhat the needs of frontier life, their pluck and endurance made them admirable colonists.2

It must be remembered also that among the settlers there were always a few rare men animated wholly by patriotic devotion or by religious zeal or by a lofty spirit of adventure. Even the first Jamestown expedition (not a fair sample, either) included, among its 104 souls, Bartholomew Gosnold, a knightly survivor of the spacious Elizabethan days; and doughty John Smith, a robust hero, "even though his imagination did sometimes transcend the narrow limits of fact"; and the gentle and

<sup>1</sup> Read Channing's United States, I, 143-144.

<sup>&</sup>lt;sup>2</sup> The same class have made the best of pioneers in later times on our western prairies and in the Australian bush. For contemporary testimony as to their worth in Virginia, see Source Book, No. 19.

lovable churchman, Robert Hunt; to say nothing of worthies such as Percy and Newport. The modern community which, for each twenty souls, can show one built on a mold like these is not unhappy. The next three years, too, saw in Virginia many another gallant gentleman, like Thomas Gates, John Rolfe, and Francis West.

On the whole, no doubt, the chief loadstone was some wild dream of wealth (Source Book, Nos. 8-9). In the first colonies, too, the expectations of sudden riches were more extravagant than in later attempts, and led for a time to more disastrous neglect of true interests. Still the motive was a proper one. It calls for no sneer. It was essentially the same desire to better one's condition which in a later century lured the descendants of the first settlers to people the continent from the Appalachians to the Golden Gate.

Moreover, the motive was not mere greed. Mingled with that element was a vision of romance and adventure. The youth was drawn partly by the glitter of gold, but quite as much by the mystery of new lands bosomed in the beauty of unknown seas. And, best of all, these motives of gain and of noble adventure were infused with a high patriotism. Englishmen knew that in building their own fortunes on that distant frontier, just as truly as when they had trod the deck of Drake's ship, they were widening the power of the little home island, which they rightly believed to be the world's best hope.

19. Difficulty and Cost. — To found a colony in the seventeenth century was more difficult than we can well comprehend to-day. The mere outlay of money was enormous for those times. Ships had little storage room, and freights were high. To carry a man from England to America cost from £10 to £12, or about \$300 in our values.<sup>2</sup> To provide his outfit, and to support him through the first season, until he could raise

<sup>&</sup>lt;sup>1</sup> At the end of a half century, other motives were to bring to Virginia a notable immigration (§ 102), but not until the forces outlined above had already made a noble frontier state.

<sup>&</sup>lt;sup>2</sup> Money was worth five or six times as much as now. And the best accommodations for an ocean passage that money could buy were inferior to modern steerage accommodations.

a crop, cost as much more. Thus to establish a family in America cost some thousands of dollars.

Ordinary laborers who wished to try their fortunes beyond seas could not pay these sums, and were glad to become "servants" to a wealthy proprietor. That is, they mortgaged their labor in advance for a few years (from four to seven) in return for transportation and subsistence, and perhaps for a tract of wild land at the end of their term.

Moreover, there were no ships ready for the business, and no supplies in stock suitable for such an enterprise. The directors of the colonizing movement encountered all sorts of expensive delays and vexations. They had to buy ships, or build them; and, in Professor Channing's phrase, they had to buy food for the voyages "on the hoof or in the shock," and clothing, not in a store, but on the sheep's back. Then there were many expenses of a general nature. The colonizing power must provide government, medicines, fortifications, military supplies, and food to meet a possible crop failure. Much money, too, was sure to be lost in experimenting with unfit industries under untried conditions,—as in the natural but futile attempts to introduce silk culture and glassmaking in Virginia (§ 31).

- 20. Policy of the Crown. The English crown founded no colonies, nor did it give money toward founding any. It did give charters to those men who were willing to risk their fortunes in the attempt. These charters were grants of territory and of authority over future settlers. Thus the English colonies (with a few accidental exceptions, which will be noticed) were at first proprietary. The proprietor might be an individual or an English corporation. In either case, the proprietor owned the land and ruled the settlers.
- 21. Preliminary Attempts. The first colonial charter was granted by Elizabeth, in 1578, to Sir Humphrey Gilbert. Gilbert made two attempts at a colony, on a large scale, starting out the first time with eleven ships and nearly six hundred colonists, and the second time with two hundred and sixty picked settlers. A series of accidents, together

<sup>&</sup>lt;sup>1</sup> This document should be read carefully (Source Book, No. 15), because of its bearing upon later grants. The student should criticize, in the light of the document itself, the extravagant misstatement regarding it in Fiske's Old Virginia, I, 30-31.

with Spanish hostility, kept the first expedition from reaching America. The second, in the spring of 1583, entered St. John's Harbor on the New Foundland coast. Gilbert's claims were recognized readily by the captains of the "thirty-six ships of all nations" present there for the fisheries, and he took formal possession of the country. He also made a few grants of land and promulgated some laws. But desertion and disaster weakened the colonists, and in August the survivors sailed for England.

Gilbert had sunk his fortune, and he himself perished on the return. The enterprise was taken up at once by his half brother, Sir Walter Raleigh, perhaps the most romantic and gallant figure of that daring age. In 1584, Raleigh received a charter which was virtually a copy of Gilbert's. In the next three years he explored the coast of North Carolina and Virginia, and sent three successive expeditions to Roanoke Island, each time in considerable fleets. One of these bands of settlers was found in distress by Drake, and was brought back to England. Supplies and reinforcements for the other colonies were delayed by the struggle with the Spanish Armada; and when the ships did arrive, the colonists had vanished without trace.

Raleigh had spent a vast fortune (a million dollars in our values); and, though he sent ships from time to time to search for the lost colonists, he made no further attempt at settlement. Still, despite their failures, Gilbert and Raleigh are the fathers of American colonization. The tremendous and unforeseen difficulties of the enterprise overmatched even the indomitable will of these Elizabethan heroes; but their efforts had aroused among their countrymen an interest which insured success in the near future.

# II. VIRGINIA UNDER THE LONDON COMPANY, 1607-1624

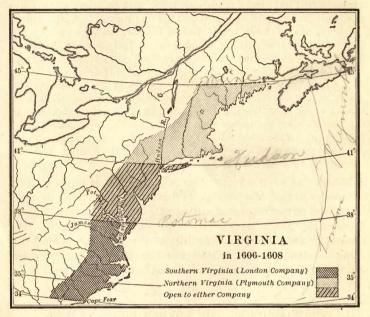
# A. UNDER KING AND COMPANY, 1607-1609

(In connection with §§ 22, 23, the student should study the charter in the Source Book (No. 16) and the King's Instructions under it (ib., No. 17) and verify there the following statements.)

22. The Charter of 1606.—The failure of Gilbert and Raleigh seemed to show that no one man could command wealth enough for the enterprise. Indeed, Raleigh had secured part of his

<sup>&</sup>lt;sup>1</sup> Raleigh's first explorers declared the new land "the most plentiful, sweet, fruitful, and wholesome of all the world," and the natives were affirmed to be "such as live after the manner of the golden age."

funds by forming a partnership with a group of London merchants. Twenty years later, when England and Spain had made peace, some of these merchants organized a large company, in two divisions, and secured from King James a patent



known as the Charter of 1606, or the First Virginia Charter. Four points demand particular notice.

- a. Grantees. One of the subcompanies was made up mainly of Londoners, and is known as the London Company. The other was made up of gentlemen from the west of England, and is called the Plymouth Company. These proprietary companies were to remain in England.
- b. Territory. The name Virginia then applied to the whole region claimed by England on the Atlantic coast, between the Spaniards on the south and the French on the north. This made a tract about 800 miles long, reaching from the 34th to

the 45th parallel. Within this territory, each company was to receive a district 100 miles along the coast and 100 miles inland,—the London Company's tract to be located somewhere in southern Virginia, the Plymouth Company's somewhere in the north.

The exact location of these grants was to be determined by the position of the first settlements. The Londoners were to choose anywhere between the 34th and the 41st parallel (or between Cape Fear and the Hudson). The western merchants were to place their settlement somewhere between the 38th and the 45th parallel (between the Potomac and Maine). Neither Company was to plant a colony within a hundred miles of one established by the other. This complicated arrangement left the middle district, from the Potomac to the Hudson, open to whichever Company should first occupy it. Probably the King's intention was to encourage rivalry; but, in fact, the dubious overlapping region was avoided by both parties.

c. Settlers' rights. The charter gave the future settlers no share in governing themselves; but it did promise them "the liberties, franchises, and immunities" of Englishmen. This clause (found also in Gilbert's and in nearly all later charters) did not refer to "the right to vote" or to hold office, for not all Englishmen had such privileges at home. It meant such rights as jury trial, habeas-corpus privileges, and free speech, as those rights were then understood in England.

Channing (United States, I, 162) says of this passage:—"English colonization was to be unlike that of Spain, France, and the nations of antiquity. It was the fate... of settlers of other nations to be looked upon as beings outside the laws and privileges of the dwellers in the home land. English colonies, on the other hand, were to enjoy the protection of the Common Law equally with the inhabitants of England.... This enunciation... marked an epoch in colonization."

d. Government. In England there was to be a superior Council for the double company, with general but indefinite oversight. In each colony was to be a Council appointed by that higher Council; and these local Councils were to govern the settlers according to laws to be drawn up by the king.

<sup>&</sup>lt;sup>1</sup> According to the Instructions drawn up by James before the first expedition sailed (Source Book, No. 17), death or mutilation could be inflicted upon

Thus the government was complicated and unsatisfactory, both in England and America. In England it was partly royal and partly proprietary, without a clear division between authorities. In the colonies there was no single governor, but an unwieldy committee. No other English colonial charter was so imperfect an instrument of government; but, under this crude grant, was founded the first permanent English colony.

23. Jamestown: a Plantation Colony. — In 1607, the Plymouth Company made a fruitless attempt at settlement on the coast of Maine (§ 45), and then remained inactive for twelve years. But in December of 1607 the London Company sent out, in three small vessels, a more successful expedition to "southern Virginia."

The 104 colonists reached the Chesapeake in the spring of 1607, and planted their town of Jamestown on the banks of a pleasant river flowing into the south side of the Bay. To avoid sudden Spanish attack from the sea, they chose a site some thirty miles up the stream. For some years this was the only regular settlement. During this time, and for a while even after other settlements grew up about the first one, the colony was really a great "plantation." The proprieters were the company of stockholders in England. They directed the enterprise, selected settlers, appointed officers, furnished transportation and supplies and capital. The colonists were servants and employees. They faced shipwreck, disease, famine, and savage warfare. They performed the actual work of settlement, - clearing forests, building rude forts and towns, and raising crops. The managing Council at Jamestown was not primarily a political government, but rather an industrial overseer. Economic interests were supreme; and the work of the officials was a kind of housekeeping on a large scale.

no offender until after conviction by a jury, and for only a small number of crimes, for that day; but the appointed Council were to punish minor offenses (such as idling and drunkenness) at their discretion, by whipping or imprisonment. This authority seems extreme to us, but it was much like that possessed then by the justices of an English county.

The produce of the settlers' labor went into a common stock. Such products as promised profitable sale in Europe, — lumber, sassafras, dyestuffs, — were shipped to the Company to help meet expenses. Grain and other produce fit for the needs of the settlers were kept for distribution in colonial storehouses under the charge of a public official. Here, too, were kept the supplies from England, — medicines, clothing, furniture, tools, arms and ammunition, seeds, stock of all kinds for breeding, and such articles of food as meal, bread, butter, cheese, salt, meat, and preserved fruits. For many years the existence of the colony depended on the prompt arrival, every few months, of a "supply"; and the colonists measured time by dating from "the First Supply," or "the Third Supply."

The system of "industry in common" has frequently been called an experiment in communism. In reality it was no more communism than was a Virginia slave plantation in 1850. The London Company would have been the last men to approve any theory of communism. The common industry and undivided profits were simply clumsy results of management by a distant proprietary company.

24. Suffering.—The location of Jamestown was low and unhealthy; the government was not suited to vigorous action; and, at the best, only the stern school of experience could teach men in that day how to colonize an unknown continent. The first years were a time of cruel suffering and often of sad mismanagement. The first summer saw two thirds of the settlers perish, while most of the rest were helpless with fever much of the time; and, for twenty years, each new immigration lost on the average half its members the first season. The most attractive figure of the first three years is the burly, bustling John Smith. This effective leader, becoming President of the Council, usurped all the powers of government, and, by beneficent tyranny, saved the colony from extinction.

<sup>&</sup>lt;sup>1</sup> This description of the plantation features of the colony is condensed from Osgood, *English Colonies*, I, 30 ff. See also an article on "The Plantation Type of Colony" in the *American Historical Review*, VIII, 260 ff.

<sup>&</sup>lt;sup>2</sup>The First Supply, in the fall of 1607, found only 38 survivors at Jamestown. Channing (I, 204) gives a table of deaths during the early years. See, also, Percy's "Discourse" in the *Source Book*, No. 19 a.

From one peril the colony was saved by its very misery. Spain watched jealously this intrusion into a region which she claimed as her own, and contemplated an attack upon Jamestown. In particular, the Spanish ambassador at London urged his king repeatedly to have "those insolent people in Virginia annihilated." "It will be serving God," he wrote, "to drive these villains out and hang them." But the Spanish spies in the colony reported that it must fall of itself; and the dilatory Spanish government, already slipping into decay and unwilling to make King James an enemy, failed to act (Source Book, No. 22).

In 1609, Smith returned to England. The next winter was "the Starving Time." A special effort had been made, the summer before, to reinforce the colony; and in the fall the number of settlers had risen to more than three hundred. Spring found only sixty gaunt survivors. These had embarked to abandon the colony, with slight chance of life whether they went or stayed, when they met Lord Delaware, the new governor, with a fleet bearing reinforcements and supplies. Had Delaware been later by three days, Jamestown would have been another failure, to count with Raleigh's at Roanoke.

## B. Under the Conservative Company, 1609-1619

(With § 25, the charters of 1609 and 1612 should be studied carefully (Source Book), and each statement in the text should be verified from that study. Observe that these charters applied to only the London branch of the original Company. The Plymouth branch remained without reorganization till 1620.)

25. Reorganization: Charters of 1609 and 1612. — Meantime the year 1609 saw a remarkable outburst of enthusiasm in England in behalf of the sinking colony. Sermons and pamphlets appealed to the patriotism of the nation not to let this new England perish. The list of stockholders was greatly multiplied, and came to include the most famous names in England, along with good men from all classes of society; <sup>1</sup>

<sup>&</sup>lt;sup>1</sup> See note in *Source Book* to No. 20. Each of the 650 subscribers bought from one to ten shares of stock, at £12 10s. a share, or about \$400 a share in our values. (Cf. § 19, note, on the value of money.) The stock certificates were negotiable, with the approval of the Company's officers.

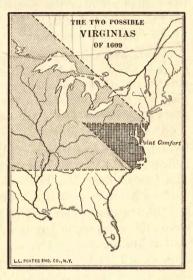
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and the enlarged Company received enlarged powers through two new charters in 1609 and 1612. These documents are particularly memorable in three respects.

a. The territory of the Company was extended. It was made to reach along the coast each way 200 miles from Point Comfort, and "up into the land throughout from sea to sea, west

and northwest." This clumsy Northwest clause was to influence our later history in many ways (§ 178 ff.).<sup>1</sup>

b. The authority retained by the king in the charter of 1606 was now turned over to the Company, and that body received a democratic organization.<sup>2</sup> It was to elect its own "Treasurer" and Council (President and Directors, in modern phrase), and to rule the colony in all respects. After 1612, the stockholders met each year at London in four "Great and General Courts" for important busi-



<sup>&</sup>lt;sup>1</sup> See map above for possible interpretations. Virginia had no trouble in deciding which to insist upon. Probably the words "west and northwest" were used vaguely, with the meaning, "toward the western ocean," which was supposed to lie rather to the northwest. Thus, the Company had instructed the first Jamestown expedition, in making explorations, especially to investigate those rivers that came from the Northwest. The myth of a "Northwest Passage" long survived.

<sup>&</sup>lt;sup>2</sup> More accurately, the charter of 1609 transferred authority from the king to the Company's Council, and that of 1612 handed it on from the small Council to the whole body of stockholders. If Hannis Taylor's English Constitution is accessible, his amazing passage (I, 23) regarding these charters should be criticized by the class. The charter of 1609 refers to the "Council resident here." "Here," of course, means in England; but Mr. Taylor seems to take it to mean in America. Hence he finds in this charter the beginning of "local self-government."

ness, while smaller meetings were held from week to week to dispatch "casual and particular occurrences."

c. A more efficient government was provided in the colony. True, there was no hint yet of self-government. The Company in England made all laws and appointed all officers for the colony, and it could give its appointees arbitrary power of life and death over the settlers. But the inefficient plural head in the colony, with its divisions and jealousies, gave way to one "principal governor."

Virginia was now wholly a proprietary colony. The reorganized Company owned and ruled it for fifteen years (1609-1624). This period falls into two sharply contrasted parts. For the first ten years the Company was despotic and absolute (§ 26). During the last five years it gave a large measure of self-government to the settlers (§ 27 ff.).

26. The "Time of Slavery." — Virginia had left anarchy behind, but she had not reached liberty, either in politics or industry. The Company decided to continue the "plantation" plan (Source Book, No. 20, closing note), and it put in force a military government with a savage code of laws. From 1611 to 1616, the chief officer in Virginia was Sir Thomas Dale, — a stern soldier, energetic but merciless, and not well fitted for civil administration.

The charter of 1609 authorized martial law (that is, trial by military courts, without juries and without the other usual privileges of accused persons). It was intended, probably, that this extreme power should be used only "in cases of rebellion or mutiny," under the same conditions as in England. But, by an unwarranted stretch of authority, martial law was established for several years as the regular method of administering justice. At the same time there was put in force a particularly offensive set of laws, known as Dale's Code. Among other provisions, the code enforced attendance at divine worship daily, under penalty of six months in the galleys, and on Sundays on pain of death for repeated absence. Death was the penalty also for repeated blasphemy, for "speaking evil of any known article of the Christian faith," for refusing to answer the catechism of a clergyman, and for neglecting work.

<sup>&</sup>lt;sup>1</sup> The Company gave each governor a Council to assist him; but, until 1619, its power was merely to advise.

Moreover, the military courts imposed ingeniously atrocious punishments, such as burning at the stake, breaking on the wheel, or leaving bound to a tree to starve, with a bodkin thrust through the tongue. Dale's rule was long known as "the time of slavery"; and an old historian of Virginia fitly calls the system "very bloody and severe, . . . in no wise agreeable to a free people or to the British constitution." 1

But though Dale's harsh tyranny was little better than slave-gang rule, yet he did keep order and protect the colony efficiently from the Indians. In 1614, he even made a few three-acre allotments of land to private holders, with excellent results. Still, at his departure, in 1616, the population, scattered in eight little settlements, numbered only 351.<sup>2</sup> During the next two years, the tyranny which Dale had practiced for the public good was used by a new governor (Argall) for selfish ends. This hastened a crisis. Argall was recalled, to stand trial; and a revolution took place in the government of both Company and colony.

# C. UNDER THE LIBERAL COMPANY, 1619-1624

27. The Company becomes Liberal.—The London Company had split into factions. The element so far in power was conservative, and belonged to the "court party" in politics; but, toward the end of 1618, control of the Company passed to a

¹ A few years later, the Company solemnly declared that the code was put in force by Dale with the approval only of the "Treasurer" (Sir Thomas Smith), without ever having been sanctioned by a "General Court." Some writers try to excuse Dale on the plea that the settlers needed "a firm hand"; but the absence of any disorder when this severity was suddenly given up (§ 28, b) raises a doubt whether it had been needed. Dale was conscientious and full of enthusiasm for Virginia. "Take the best four kingdoms of Europe," he wrote, "and put them all together, and they may no way compare with this country for commodity and goodness of soil." See also § 17 a, note, and Source Book, No. 12.

<sup>&</sup>lt;sup>2</sup> Of these, 65 were women and children. The 351 were the survivors of 2000 settlers who up to that time had landed in Virginia. Only 81 land allotments had been made,—or a small garden to one man out of four. Probably the other three men of every four were still "servants."

<sup>&</sup>lt;sup>8</sup> Modern History, § 238, close.

liberal and Puritan faction, led by the Earl of Southampton and Sir Edwin Sandys. These patriots were struggling gallantly in Parliament against King James' arbitrary rule; and they at once granted a large measure of self-government to the Englishmen across the Atlantic, over whom they themselves ruled. Sir George Yeardley was sent out as governor, with instructions which began a new era in Virginia.

28. Yeardley in Virginia.— With Yeardley's arrival, in April, 1619, the number of colonists was raised to about a thousand. They were still, mainly, indentured servants, and



THE DOTS MARK THE RIBBON OF SETTLEMENT IN 1624.

were distributed among eleven petty "plantations," 2— mere patches on the wilderness,— scattered along a narrow ribbon of territory, nowhere more than six miles wide, curving up the James to a hundred miles from the sea. Industry was still in

common (except for the slight beginning of private tillage under Dale); and martial law was still the prevailing government. According to his instructions from the Company, Yeardley at once introduced three great reforms.

a. The system of common industry was abolished, and private ownership was established. All free immigrants received liberal grants of land for private possession.

A large part of the settlers continued for some time to be "servants" of the Company, and these were employed as before on the Company's land. But each of the old free planters now received 100 acres; each servant was given the same amount when his term of service expired; and each new planter thereafter was to receive 50 acres for himself and as much more for each servant he brought with him. Grants of many

<sup>&</sup>lt;sup>1</sup>The quarrel within the Company grew out of business and personal differences, not out of political principles. But when the Sandys party found itself in control, it seized the chance to embody its principles of government in a free colony.

<sup>&</sup>lt;sup>2</sup> The word "plantation," as used here to indicate a distinct settlement, must not be confused with the word as used in § 22.

hundred acres were made, too, to men who rendered valuable service to the colony. For many years, all grants were in strips fronting on rivers up which ships could ascend.

- b. Martial law and Dale's Code were set aside. As a later "Declaration" by the Old Planters puts it, Yeardley proclaimed "that these cruell lawes by which we had soe longe been governed were abrogated, and that we were now to be governed by those free lawes which his Majesties subjects live under in Englande." That is, Yeardley restored the private rights of Englishmen, to which the settlers were entitled both by the Common Law and by the Company's charter (§ 22).
- c. The settlers received a share in the government. A Representative Assembly was summoned, "freely to be elected by the inhabitants, . . . to make and ordaine whatsoever lawes and orders should by them be thought good and profitable." This political privilege was a new thing, to which the colonists had no express claim, and for which, indeed, they had not asked.
- 29. The First Representative Assembly in America met at Jamestown, August 9,2 1619. It was not purely representative. Each of the eleven plantations sent two delegates; but in the same "House" with these elected "burgesses" sat the governor and his council (seven or eight in number), appointed from England.

We have no account of the elections.<sup>4</sup> No doubt they were extremely informal. Of the thousand people in the colony, seven hundred must

<sup>&</sup>lt;sup>1</sup> The Records are given in the Source Book, No. 25. An exercise might well be spent upon them, along with §§ 29-30; and cf. also Source Book, Nos. 23, 24.

<sup>&</sup>lt;sup>2</sup> The Old Style date, July 30, is often given. A discussion of Old and New Style is given in the *Source Book*, No. 20, note.

<sup>8</sup> Eggleston (Beginners of a Nation, 55) says that the Assembly "contained in embryo the American system of . . . a legislature of two houses"; but certainly he does not mean that burgesses and council had as yet separated into two Houses, as the student sometimes understands him.

<sup>&</sup>lt;sup>4</sup> The student will find it instructive, in the light of this fact, to compare the circumstantial but highly imaginative picture in Brown's *First Republic*, 315, with a cautious statement like that in Doyle's *English Colonies*, I, 159.

have been "servants" without a vote; and, of the three hundred or so free persons, a fraction were women and children. Probably there were not more than two hundred voters. They were distributed among eleven plantations; and, at least in some of these, the only voters must have been the foreman and employees of a rich proprietor. It is not likely that polls were opened in more than two or three of the plantations. In many cases, the "election," no doubt, was really an appointment.

The Assembly opened with prayer, and slipped with amazing ease into the forms of an English parliament. It verified credentials of the delegates; it gave all bills three "readings"; and, in two cases, it acted as a court of justice, trying ordinary criminals and imposing judgment. Laws (which to-day would be stigmatized as "Blue Laws") were passed against drunkenness, gambling, idleness, absence from church, excess in apparel, and other misdemeanors. For that age, the penalties were light; but death was prescribed for those offenders who endangered the colony by selling firearms to the Indians. Church of England was made the established church, and aid was asked from the Company toward setting up a college. With all this business, the Assembly sat only six days. The work was done mostly in committees, and there was little debate. The governor possessed an absolute veto, but had no occasion to use it.

Virginia had been transformed from a "plantation colony," ruled by a despotic overseer, into a self-governing political community. Rude as the organization was, this beginning of representative government in the wilderness has a simple grandeur and a striking significance. The pioneers manifested an instinct and fitness for representative government, a zest in it, and a deep sense of its value. It came as a gift; but, once given, it could not be withdrawn.<sup>2</sup>

¹ This mixture of legislative and judicial functions was found in the "Courts" of the Company in England and in all early colonial Assemblies. The clear separation into legislatures, on the one hand, and judicial courts, on the other, came later. We still have some survival of judicial power in our senates in impeachment trials; and, until a recent date, there was much more of that power in the English House of Lords.

<sup>&</sup>lt;sup>2</sup> Many American writers speak as though the colonists had created the Assembly. Thomas Hutchinson (*History of Massachusetts Bay*, 94, note)

Jury trial and representative government were both established upon a lasting foundation in America in 1619, while Virginia was the only English colony. These two bulwarks of freedom were not then known in any large country except in England; and they were not to take root in the colonies of any other country for more than two hundred years. Their establishment in Virginia made them inevitable in all other English colonies.

30. Charters to the Settlers.—Yeardley presented to the Assembly a long document from the Company. The Assembly called it a "Great Charter," and appointed two committees to examine it carefully, "because [it] is to binde us and our heyers forever." This "charter of 1618" has been lost; but it seems to have arranged for land grants, and certainly it guaranteed a representative Assembly. Two years later, Francis Wyatt became governor, and the Company sent over by him a brief confirmation of the political rights of the colonists in a second "charter," known as the Ordinance of 1621.

Some historians, including even Channing (United States, I, 203), hold that the document presented by Yeardley was not a charter to the colony but only "instructions" from the Company to himself as governor. But a governor's instructions might be changed any time at the Company's will. The Assembly's language does not fit mere "instructions." Indeed, they would have had no business with such a document, — unless it pledged the Company for the future to a specified policy; and, if it did this, then, no matter what its form, it was really a "charter," as the Assembly called it. It became at once an inducement to emigrants; and the English law regarded such a grant as a bargain, or contract. The grantor could not revoke it. Only the highest English courts or parlia-

said that in 1619 representative government "broke out" in Virginia; and Story in his great Commentaries on the Constitution (I, § 166) said that the Assembly was "forced upon the proprietors" by the colonists. Influenced by such earlier authorities, John Fiske (Old Virginia, I, 186) explains the Assembly on the ground that "the people called for self-government." But this view is contrary to all evidence. For a good statement, see Channing, United States, I, 204. For the ardor, however, with which the settlers maintained the privilege, in contrast to French indifference (§ 15), see §§ 33-36.

<sup>1</sup> The class should discuss fully the scheme of government there provided (Source Book, No. 27). Note the remarkable promise at the close, and compare with one of the Assembly's petitions. For the methods of the Company, and its spirit, see extracts from its rules in Source Book, Nos. 23, 24, 26.

ment could set it aside. This contract character certainly belongs to the Ordinance of 1621, —though that document lacks somewhat the form of a charter.

These "charters" of 1618 and 1621 were wholly different from royal grants to proprietors in England, like the charter of 1609. They were the first of many charters and "concessions" issued by the proprietors of various colonies to settlers in America, in order to set up ideals of government or to attract settlers.

31. Material Growth. — The new management of the Company bestirred itself to build up the colony on the material side also. To supply the labor so much needed, Sandys (the "Treasurer" for 1619) sought throughout England for skilled artisans and husbandmen, and shipped to Virginia many hundred "servants" of less desirable character. Several cargoes of young women were induced to go out for wives to the settlers; and supplies of all kinds were poured into the colony with a lavish hand.

This generous paternalism was often unwise. Effort and money were wasted in trying to establish unsuitable industries, like the production of iron, glass, silk, and wine; and the main industry that was to prove successful, tobacco raising, had to win its way against the Company's frowns. Moreover, pestilence and hardship continued to kill off a terrible proportion of the people. In the first three years after Yeardley's arrival, more than three thousand new settlers landed; but in March, 1622, of the population old and new, only some twelve hundred survived, and that spring an Indian massacre swept away a third of that little band.

In spite of all this, Virginia became prosperous under the Company's rule. Two years after the massacre, when the Company fell (§ 32), the population had risen again to twelve hundred, and the number of settlements had become nineteen. The Indians had been crushed. Fortunes were made in tobacco, and the homes of the colonists were taking on an air of comfort. The period of experiment was past, and the era of rapid growth had just been reached. During the following ten years

(1624–1634), the population grew fourfold,—to more than five thousand people, organized in eight counties. Thereafter, material development was uninterrupted.

The first tobacco was grown for export in 1612; but both the Conservative and Liberal management of the Company discouraged its cultivation (in part, from moral reasons); and, even later, King Charles warned the Virginians not to "build solely on smoke." The product, however, brought high prices in Europe; and, before 1624, it was apparent that a profitable industry had been found. Thereafter, Virginia needed no coddling. In Eggleston's words, the colony "was no longer a hothouse plant; it had struck root in the outdoor soil of human interest."

32. The King overthrows the Company. — Meanwhile James became bitterly hostile to the Company. Sandys, the first Liberal "Treasurer," was particularly obnoxious.¹ When Sandys' term expired (in 1620), the King sent to the "General Court" the names of four men from whom he advised them to elect a new Treasurer. The Company (some hundreds of the best gentlemen of England present) remonstrated earnestly against this interference with the freedom of election guaranteed by their charter; and James yielded, exclaiming petulantly, "Choose the Devil, an ye will; only not Sir Edwin Sandys!" Sandys then withdrew his name; and the Company chose his friend Southampton, who was little more to the royal taste.² By general agreement, Sandys remained the real

¹ Cf. §§ 27 and 31. Sandys replaced Sir Thomas Smith as the executive officer of the Company in England in 1619. He was prominent in parliament in opposing the king's arbitrary policy, and was reported to be "the king's greatest enemye." More than once he was committed to custody by royal order. One of his business associates testified that "there was not any man in the world that carried a more malitious hearte to the government of a Monarchie than Sir Edwin Sandys did," and that Sandys had said repeatedly that he "aymed . . . to make a free popular state there [in Virginia] in which the people should have noe government putt upon them but by their owne consents."

<sup>&</sup>lt;sup>2</sup> Southampton had been a friend of Shakespeare, and he was a Liberal leader in the House of Lords. The Company inquired whether Southampton would serve as Treasurer. "I know the King will be angry," replied the Earl, "but so this pious and glorious work... be encouraged, let the Company do with me as they think good." Then "surceasing the ballot," the meeting elected

manager. Again, when Southampton's second term expired (1622), James sent to the Court of Election five names. It would be pleasing to him, he said, if the Company chose a new Treasurer from the list; but this time he carefully disclaimed any wish to infringe their "liberty of free election." The Company proceded to reëlect Southampton by 117 ballots, to a total of 20 for the King's nominees. Then they sent a committee to thank James "with great reverence" for his "gracious remembrance" and for his "regard for their liberty of election." It is reported that the King "flung away in a furious passion." Small wonder, at all events, that he listened to the sly slur of the Spanish ambassador who called the London Company's General Court "the seminary for a seditious parliament."

Since James could not secure control of the Company, he now decided to overthrow it. A revival of the old factions within it, and the massacre of 1622 in Virginia, furnished a pretext. Commissioners were sent to the colony, to gather further imformation unfavorable to the Company's rule; but the Virginians supported the Company ardently, and made petition after petition to the King in its favor. The charter could be revoked only by a legal judgment; but just at this time the English courts were basely subservient to the monarch, and, spite of the Company's valiant defense, the King's lawyers, in 1624, secured judgment that its charter was void.

Thus ended the London Company,—"the greatest and noblest association ever organized by the English people." It had expended five million dollars, and had made no profits; but it had "added a fifth king-

him "with much joy and applause, by erection of hands." These spicy anecdotes come mainly from the papers of the Ferrars, high officials of the Company. The most important official records are given in Source Book, No. 28. There the language is more courtly, but the spirit is equally definite.

<sup>1</sup> Modern History, § 241. Sir Edward Coke, the great Chief Justice, had been dismissed from office by James for refusing to degrade his position by consulting the King's will in his decisions. Such interference with the courts was a new thing in England, and was never to recur after the Stuart reigns.

<sup>2</sup>The King's advocate pleaded that it was contrary to the public weal for a merchant company to exercise such vast powers over Englishmen.

dom "to England, and had established civil liberty therein. Its work was done. Its overthrow was not to hinder the future progress of Virginia.

III. VIRGINIA A ROYAL PROVINCE (NEGLECTED) TO 1660

MAN

- 33. Results of the Change. Virginia had become a royal province. Four results call for attention.
- a. Land grants from the Company to individuals held good, though for a time the colonists felt some uneasiness in the matter.
- b. All the land which had been granted to the Company by the charter, and which had not been transferred to individuals, became crown property <sup>2</sup> again. Thereafter the crown, through the royal governors, made grants to individuals upon much the same terms that the Company had used.
- c. The colony was now compelled to support itself. There were no more supplies from England. At first the settlers dreaded this result. They believed the colony could not survive without the fostering which it had enjoyed. In the next three years, they sent four petitions to the crown for aid; but the royal proprietor, quarreling with parliament and struggling for money enough to run the government at home, paid no attention to such prayers. This was fortunate. The colony found that it could walk alone.
- d. Political control over the colonists reverted wholly to the king. He was not bound by the charters of 1618 and 1621, as the Company would have been. When the Company fell, grants of jurisdiction from it became worthless. And as the colonists feared the king would help too little, so, with more reason, they feared that he would govern too much (§ 34).

<sup>&</sup>lt;sup>1</sup> England, Scotland, Ireland, and France were claimed in the title of the English crown.

<sup>&</sup>lt;sup>2</sup> Virginia afterward claimed its "ancient bounds," as they had been defined in the charter of 1609. But that grant was not made to the colony; and the king was strictly within his rights when he afterward granted Maryland, and other parts of the territory, to new proprietors. Still, as we shall see, the Virginia claim remained an important factor in our history. Cf., also, Scarce Book, No. 34, and note.

a one of these, carried to England by Yeardley, reads, in part: "The ground work of all is that there must bee a sufficient publique stock to goe through with soe greate a worke; which we can not compute to bee lesse than £20,000 a yeare. . . For by it must be mainetayned the Governor and his Counsell and other officers here, the forest wonne and stocked with cattle, fortifications raysed, an army mainetayned, discoveries mayde by Sea and land, and all other things requisite in soe mainefold a business." Cf. Source Book, No. 31, b.

34. Preservation of the Assembly. — There was real danger that King James would establish an arbitrary government in Virginia. In the spring of 1624, when the overthrow of the Company was imminent, a body of leading settlers, with the Assembly's approval, "humbly entreat . . . that the Governors [to be appointed by the king] may not have absolute authority, but be restrayned, as formerlie, by the consent of a Counsell . . . [and] above all . . . that we may retayne the Libertie of our General Assemblie, than which nothing can more conduce to our satisfaction or the public utilitie." At the same time the Assembly itself solemnly put on record its claim to control taxation, in a memorable enactment:—

"That the Governor shall lay no taxes or ympositions upon the colony, its lands or goods, other way than by the authority of the General Assembly, to be levied and ymployed as the said Assembly shall appoint." 1

This was the first assertion on this continent of the English principle, "No taxation without representation." James was planning a despotic government for the colony; but he died (1624) before he had put his new "constitution" in form, and Charles I at once found himself so involved in quarrels at home and abroad that he could give little attention to a distant colony. Thus Virginia was left to develop with less interference than it would have encountered from the most liberal proprietary Company. The London Company had planted constitutional liberty in America; the settlers clung to it devotedly; and the careless royal government found it easier to use the institution than to uproot it.

King James began his control by confirming Governor Wyatt and the former Council in their places in Virginia,—

"to direct and governe [the Virginians], and execute . . . all other matters concerning that Plantation as fullye and amplye as any Governor and Council resident there at any time within the five years now last past." <sup>2</sup>

A year later, Charles I copied this phrase, in appointing Yeardley governor again, and it became a regular form in subsequent

<sup>&</sup>lt;sup>1</sup> The law asserts the Assembly's control over the method of collecting and expending taxes, be it observed, as well as over merely granting them. The same Assembly passed two other acts (Source Book, No. 31, a) in the nature of a bill of rights, to guard personal and public liberty against the expected royal governor.

<sup>&</sup>lt;sup>2</sup>See extracts from the royal commission in Source Book, No. 29.

commissions. The royal governors never received absolute authority, such as Dale held. They could do no important act without the Council, as the colony had petitioned. But nothing was said in the first commissions about a representative Assembly, and doubtless the royal intention was quietly to do away with it. At all events none was permitted for five years (1624–1628). During just this time, however, the royal governors (Wyatt, Yeardley, and Francis West) were appointed from old officials of the Liberal Company. In various ways these men maintained liberal traditions; <sup>1</sup> and each of them joined in a petition for the restoration of the Assembly.

Yeardley was sent to England in 1625 to represent the desires of the colonists. He presented to the King's Council a long petition that the "Libertie of Generall Assemblies be confirmed," and urged strenuously that such assurance was needed to allay the universal distrust felt in Virginia, where "the people... justly fearing to fall into former miseries, resolve rather to seek the farthest part of the World."

These petitions met with no direct response. But, in 1628. Charles wished a monopoly of the Virginia tobacco trade, and, hoping vainly that an Assembly would vote it to him, he ordered the governor to summon one. Soon after, Charles appointed Sir John Harvey governor. Harvey belonged to the court faction in England, and had been one of the royal commissioners sent to Virginia in 1623. Apparently he had learned there the indispensable need for an Assembly. His commission from Charles made no mention of one; but, in 1629, before leaving England, he drew up for the King's consideration a list of seven "Propositions touching Virginia." One of these propositions asked for a representative Assembly as part of the government. The King seems to have been influenced by this request from the courtier-governor more than by the petitions of the colony. He was just entering upon his eleven-year period of "No Parliament" in England,2 but,

<sup>&</sup>lt;sup>1</sup> On two occasions, a number of leading colonists met with the Council to decide important matters, forming a sort of "Assembly." <sup>2</sup> Modern History, § 243.

in his answer to Harvey, he approved an Assembly for Virginia.¹ With this sanction, the Assembly continued regularly; and formal directions to call Assemblies at regular intervals became a part in future of each governor's instructions.²

- 35. The central government of the royal colony consisted, then, of three elements:—
- a. The governor, appointed by the king and acting under instructions from him. In dignity, the governor was the chief part of the government, and his authority was very great. True, he could do little without the approval of his Council of State; but he had much influence over that body, and he possessed the right of absolute veto over both Council and Assembly.
- b. The Council of State (containing the governor as its president). This body comprised from ten to twenty leading Virginia gentlemen appointed by the king. It met frequently to assist and advise the governor, and to act as a high court of justice.
- c. The General Assembly (consisting of the Council of State and a larger number of burgesses elected by the counties and principal cities). The Assembly could meet only on the governor's summons (usually once or twice a year, for only a few weeks each time), and it could be dissolved by him at will. Its business was mainly legislative, though it was also the highest judicial court if it chose to hear appeals from the Council. It was the only body to make laws or raise taxes; and, more and more, it tended to become the dominant element in government.
- 36. The Mutiny of 1635. For nearly a quarter of a century after the restoration of the Assembly, the political history of the colony has only one striking episode. This was connected with the administration of Governor Harvey. Despite his "proposition" for an Assembly, Harvey was known to sympathize with arbitrary rule. For this reason, or because

<sup>1</sup> Source Book, No. 32.

<sup>&</sup>lt;sup>2</sup> See extract from Berkeley's instructions (1642) in Source Book, No. 32, a. So far as the writer knows, all American historians assert or imply that the Assembly continued, after a short interruption, without English sanction until Wyatt's commission of 1639. Too little attention seems to have been paid to the Harvey Propositions and the royal reply. The continuance of the Assembly was due, certainly, to the spirit of the colonists,—which was such that not even Harvey dared try to rule without that organ of government; but it is equally clear that, in form, royal sanction of some kind preceded the call for each meeting after the colony became a royal province.

of some attempt by him to levy taxes, the Assembly of 1632 reenacted, word for word, the great law of 1624 regarding representation and taxation. Harvey clashed continually with the settlers, and complained bitterly to the authorities in England about the "self-willed government" in Virginia. Finally, he tried to arrest some of his Council for "treason." Instead, the Council "thrust him out of his government," sent him prisoner to England, and chose John West governor in his place. The Assembly at once ratified this bloodless revolu-Two years later, the king restored Harvey for a time, but replaced him, in 1639, by the liberal Wyatt, restoring to office, at the same time, the Councilors who had deposed Harvey.

In 1641 Sir William Berkeley was sent over as governor. He had been an ardent royalist in England, and it is significant that his first Assembly enacted verbatim, for the third time, the law of 1624 regarding taxation. Soon after his appointment, however, the Civil War began in England, and during that struggle, loyal sentiment was strong enough in Virginia to secure harmony with the King's governor. On his part, Berkeley ruled with much moderation, keeping in touch with the Assembly and showing no promise of the tyranny which was to mark his second governorship after the English Restoration (§§ 103-105).

37. Enlarged Self-government under the Commonwealth. - In 1649, after the Civil War, England for a time became a republican "Commonwealth." Parliament soon sent commissioners to America to secure the obedience of the colonies. Berkeley wished to resist the officers, but the Assembly quietly set him aside and made terms.1 The government was reorganized so as to put more power into the hands of the Burgesses (whom Parliament could trust better than the more aristocratic elements). Each year a House of Burgesses was to be chosen as formerly, but this body was now to elect the governor and Coun-

<sup>&</sup>lt;sup>1</sup> The treaty is given in the Source Book, No. 34. Let the class find authority in it for as many statements below as possible.

cil. For the first time, the government of England recognized in full the colonial Assembly's sole control over taxation and its practical control over all colonial legislation. During the next nine years (1652–1660), Virginia was almost an independent and democratic state.

This democratic self-government was vigorously maintained. On one occasion (1657), a dispute arose between the Burgesses and the governor. Governor Matthews and the Council then declared the Assembly dissolved (as a royal governor would have done). The Burgesses held, logically, that the governor, having been made by them, could not unmake them, and that "we are not dissoluable by any power yet extant in Virginia but our owne." Matthews threatened to refer the matter to England. The Burgesses then deposed him, and proceeded to reëlect him upon condition that he acknowledge their supreme authority.

A year later, when Cromwell died and his son became Lord Protector in England, a new commission was sent to Virginia, authorizing the "Governor and his Council" to manage "the affaires of that colony according to such good lawes and custones . . . as . . . heretofore used." This language might be taken to ignore the Burgesses; but that body obliged the Governor and Council to appear in its presence and acknowledge "the supreme power to be by the present laws resident in the Grand Assembly." The Governor was required also to "joyne . . . in an address [to England] for confirmation of their present priviledges . . . that what was their priviledge now might be . . . their posterities hereafter."

In March, 1660, Governor Matthews died. Charles II had just returned to the throne in England. The Assembly wished to conciliate Charles; and so Berkeley, who had been living quietly in Virginia during the Commonwealth, was elected governor. An effort was made to save Commonwealth liberties by enacting that Berkeley "governe according to the ancient lawes of England and the established lawes of this country, and . . . that once in two years at least he call a Grand Assembly, and that he do not dissolve this Assembly without the consente of the major part of the House." The failure of this attempt to restrict the new governor belongs to a later chapter (§§ 103–105).

<sup>&</sup>lt;sup>1</sup> During the Commonwealth, the Burgesses and Council sat in two "Houses," but after the Restoration the two orders again sat together, for the most part, until their final separation in 1688 (§ 106, note).

For Further Reading. - This text-book can be used, like others of its kind, with the usual amount of supplementary reading from standard "secondary" works. The author has planned, however, for Part I to be accompanied instead with a rather full study of illustrative "sources" which he has collected for the purpose in a Source Book. Nos. 1-35 of that volume may be used to advantage with this chapter. Frequent directions and suggestions for the use of the more important documents there are given in this book. In addition, the teacher will find many ways to relate the sources to the narrative. Occasional lessons may well be given wholly upon the Source Book. It is well to ask a student to find in a given document some important fact which is not mentioned in this text-book but which might well be mentioned. In particular, it is a good exercise to set a student to find in a given "source" the authority for some statement in the text, or to find a possible basis for deciding between two authorities who differ about a matter covered by the "source." The teacher will bear in mind. of course, that the limited number of sources possible in a school volume must, on the whole, be illustrative of judgments, rather than a basis for judgments. Still, skillful handling can give the class some idea of historical material and of how it is to be used.

For the class which does not use the *Source Book*, or for the student who, in addition to it, finds time for reading, the following bibliography is suggested in connection with early Virginia.

Eggleston, Beginners of a Nation, 1-97 (charming and scholarly); Fiske, Old Virginia and HerNeighbors, I, 1-224; Channing, History of the United States, I, 115-241; Osgood, American Colonies in the Seventeenth Century, I, 1-99, and III, 1-141 (the most critical work, but not very attractive); Tyler, English in America, 1-117 (readable, but not always cautious in statement). Doyle's English Colonies, I, contains much good material, but it is not particularly well presented for young people; it appeared before any of the works mentioned above, and was for a time the most scholarly work on the colonies. Alexander Brown's First Republic in America and English Politics in Early Virginian History extend to about 1625; they contain much valuable material for an experienced teacher, but they are too detailed, and too partisan, for students.

References to collections of sources are given in the Source Book.

In fiction, mention may be made, for this period, of Mary Johnston's To Have and to Hold and Eggleston's Pochahontas and Powhatan. Kingsley's Westward Ho pictures the rivalry between England and Spain in the Old World and the New.

### MARYLAND

### Suggestions and Questions for Study and Review

- 1. Quote from memory three or four memorable sentences or phrases (such as the quotations at the head of the chapter and in § 17, a).
  - 2. Make a syllabus for Virginia to 1660.

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3. Let each student present a list of twelve or fifteen questions for the others to answer. — the instructor criticizing when necessary.

4. Sample Questions.—(1) Who chose the chief executive in Virginia in 1607? In 1611? In 1620? In 1625? In 1655? (2) Distinguish between the Virginia General Assembly and the Virginia Company's Great and General Court, as to place, composition, and powers. (3) Did any of the royal charters to the Virginia Company suggest self-government for the settlers? Justify the answer. (4) When and why did the Ordinance of 1621 cease to be valid? (5) Distinguish two stages in the attack of King James upon the liberal London Company. (6) Who had authority to make laws for the Virginians in 1608? In 1610? In 1616? In 1621? In 1631? (7) What facts about the colony in this period, not referred to in the text above, can you find in the Source Book?

(Students should be trained to answer briefly but inclusively. For the fifth question, some such answer as the following should be required: First he tried in vain to secure control of the Company by dominating its elections in 1620 and 1622; then, he secured its overthrow through a decree of his subservient courts against the validity of the Company's charter, in 1624.)

# IV. MARYLAND: A PROPRIETARY PROVINCE

From 1607 to 1620 Virginia was the only English colony on the continent. Then came the beginnings of New England; but for some time more the two groups of colonies, north and south, were separated by vast stretches of wilderness and had little to do with each other's development. It is convenient, therefore, to pass at once to Maryland, Virginia's only neighbor in the first half century.

### A. ORIGINS

38. George Calvert. — Like early Virginia, Maryland was a proprietary colony, but the proprieter was an individual. The plan of colonization returned to that of Raleigh's time. George Calvert, a high-minded gentleman, had been interested for many years in the expansion of England. He was a member of the Virginia Company after 1609 and of the Plymouth Council of 1620 (§ 45); and in 1621, while still a member of these corporations, he took upon his own shoulders a separate attempt to found a great

feudal domain in Newfoundland. He bought a vast tract there from an earlier adventurer, named it Avalon, and sent out several bodies of settlers. In 1623 King James confirmed Calvert's title to this province, and granted him remarkable powers over the settlers, in a charter which was to be copied a few years later in the grant of Maryland.

Soon after receiving the charter for Avalon, Calvert become a convert to Catholicism, which was then persecuted sternly in England. His life so far had been devoted mainly to the public service, but this step compelled him to withdraw from office. To reward his past services, King James made him Baron of Baltimore. The new peer now spent some time in his colony, only to learn by bitter experience that he had been misled sadly as to its climate and wealth. Broken in health and fortune, he finally abandoned that harsh location, and applied to King Charles for a more southerly province. Before the formalities connected with a new grant were completed, Baltimore died. But in 1632 the Charter for Maryland was issued to his son, Cecelius Calvert; and, two years later, a settlement of some two hundred souls was established in the new colony.

39. The charter of 1632 sanctioned representative self-government. It put the head of the Baltimore family in the position, practically, of a constitutional king over the settlers; but his great authority was limited by one supreme provision, not found in the charter to Raleigh. In raising taxes and making laws, the proprietor could act only with the advice and consent of an Assembly of the freemen 2 or of their representatives.

This recognition of *political* rights for the settlers, in a royal charter, marks an onward step in the history of liberty. The creation of the Virginia Assembly, and the devotion of the Virginians to it, had borne fruit. Seemingly, between 1620 and 1630, it became a settled conviction for all Englishmen, at last even for the court circle (§ 34), that colonization in America was possible only upon the basis of a large measure of self-government.<sup>3</sup>

<sup>&</sup>lt;sup>1</sup> See Baltimore's letter to King Charles in Source Book, No. 41. The name Avalon, with such terms as Bay of Flowers and Harbor of Heartsease, suggest the rosy anticipations of the first expedition to Newfoundland. Cf. § 2, note.

<sup>&</sup>lt;sup>2</sup>In practice this term in Maryland was used as equivalent to freeholders. <sup>3</sup>The Source Book gives the charter in full, and — with comment — the clauses for self-government in the other royal charters of the period: the one to Baltimore for Avalon (1623), and those to Robert Heath and Edmund Plowden for their projects in Carolina (1629) and in "New Albion" (1634).

### B. POLITICAL DEVELOPMENT

- "It turned out, therefore, that the proprietary's power was so circumscribed that the institutions of Maryland ultimately became the most liberal of any outside of Connecticut and Rhode Island."—Channing, History of the United States, I, 245.
- "Among the people of Lord Baltimore's colony, as among Englishspeaking people in general, one might observe a fierce spirit of political liberty coupled with an ingrained respect for law and a disposition to achieve results by argument rather than by violence." — Fiske, Old Virginia, II, 149.
- v 40. The Right of the Assembly to initiate Legislation. The proprietors of Maryland did not live in the colony. They ruled it through vicegerents, or governors, whom they appointed or dismissed at will, and to whom they delegated such authority as they chose. The governor was assisted by a small Council, also appointed by the proprietor. At first this proprietary machinery was the central fact in the government. The Assembly, the only popular element, could meet only at the governor's call. But out of this feudal fief there was to grow a democratic commonwealth, with the Assembly for the center of authority. This transformation occupied a century, but the most important steps were taken in the first twenty years.

Lord Baltimore's instructions to the first governor directed him to call an Assembly, but authorized him to adjourn and dissolve it at will and to veto any of its acts. Baltimore himself reserved a further veto. Moreover, he intended to keep for himself the sole right to initiate legislation. He meant to draw up all laws in full, and to submit them to the Assembly only for approval or rejection. The charter declared that he was to make laws "with the advice and consent" of the freemen. But this phrase was the same that English kings had used for centuries to express the division of power between themselves and parliament; and meantime parliament had come to be the real lawmaking power. Accordingly, the people of Maryland at once insisted upon taking the words in the sense which history had given them, rather than in their literal meaning.

The first Assembly (1635) passed a code of laws. Baltimore vetoed them all, on the ground that the Assembly had exceeded its authority. To the next Assembly (1638) Baltimore sent a carefully drawn body of laws. After full debate, these were rejected by unanimous vote of all the representatives. Then the Assembly passed a number of bills, several of them based upon those that had been presented by Baltimore; but all these fell before the proprietor's veto. In the following year, however, Baltimore wisely gave way. In a letter to the Assembly he announced his willingness that it should share with him in this right of initiating laws. Even this victory did not satisfy the champions of popular rights. The Assembly urged that Baltimore ought not to present fully drawn acts at any time, but, at the most, only "heads of bills," leaving all details to be worked out by the colonial legislature; and after 1650 this policy prevailed.

41. The Assembly becomes Representative and Bicameral. Another contest took place over the form of the Assembly. Representative government, simple as it seems to us, was not thoroughly understood in the seventeenth century, even by Englishmen; and events in Maryland mark great progress in clearing up ideas on the subject. The first Assemblies were "primary" gatherings, to which all freemen might come; but to the spring Assembly of 1639 each "hundred" (the local unit in early Maryland) chose two delegates. Notwithstanding this, from one of the hundreds there appeared two other men claiming a right to sit as members because they "had not consented" to the election! Stranger still, the absurd claim was allowed. But the same Assembly decreed that in future there should sit only delegates duly chosen and gentlemen summoned by the governor's personal writs. In 1641 a defeated candidate claimed a right to sit "in his own person," but this time the plea was promptly denied.

At first the Council sat as part of the Assembly in one body with the freemen or their delegates. Moreover, the governor summoned other gentlemen, as many as he pleased, by personal writs, independent of election. These appointed members sympathized naturally with the proprietor and the governor, while the delegates sometimes stood for opposite interests. As early as 1642 the differences between the two elements, appointed

and elected, led the representatives to propose a division into two "Houses." The attempt failed because of the governor's veto; but the arrangement became law in 1650.

Thus the first generation of Marylanders won from the Proprietor important rights guaranteed to him by the charter. The form of the Assembly was no longer determined by him from time to time: it was fixed, to suit democratic desires, by a law of the Assembly. The revolutionary Assembly of 1642 attempted also to secure stated meetings, independent of a governor's call, and to do away with the governor's right of dissolution. In form, these radical attempts failed; but in reality the Assembly soon learned to control its own sittings, except in extreme crises, through its power over taxation. It granted supplies only for a year at a time (so that it had to be called each year), and it deferred this vote of supplies in each session until it was ready to adjourn.

## C. Religious Toleration

42. A Refuge for Catholics. - After George Calvert's conversion to Catholicism, a religious design was added to his earlier motives for colonization. He and his son intended that their new colony should be a refuge for their co-religionists in England. The charter, it is true, makes no reference to religious toleration and no provision for Catholic worship (which was forbidden rigorously by the English law). The only clause bearing directly upon the matter is a passage which gives Baltimore power to appoint clergymen to positions, and to consecrate church buildings, "according to the ecclesiastical laws of England," So far as this goes, it establishes Episcopacy. On the other hand, the charter omits the usual reference to the oath of supremacy. Probably there was an understanding between king and proprietor that Catholics would not be molested; but Maryland was never a Catholic colony in the sense that the Catholics could have made their religion the state religion, or that they could have excluded other sects. The most that the devout, highminded Baltimore could do for his fellow worshipers, - possibly all that he wished to do, - was to secure toleration for them by compelling them to tolerate others.2

<sup>&</sup>lt;sup>1</sup> The first colony to establish a bicameral legislature was Massachusetts in 1644 (§ 69); but the *attempt* came first in Maryland.

<sup>&</sup>lt;sup>2</sup> From the first there were many Protestants in the colony, possibly a majority, though for a time the leaders were mainly of the Catholic Church. Baltimore's instructions to the governor of the first expedition enjoined him to permit no scandal or offense to be given to any of the Protestants and to

- 43. The Toleration Act.—By the time of the Civil War in England, the Puritans had begun to swarm into Maryland and were trying to secure political supremacy there. When the Puritan Commonwealth was established in England, Lord Baltimore, to prevent disputes that might lose him his colony, proposed a wise law which was finally adopted by the Assembly and which is known as the Toleration Act of 1649. This great law it is true, threatened death to all non-Christians (including Jews and any Unitarians of that day); but it was far in advance of the policy of almost all the governments of the world. It aimed to prevent acrimonious controversy between sects, and it provided that "no person . . . professing to believe in Jesus Christ, shall be in any wise molested or discountenanced for his or her religion."
- 44. Later Religious History: Persecution of the Catholics.—The Parliamentary Commissioners of 1652 (§ 37) wished to deprive Baltimore of his province. Thus the Puritans came into control of the Assembly; and, in 1654, they decreed that toleration should not extend to Catholics or Episcopalians. Cromwell, however, recognized Baltimore's rights, and in 1657 the Toleration Act was restored. After the English Revolution of 1688, however, the Catholic Baltimore family was deprived of all political power; and, for a generation, Maryland became a royal province. In 1715 the Lord Baltimore of the day, having declared himself a convert to Protestantism, recovered his authority. Meantime the Episcopal Church had been established in Maryland and ferocious statutes 2 had been enacted against Catholics, to blacken the law books through the rest of the colonial period.

For Futher Reading. — The narrative is given admirably in either Channing's United States, I, 241–271, or more fully in Fiske's Old Virginia and Her Neighbors, I, 255–318, II, 131–173. Browne's Maryland (1–183), in the "Commonwealth" series, is good. A critical study may be found in Osgood's American Colonies, II, 5–10, 58–94.

<sup>&</sup>lt;sup>2</sup> See brief statement in Fiske, Old Virginia, II, 167.



see that Catholic services be performed "as privately as may be." One of the proprietor's chief difficulties was to enforce this wise and necessary policy upon zealots among his followers.

<sup>&</sup>lt;sup>1</sup> See important passages in Source Book, No. 45, and cf. Fiske's Old Virginia, I, 309-311.

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## CHAPTER II

#### NEW ENGLAND TO 1660

"After all that can be said for material and intellectual advantages, it remains true that moral causes determine the greatness of nations; and no nation ever started on its career with a larger proportion of strong characters or a higher level of moral earnestness than the English colonies in America."—Lecky, England in the Eighteenth Century, 11, 2.

#### I. COMMERCE AND PURITANISM AS COLONIZING FORCES

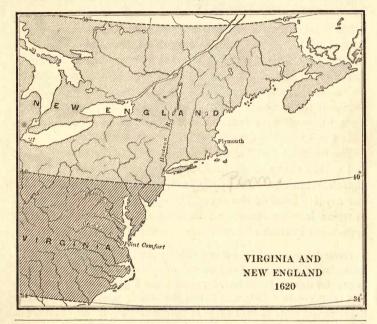
45. Early Attempts. The New England Council.—After Gilbert's failure (§ 21), the English neglected the North Atlantic coast for many years. Soon after 1600, however, several voyages were made with a view to settlement at various points between Cape Cod and the St. Lawrence; and, in particular, in 1607, the Plymouth branch of the Virginia Company sent a promising expedition to the mouth of the Kennebec. A series of misfortunes caused this colony to be abandoned, like all its predecessors; and there followed another period of neglect, until 1620. Then, roused by the success at Jamestown, some members of the Plymouth Company reorganized as "The Council resident in Plymouth . . . for the planting of New England," and a royal charter gave this body powers similar to those of the London Company, with a grant of all North America between the fortieth parallel and the forty-eighth.

This proprietary Council sent out no colonists itself. Instead, it sold or granted tracts of land, with various privileges, to adventurers who undertook to found settlements. Two small trading stations were established in this way; and then (in 1623) there followed a more ambitious attempt. Robert Gorges, son of the most active member of the Plymouth Council, was granted lands near Boston harbor, with a charter empower-

<sup>&</sup>lt;sup>1</sup> Source Book, No. 42. The Company is styled sometimes The Plymouth Council, sometimes The Council for New England, or The New England Council. Six years earlier, Captain John Smith, then in the employ of gentlemen connected with the old Plymouth Company, had explored and mapped

ing him to rule settlers "according to such lawes as shall be hereafter established by public authority of the state assembled in Parliament in New England." 1

Gorges brought to America an excellent company, containing several "gentlemen" and two clergymen, with farmers, traders, and mechanics; but after one winter he returned home, and his followers soon dispersed.



these northern coasts, and had given to the region the name New England, suggested, the map says, by Prince Charles. The royal charter of 1620 officially adopted this name for the vast district previously known vaguely as "the northern parts of Virginia."

<sup>1</sup> The Plymouth Council was an aristocratic body, composed mainly of the nobility. This clause in a charter from that body, together with a still earlier charter issued to the Pilgrim colony (§ 47), shows that the influence of the London Company charters to the Virginians was far-reaching. Cf. § 39. Extracts from the Gorges charter and Ferdinando Gorges' account of the expedition are given in the Source Book, No. 51.

<sup>2</sup> Gorges had also been commissioned by the New England Council as "General Governor" of all settlements in their territory. This caused some jealousies. The Pilgrim historian, Bradford, says, with unusually grim

When the main Puritan migration began, six years later, there survived from all these commercial undertakings only seven small settlements, like that of Blackstone at Boston, with a total population of some fifty souls. One other colony—a weak Puritan settlement at Plymouth—had already appeared; but its location in New England had been unintentional; and in purpose and development (§§ 47–53) it ran a course distinct from the movements we have been tracing.

√ 46. English Puritanism becomes a Factor in Colonization. — The factors so far at work in settling New England were essentially those that had finally succeeded in Virginia. If anything, the New England movement had drawn less from patriotic and missionary motives. This lack of idealism was now to be more than made good. Success in New England came from a new element just ready to appear as a colonizing force. This force was Puritanism.

The "established" church in England was the Episcopalian; and within that church the dominant party had strong "High-church" leanings. This party, too, was ardently supported by the royal "head of the church,"—Elizabeth, James, Charles, in turn; but it was engaged in constant struggle with a large, aggressive Puritan element.

Puritanism was much more than a religious sect. It was an ardent aspiration for reform, personal and social. In politics, it stood for an advance in popular rights; in conduct, for stricter and higher morality; in theology, for the stern doctrines of Calvinism (which appealed powerfully to the strongest souls of that age); in church matters, for an extension of the "reformation" that had cut off the English Church from Rome.

Two groups of Puritans, in religious organization, stood in sharp opposition to one another,—the influential "Low-church" element within the church, and the despised Separatists outside of it. The Low-churchmen had no wish to separate church and state. They wished one national church,—a

humor, that Gorges departed, "haveing scarce saluted the cuntrie of his Government, not finding the state of things hear to answer his quallitie"; but the fact seems to be that this very gallant gentleman found himself without funds enough to carry on his enterprise.

Low-church church, — to which everybody within England should conform. They desired to make the church a more farreaching moral power. To that end they aimed to introduce more preaching into the service and to simplify ceremonies, — to do away with the surplice, with the ring in the marriage service, with the sign of the cross in baptism, and perhaps with the prayer book. As a body, for a long time, they did not care to change radically the organization of the English Church; but they looked upon all church machinery as of human, not of divine, institution, and some among them spoke with scant respect of bishops. From the extreme wing of this party came the men who were to found Massachusetts Bay. Once in America, they soon threw episcopacy overboard, and, in many ways, drew nearer to the formerly despised Independents. <sup>1</sup>

The Independents, or "Puritans of the Separation," believed that there should be no national church, but that religious societies should be wholly separate from the state,—each local religious organization a little ecclesiastical democracy, independent in government even of other churches. It was one of these Separatist congregations that founded the first Puritan settlement in America, the Pilgrim colony at Plymouth.

#### II. THE PILGRIM SEPARATISTS AT PLYMOUTH

"Next to the fugitives whom Moses led out of Egypt, the little shipload of outcasts who landed at Plymouth . . . are destined to influence the future of mankind."—James Russell Lowell, New England Two Centuries Ago.

"If Columbus discovered a new continent, the Pilgrims discovered the New World." — Goldwin Smith.

47. The Pilgrims in Holland. — To all other sects the Separatists seemed the most dangerous of radicals, — mere anarchists in religion. They had been persecuted savagely by Queen

<sup>&</sup>lt;sup>1</sup> In England, on the contrary, before the middle of the century, this party merged itself largely with the Presbyterian movement, and indeed, for a time, made the English Church Presbyterian (*Modern History*, § 246).

Elizabeth, and some of their societies had fled to Holland. In 1608, early in the reign of James, one of their few remaining churches—a little congregation from the village of Scroby,—managed to escape to that same land, "wher," says one of them, "they heard was freedome of Religion for all men":—

"... a countrie wher they must learn a new language and get their livings they knew not how . . . not acquainted with trads or traffique, by which that countrie doth subsist, but . . . used to a plaine countrie life and the inocente trade of husbandrey." They first settled in Amsterdam. but had no sooner begun to feel safe in some measure, through toil and industry, from "the grime and grisly face of povertie coming upon them like an armed man," than it seemed needful to risk the perils of another removal. Other Independent congregations that had found refuge in Amsterdam were torn with internal dissensions.2 To avoid being drawn into these fatal squabbles, the Scrooby Pilgrims moved to Leyden; and "being now hear pitchet, they fell to such trads and imployments as they best could, valewing peace and their spirituall comforte above all other riches . . . injoyinge much sweete and delightefull societie . . . in the waves of God ". . . but subject to such "greate labor and hard fare" that "many that desired to be with them . . . and to injoye the libertie of the gospell ... chose the prisons in England rather than this libertie in Holland."

<sup>1</sup> William Bradford, in his *History of Plymouth Plantation*. The quoted passages in the following paragraphs upon Plymouth are from this source (Original Narratives edition), when no other authority is mentioned.

<sup>2</sup> The unlettered folk who made up most of the Separatist congregations were particularly susceptible to the vagaries of religious cranks, and were liable to "separate" farther, into petty cliques, over the most fantastic quibbles. To the adherents of a national church with central authority, the unfortunate fate of some Separatist societies seemed to illustrate the logical outcome of their doctrine. From such disaster this particular society was saved largely by the breadth and superior intellectuality of its leaders, Robinson and Brewster. (The student should read the admirable paragraphs on this topic in Eggleston's Beginners of a Nation, 142 ff., especially 149-157.) Of Robinson his follower, Edward Winslow, wrote: "His study was peace and union, so far as might agree with faith and a good conscience; and for schism and division, there was nothing in the world more hateful to him." Pastor Robinson gave a remarkable evidence of his willingness to ignore minor differences in a hesitating offer to take even the oath of supremacy to the English king: "the oath of Supremacie we shall willingly take, if it be required of us, and [if] convenient satisfaction be not given by us taking the oath of Alleagence." (Bradford, 156; from a postscript in a letter by Robinson while the Pilgrims were negotiating for a charter in northern Virginia.)

48. Reasons for Coming to America. — After some twelve years in Holland, the Pilgrims decided to remove once more, to the wilds of North America. Their motives, as Bradford gives them, may be summed up under three heads: (1) an easier livelihood, especially for their children; \(^1\) (2) removal of their children from contamination by the "licentiousness" of easygoing Dutch society; and (3) the extension of their religious principles. Winslow (another Pilgrim historian) places especial emphasis upon a fourth reason, — an ardent patriotic desire to establish themselves under the English flag, — one of their chief griefs in Holland being that their children intermarried with the Dutch and were drawn away from their English tongue and manners.

Of these motives, the third was beyond doubt the weightiest. In Holland, it was plain, there was no growth for their Society. It would die out, as the older members passed off the scene; and with it would die their peculiar principles, represented almost alone now by their one congregation. But, if they established themselves in a New World,—

"a greate hope and inward zeall they had of laying some good foundation for the propagating and advancing the gospell of the kingdome of Christ in those remote parts of the world; yea, though they should be but even as stepping-stones unto others for the performing of so greate a work."

49. Negotiations for a Location and for Funds. — From the London Company the Pilgrims secured a grant of land and a charter; and, by entering into partnership with a group of

"But that which was . . . of all sorrows most heavie to be borne, — many of their children, by these occasions and the greate licentiousnes in that countrie, and the manifold temptations of the place, were drawn away . . . into extravagante and dangerous courses, tending to dissolutenes and the

danger of their souls."

<sup>1&</sup>quot;Old age beganne to steale on many of them (and their greate and continuall labours . . . hastened it before the time). And many of their children that were of the best dispositions and gracious inclinations, having learnde to bear the yoake in their youth, and willing to bear parte of their parents burdens, were often times so oppressed with heavie labours that . . . their bodies . . became decreped in their early youth, the vigour of nature being consumed in the very budd, as it were."

London merchants, they secured the necessary money. Influential friends of the enterprise urged King James to aid by granting to the proposed colony the privilege of its own form of worship. A formal promise of this kind was not secured; but James allowed it to be understood that "he would connive at them . . . provided they carried themselves peaceably."

For many months this opening business was "delayed by many rubbs; for the Virginia Counsell was so disturbed with factions as no bussines could goe forward" (cf. § 27 and Source Book, No. 49). But when Sandys and the Puritan faction fully attained supremacy in that Company, the matter was quickly arranged,—the more quickly, perhaps, because Brewster, one of the Pilgrim leaders, had been a trusted steward of a manor belonging to the Sandys family. The charter was issued in the name of John Wincob (as trustee for the Pilgrims). Wincob was a clergyman in England. He intended to go with the expedition, but failed to do so.

The London merchants who furnished funds must not be confused with the Virginia, or London, Company. These "merchant adventurers" subscribed stock in £10 shares.¹ Each emigrant was counted as holding one share for "adventuring" himself. That is, the emigrant and the capital that brought him to America went into equal partnership. Each emigrant who furnished money or supplies was given shares upon the same terms as the merchants. For seven years all wealth produced was to go into a common stock, but from that stock the colonists were to have "meate, drink, apparell, and all provissions." The partnership was then to be dissolved, each colonist and each merchant taking from the common property according to his shares of stock.

The arrangement was clumsy, because it involved a system of labor in common; but it was generous toward the settlers. Penniless immigrants to Virginia became "servants," as separate, helpless individuals, to work for seven years under overseers, and at the end of the time to receive merely their freedom and possibly some raw land. The penniless Pilgrims were "servants" for a time, in a sense; but only as one large body, and to a company of which they themselves were part; while their persons were controlled, and their labors directed, only by officers chosen by themselves from their own number.

<sup>&</sup>lt;sup>1</sup> According to Captain John Smith, there were seventy of the merchants in the partnership, who by 1623 had paid in £7000. (Smith's Works, 783.) This is probably an overstatement. The articles of partnership are given by Bradford, and may be found in the Source Book, No. 44.

The settlers, it is true, were bitterly aggrieved that the merchants did not grant them also for themselves one third of their time, together with the houses they might build and the land they might improve. But it is clear now that under such an arrangement the merchants would have lost their whole venture. As it was, they made nothing.

dragged along in these negotiations; and the season of 1620 was far wasted when (September 16) the Mayflower at last set sail. Most of the Pilgrim congregation remained at Leyden, to await the outcome of this first expedition, and only one hundred and two embarked for the venture, — the younger and more robust of the company.

They had meant to settle "in the northern parts of Virginia," — probably somewhere on the Delaware coast. But the little vessel was tossed by the autumn storms until, apparently, the captain lost his reckoning; and they first made land, after ten weeks, on the bleak shore of New England, already in the clutch of winter (November 21). The tempestuous season, and the dangerous shoals off Cape Cod, made it unwise to continue the voyage. For some weeks they explored the coast in small boats, and finally decided to make their home at a place which Smith's map had already christened Plymouth; but it was not till the fourth day of January 1 that they "beganne to erecte the first house, for commone use, to receive them and their goods."

"Now, summer being done, all things stand upon them with a wether-beaten face; and the whole countrie, full of woods and thickets, represented a wild and savage hiew. . . . In 2 or 3 months time, halfe their company dyed . . . wanting houses and other comforts; [and of the rest] in the time of most distres, ther was but 6 or 7 sound persons" to care for all the sick and dying. Of the eighteen married women who landed in January, May found living only four. The settlement escaped the tomahawk that first terrible winter only because a plague (probably the smallpox, caught from some trading vessel) had destroyed the Indians in the neighborhood.

But when Spring came and the Mayflower sailed for England, not one

<sup>&</sup>lt;sup>1</sup> These dates are New Style. Cf. § 29, note. Some common errors regarding the Pilgrim "landing" are criticized by Channing, I, 320.

person of the steadfast colony went with her. In Holland they had carefully pondered the dangers that might assail them, and had highly concluded "that all greate and honorable actions must be enterprised and overcome with answerable courages."

51. Mayflower Compact and Early Political Organization.— The charter from the Virginia Company had provided that the Pilgrims should be governed by officers of their own choosing.<sup>1</sup>

In J name of god finen. he whose names are underwriten. The loyal subjects of our dread soveraigns. Lord Hing Fames of food, of greak Erstaine, france, e greland king defondor of faith, or Haveing underfakm, for f gloris of god, and advance ments of this time and known of our king countrie, a veryage to plant f first colonie my northerns parts of virginia. Dos by these presents solemnly a mutually my presence of god, and one of another, covenant, a combine our selves togeather mloa civil body politich; for flotor ordering, a preservation of twe therance of gends aforgaid; and by vertue hear of to enacte. Constitute, and frame shick just a equal lawes, ordinances, Ats, constitutions, a offices, from time to time, as shall be thought most meete a convenient for general good of g colonie: unto which me promise all due submission and obsdience if mutues where f me have here under subscribed our names at cap could g in of november my year of graigne of our soveraims lord king James of England, france a greland g eighteent and of scotland g fifter souths. In: Dom. 1620

THE MAYFLOWER COMPACT.
From Bradford's Plymouth Plantation,

The grant, however, had no force in the place to which they had come, and the colony was without any legal government. In consequence, as soon as it was proposed to remain there, "some of the strangers 2 among them let fall mutinous

<sup>&</sup>lt;sup>1</sup>The exact contents of the charter are not known; but Robinson's farewell letter to the emigrants, when they were leaving Europe, refers to them as having "become a body politik...to have only for your gouvernors them which yourselves shall make choyse of." See Source Book, No. 45.

<sup>&</sup>lt;sup>2</sup> Part of the expedition had joined it in England, without previous connection with the Leyden congregation. They had also a few "servants,"

speeches," threatening to take advantage of this condition and "to use their own libertie." To prevent such anarchy, the Pilgrims, before landing, drew up and signed the Mayflower Compact, believing "that shuch an acte by them done . . . might be as firme as any patent."

This famous agreement has sometimes been called, carelessly, a written constitution of an independent state. This it is not. It does not hint at independence, but expresses lavish allegiance to the English crown; and it is not a constitution, because it contains no fundamental laws and provides no frame of government. The signers merely declare their intention (in the absence of established authority) to maintain order by upholding the will of the majority of their own number. The way in which the new government was put in action is told by Bradford in few words:—

"Then [as soon as the compact had been signed, while still in the Mayflower cabin] they choose, or rather confirmed, Mr. John Carver their Gouvernor for that year. [Carver had probably been made governor before, under authority of the charter; such action would now need to be "confirmed."] And after they had provided a place for their goods . . . and begunne some small cottages, as time would admitte, they mette and consulted of lawes and orders, . . . still adding therunto as cases did require."

52. From Industry in Common to Individual Enterprise, and from Proprietary Plantation to Corporate Colony.—Expectations of quick-won wealth in America still dazzled men's minds. In

<sup>&</sup>lt;sup>1</sup> Source Book, No. 46. The Compact does not determine what officers there should be, nor how or when they should be chosen, nor what powers they should have. It resembles the preamble to a constitution; but, more truly regarded, it is the first of a long series of similar agreements in America, in regions where settlement has for a time outrun government,—first, on the coast of Maine and New Hampshire, then in the woods of Kentucky and Tennessee, then on the prairies of Illinois and Iowa, and very recently in Western mining camps. This first use of the device was probably suggested to the Pilgrims by a general ordinance of the London Company, shortly before, which authorized just such action by any body of colonists who might find themselves in parts of Virginia where no regular government had as yet been provided. See Source Book, No. 24.

1624 Captain John Smith wrote (while speaking of this same Plymouth colony): —

"I promise no Mines of gold; yet, . . . New England hath yeelded already, by generall computation, £100,000 at least in the fisheries. Therefore, honourable countrymen, let not the meanness of the word fish distaste you, for it will afford as good gold as the Mines of Guiana, or Potassie, with less hazard and charge, and more certainty."

Individual traders, too, sometimes made sudden fortunes in the fur trade. Accordingly, the Pilgrims had hoped to win wealth rapidly, and had expected to give most of their energies to these sources of magic riches. Pastor Robinson wrote, as late as June 14, 1620:—

"Let this spetially be borne in minde, that the greatest parte of the collonie is like to be imployed constantly, not upon dressing ther perticular lands and building houses, but upon fishing, trading, etc."

Contact with actual American conditions quickly put an end to the delusion. For fishing and trading, in any case, the Pilgrims were at first wholly unfitted; and to establish a permanent colony, containing women and children, called for exclusive attention for some years to raising food and improving homes. Plymouth had a stern struggle for bare existence.

The "supplies" expected from the London partners came, from year to year, in too meager measure to care even for the new immigrants who appeared along with them; and the crops of European grains failed season after season. Fortunately, during the first winter, the colonists found a supply of Indian corn for seed, and a friendly native to teach them how to cultivate it; and the old cornfields of the abandoned Indian villages saved them the formidable labor of clearing away the forest. For long, however, the most important duty of the governor was to direct the work in the fields, — where he toiled, too, with his own hands, along with all the men and larger boys.

One serious hindrance to success, even among these "sober and godly men," was the system of industry in common.

"For this communitie was found to breed much confusion and discontente, and retard much imployment that would have been to their benefite and comforte. For the yung-men, that were most able and fitte, . . . did repine that they should spend their time and strength to worke for other mens wives and children. . . . The aged and graver men, to be ranked and equalised in labours and victuals, cloaths, etc., with the younger and meaner sorte, thought it some indignitie and disrespect unto them. And for mens wives to be commanded to doe service for other men, as dressing their meate, washing their cloaths, etc., they deemed it a kind of slaverie; neither could many husbands well brooke it."

Accordingly, in the third year, famine seeming imminent, Governor Bradford, with the approval of the chief men of the colony, set aside the agreement with the London partners in this matter and assigned to each family a parcel of land ("for the time only"). "This," says Bradford, "had very good success,"—

"for it made all hands very industrious, so as much more corne was planted then other waise would have been, by any means the Governour or any other could use. . . . The women now wente willingly into the field, and tooke their litle-ons with them to set corne, which before would aledge weakness . . . whom to have compelled would have bene thought great tiranie."

For other reasons, too, the danger of failure passed away. The Pilgrims were learning to make use of the opportunities of their new surroundings. In 1627, when the partnership was to have expired, little had been done, it is true, toward repaying the London merchants. But the beginning of a promising fur trade had been secured; and Bradford, with a few of the leading men, offered to assume the English debt if they might have control of this trade to raise the money. This arrangement was accepted by all parties. It took Bradford fourteen years to pay the merchants; but meantime they at once surrendered their claim upon the colony. Then the lands,

<sup>1</sup> This arrangement for individual labor and property applied only to the agricultural produce. Such trade and fishery as were carried on remained under common management; and even these parcels of land did not at this time become private property. Only their temporary use was given. The original arrangement was not communism. Cf. § 23, note.

houses, and cattle were promptly divided among the settlers for private property (1627).

Legal titles were still wanting (§ 55); but, as matter of fact, in economics, as in politics, Plymouth had now grown out of a proprietary plantation into a *Corporate Colony*. The freemen formed a "corporation upon the place." This was a new type in American colonization.

- 53. Political Development. Through the entire life of Plymouth as a separate colony, the government continued simple and democratic. The political development may be summed up under four heads:—
- a. The executive. Governor Carver died during the first spring. The next governor, William Bradford, was kept in office by annual reëlection until his death, in 1657, except for five years when he absolutely refused to serve. At Bradford's first election, one "Assistant" was chosen to aid him. Three years later, the number of Assistants was raised to five, and finally to seven. Governor and Assistants were chosen anew each spring. At first much was left necessarily to the discretion of the governor; but his power always depended upon popular approval, and the Assembly could check him at any time. After 1636, his functions were limited carefully by written law.
- b. The Assembly. This was the essential part of the government. For many years it was, in form, merely a town meeting,—a mass meeting of the voters of one small village. Even after other settlements grew up in the colony, the Assembly continued for a time to be a "folk moot," held in the oldest town. But this could not last among Englishmen. In 1636, by order of the Assembly, the three chief towns sent representatives to sit with the governor and Assistants to revise and codify the laws. The same device was used the next year in dividing lands and assessing taxes. And in 1639 it was decreed that thereafter the Assembly should be made up of such representatives, together with the governor and Assistants. There was never a division into two "Houses."

- c. Local government. As other villages grew up about the original settlement at Plymouth town, their constables and other necessary officers were at first appointed by the central Assembly. But, soon after the central government became representative, the various settlements became "towns" in a political sense, with town meetings, and elected officers of their own, after a method introduced just before in Massachusetts (§ 71).
- d. Franchise. The first voters were the forty-one signers of the Mayflower Compact. They made up the original Assembly. Thereafter, the Assembly admitted to citizenship as it saw fit. For a time it gave the franchise to nearly all men who came to the colony (the easier done, because few came to this struggling settlement unless they were in sympathy with its aims). Gradually, however, the practice became less liberal. In 1656 a law required that new applicants for the right to vote must first be recommended by the towns in which they lived; and, soon after, it was enacted that only men with a specified amount of property could become voters. Plymouth never expressly limited the franchise to church members, as Massachusetts did (§ 65), but she reached much the same result, after 1671, by granting the privilege of voting only to those who could present "satisfactory" proof that they were "sober and peaceable" in conduct and "orthodox in the fundamentals of religion.'

54. Plymouth in History. Political democracy was not prominent in the original ideals of the Pilgrims. It was rather an outgrowth of economic and social democracy at Plymouth. There were no materials for anything else 2 but democracy. No one was rich, even by colonial stand-

<sup>1</sup> Out of sixty-six adult males. Of the twenty-five who did not sign (over a third of all), some were regarded as represented by fathers who did sign, and eleven were servants or temporary employees; but the absence of other names can be explained only on the ground that certain men did not wish to sign or that they were not asked to do so. Cf. a careful study of the names in Arber's Story of the Pilgrim Fathers, 378-380.

<sup>&</sup>lt;sup>2</sup> Robinson, in his farewell letter (§ 51, note), regards it a misfortune that the Pilgrims "are not furnished with any persons of spetiall eminencie above

ards; and, more than in any other important colony, all the settlers came from the "plain people." Hardly any of them would have ranked as "gentlemen" in England. Bradford, there, would have remained a poor yeoman, and John Alden a cooper.

But, in even greater degree, democracy in politics at Plymouth resulted from democracy in the church,—and this ecclesiastical democracy was essential to the Pilgrim ideal. Plymouth was, first, a religious society; then, an economic enterprise; and, last, and, to the founders, incidentally, a political commonwealth.

At the same time, however incidental in origin, political democracy at Plymouth was very real, and had far-reaching results. Not least among these was the noble code of laws of 1636, the first written code in America. Along with much concise legislation (most of it far ahead of that of Europe in that day), it contained an admirable statement of democratic theory and a notable "bill of rights": a claim for the rights of "freeborn Englishmen"; an order that no law or tax should apply to the colony except such as should have been made by the Assembly; provision for annual election of all officers; guarantee that no punishment should be imposed by the discretion of magistrates, but only by virtue of some express law; provision for jury trial in all criminal cases, with right of the accused to challenge jurors, both for cause, and, up to twenty, without reason assigned. See Source Book, No. 50.

The colony grew slowly, counting less than three hundred people in 1630, when the great Puritan migration to Massachusetts Bay began. The larger Puritan colonies, then established, had a more complex development, and taught more important lessons in politics and economics. "Plymouth had little direct influence, in either of these ways, upon later

the rest, to be chosen into offices of governmente." Had such persons been present, public feeling, even in Plymouth, would probably have made them an aristocracy of office. Democracy at that time rarely went farther than to suggest that common men ought to have a voice in selecting their rulers. The actual ruling was to be left in the hands of those selected from the noble, or at least from the gentry, class. A feeling much akin to this dominated most of American society well into the nineteenth century, until the victory of "Jacksonian Democracy."

<sup>&</sup>lt;sup>1</sup>EXERCISE. — Find authority for these figures in one of the Plymouth documents in the Source Book.

<sup>&</sup>lt;sup>2</sup> Even representative institutions were developed in the later Massachusetts colony earlier than at Plymouth (§ 64).

American history. It did have a large part in directing the later Puritan colonies toward church independency; but its supreme service, after all, lay in pointing the way for that later and greater migration. This the Pilgrims did; and with right their friends wrote them later, when the little colony was already overshadowed by its neighbors,—"Let it not be grievous to you that you have been but instruments to break the ice for others: the honor shall be yours till the world's end."

55. Charters.—It has been noted that the Pilgrims found themselves at first without government. Moreover, during the first months, they were merely squatters on the soil, without title. The London partners remedied these conditions by securing a charter for the colony from the proprietary Plymouth Council (§ 45). This charter (June, 1621) was made out to John Peirce (one of the merchant partners) as trustee for the partnership; but its effect was to grant to the partnership full title in the lands that might be settled, and to authorize the settlers to govern themselves under laws and officers of their own making.<sup>1</sup>

This patent gave the sanction of English law to the government that had been set up under the Mayflower Compact. That sanction was of brief duration. The next year, by trickery and the payment of £50, Peirce got the New England Council to replace the first charter by another grant, which made him proprietor, not trustee. "He mente," says Bradford, that the colonists should "hold of him as his tenants and sue to his courtes as cheefe Lord." Two expeditions were prepared by Peirce to strengthen his hold upon Plymouth; but each time his plans were ruined by shipwreck, and finally he resigned his claims, in return for £500 paid him by the London merchants. Then, in 1630, after its partnership with the Londoners had been dissolved, the colony obtained a third charter, this time in Bradford's name, but otherwise like that of 1621.

Four years later, however, the New England Council ceased to exist, and all grants of jurisdiction from it became invalid (cf. § 33), — such powers reverting to the king. The government of the colony remained thereafter on the basis of the Mayflower Compact, and no sanction was ever secured for it by a royal charter. The English government, however, did not interfere with the Plymouth democracy (except for the Andros

<sup>&</sup>lt;sup>1</sup> Source Book, No. 47. This was the first charter issued by the New England Council, — which was glad enough to welcome an unexpected colony into the territory it had just acquired. As to the legality of the transfer of jurisdiction, cf. Source Book, No. 47, comment at close.

<sup>&</sup>lt;sup>2</sup> Source Book, No. 49, a.

period, § 100) until 1691, when King William annexed the colony to the Province of Massachusetts.

However, when the Bradford charter lost its claim to political value, its land grants still held good (cf. § 33); and, in 1641, with solemn ceremony, Bradford surrendered his rights to the whole body of colonists. It was now possible for the colony to *legalize* the assignments of land it had made in 1627 and at later times.

For Further Reading. — The documents in the Source Book bearing upon Plymouth should be studied with care. (Cf. suggestions on page 43 of this volume.) Bradford's Plymouth Plantation will be enjoyed by many high school students as far as to page 200. (The latter part of the work is taken up largely with details of financial arrangements with the London partners, and is difficult reading.) Excellent secondary accounts are given by Tyler (England in America, 149–182) and by Channing (I, 293–321). The most careful constitutional study is found in Osgood's Colonies, I, 98–102. Perhaps the most dramatic portraiture of the leaders is found in Eggleston's Beginners of a Nation. Jane G. Austin's stories, especially Standish of Standish, are worthy of mention.

Exercise. — 1. Trace the title of a piece of property purchased in 1642 from John Alden and never held previously by any other private owner.

2. Distinguish between Plymouth town and Plymouth colony.

3. When does it become needful to keep this distinction in mind?

4. Examine the Source Book on Plymouth for information not given in this volume, and report.

5. Explain two meanings of "New England."

## III. MASSACHUSETTS BAY: AN ARISTOCRATIC THEOCRACY

## A. FOUNDATION IN COMMERCIAL ENTERPRISE

56. The Dorchester Company's Colony at Cape Ann, 1623.—
The great Puritan colony of Massachusetts was fortunate enough to find foundations laid for it by commercial enterprise. A partnership of merchants in the west of England, mainly about Dorchester, had been engaged in the New England fisheries for several years. In 1623, in order to carry

<sup>&</sup>lt;sup>1</sup> See Source Book, No. 49, b. The surrender had been deferred until Bradford and his seven associates paid off the huge debt they had assumed for the colony, in order, no doubt, to have a whip over newcomers who might otherwise interfere with the fur trade which was to pay that debt.

on the business to better advantage, they decided to leave thirty or forty employees the year round in a station at Cape Ann. By happy accident, an admirable overseer for the plantation was found in *Roger Conant*, but in England the management was overwhelmed by misfortunes and blunders, and, after three years of heavy losses, the partnership broke up. However, when a ship arrived to take the colonists home, Conant and four others decided to stay, and so kept the enterprise alive.

57. The Massachusetts Company's Colony at Salem, 1628.— Conant removed from the exposed situation on Cape Ann to a more convenient location near by. He had been induced to remain in America by promises from John White, one of the Dorchester partners.<sup>2</sup> White managed at once to send over some cattle and supplies; and the next year (1627–1628) he succeeded in organizing a strong proprietary Company to take up the work of trade and colonization. The new partnership contained some of the former Dorchester "adventurers" and many additional members from London, and it came to be

White was a Puritan clergyman, and was actuated mainly by "compassion toward the fishermen," rather than by the commercial motives of his associates. But this religious purpose was of a home missionary nature,—such as in our country to-day helps extend churches into frontier districts. It was not, in any sectarian sense, a Puritan motive. White never came to America.

<sup>&</sup>lt;sup>1</sup>Conant drifted to Cape Ann from Plymouth, which he left (as he said years later) out of dislike for the extreme principles of the Separatists. How he came to Plymouth we do not know. Possibly he was one of the gentlemen in the Gorges expedition (§ 45).

<sup>&</sup>lt;sup>2</sup> White's Brief Relation is the chief authority for the Cape Ann colony and for part of the Salem movement. Extracts are given in the Source Book, No. 58. White gives the following reasons for founding a station in America. Vessels had to be double-manned for the voyage across the Atlantic and back, in order to accomplish anything at the fisheries during the brief season. This overcrowding was costly and deadly. Employees, left the year round in America, would be ready to join the fleet in fishing when it arrived each spring, and to supply it with fresh and wholesome food. At other times they might engage in the enticing fur trade, with its possibilities of enormous gains. In such a village, too, there would of course be a church, and its influences might reach out to the rough fisher-folk of the fleets, who, otherwise, during their eight-month voyages, knew little of civilization.

known as the Company for Massachusetts Bay,¹ or the Massachusetts Company. March 29, 1628, it bought from the New England Council the territory between the Charles River and the Merrimac (extending west to the Pacific),² and, during the summer, it sent out sixty settlers under John Endicott.³ On the arrival of this expedition, there was some friction at first between Endicott and Conant's "old planters"; but finally Endicott was recognized peaceably as the manager of the colony—to which he then gave the name Salem (Peace).

The following spring the Massachusetts Company obtained a charter from King Charles (March 14, 1629). This "First Charter of Massachusetts Bay" was at the time merely a grant to a commercial company in England, like the charters to the London Company. To settlers in America it gave no privileges, except for the usual guarantee of the "rights of Englishmen." Its purpose was threefold. It incorporated the Company; it confirmed title to the land purchased from the New England Council; and it gave the Company jurisdiction over settlers, similar to the authority

¹ Composed of merchants from different parts of England, the Company could not be described fitly by a name pertaining to England, and so it took its name from the district in which it was to operate in America — as the London Company had sometimes been called the Virginia Company. This did not mean that the Company expected to go itself to America. Several of the new members had been among the London partners of the Pilgrim settlement; and, as a whole, the Company was Puritan (as was almost the entire merchant class in England); but there is no evidence of any design, as yet, to found a Puritan colony. For over a year more, the movement remained commercial in character.

<sup>&</sup>lt;sup>2</sup> The Company is said to have paid £2000 for this grant. The territory included the tract granted earlier to Robert Gorges (§ 45). Such confusion was common in territorial grants in this period; but this unhappy complication gave the Puritan colony an able enemy in Ferdinando Gorges, a noble and worthy gentleman (§ 61).

<sup>&</sup>lt;sup>8</sup> Endicott was a well-known Puritan of the gentry class. A contemporary called him "a fit instrument to begin this Wildernesse-worke, of courage bold, undanted, yet sociable, and of a chearfull spirit, loveing and austere" (Edward Johnson's Wonderworking Providence of Zion's Saviour in New England). The modern student sees mainly his austere side.

possessed by other colonizing companies in England, but more restricted.<sup>1</sup>

The Company now became a very busy body, with frequent meetings. It appointed Endicott governor at Salem,<sup>2</sup> and sent him voluminous instructions upon many matters. It collected supplies of all sorts diligently, and sought for desirable emigrants of various trades; and, in May, 1629, it sent out its second expedition, of some two hundred settlers, led by Francis Higginson, a Puritan minister.<sup>3</sup>

Two other clergymen were in this company; and a few months later a distinctively Puritan church was organized at Salem. Indeed, by highhanded action, Endicott sent back to England certain prominent settlers who set up a separate worship more in accord with the English Church.

All this does not prove that the Company meant as yet to establish a Puritan colony. It sympathized strongly with the Puritan movement; but it rebuked Endicott's action severely, and the majority of the emigrants it had sent out so far were certainly not Puritans. Most of them, indeed, were of the "servant" class, and they proved rather a worthless lot (§ 60). The chief men of the colony were Puritans, because, as things had come to be in England, it was easier just then for an emigration to draw fit leaders from the Puritans than from any other class.

So far, then, the history of this proprietary Company and its plantation resembles closely that of other colonizing enterprises of the day. But, late in the summer of 1629, a new movement appears, with mighty consequences. Puritanism is seen to be in danger in England. To the Puritan stockholders of the Company, all commercial motives fade beside a supreme desire to provide a safe refuge for their principles in church and

<sup>&</sup>lt;sup>1</sup> For this famous document, and for some suggestions as to its study (including notes upon its limitations), see *Source Book*, Nos. 53-55. The student may justify the statement in the text regarding the three main purposes of the charter, by comparing it with the abstract ("Docket") presented for the royal approval (*Source Book*, No. 54). Unlike some charters, this one did *not* authorize capital punishment, martial law, control over emigration, or coinage of money,—though the colony was to assume all these powers.

<sup>&</sup>lt;sup>2</sup> Source Book, No. 63. Until the Company secured the charter, it had no authority to appoint officers in America. Like Conant before him, Endicott had been merely an agent, without legal control over settlers, except such as he had over those who were "servants" of the Company.

<sup>3</sup> See Source Book, No. 56, for an "agreement" with Higginson.

state. The organization of the Company is turned over to a few members (for the most part new members and men of good position in English society), who pledge their lives and fortunes to a daring and lofty experiment. These men transfer themselves (and the corporation with them) to America. Company and colony merge; and Massachusetts becomes a corporate colony and a Puritan commonwealth (§§ 58 ff.).

# B. A PURITAN CORPORATE COLONY

"God hath sifted a nation, that he might send choice grain into this wilderness."—William Stoughton, "Election Sermon," in 1690.

58. Danger to English Puritanism: the Cambridge Agreement.—For years, despite the strenuous efforts of the Puritans, the English Church had been carried farther and farther away from their ideals. Bishop Laud, the tireless leader of the High-church movement, was ardently supported by King Charles. All high ecclesiastical offices had been turned over to his adherents; and his "High Commission" Court, with dungeon and pillory at its back, was now ready to silence the great body of Puritan pastors or to drive them from their parishes.

In this hard case the Puritans had rested their hope upon parliament. That body was controlled by them; and, year by year, it worked for reform both in government and in the church. With the meeting of the third parliament of Charles (1628), reform seemed on the verge of success. In its first session, that parliament extorted the King's assent to the great "Petition of Right"; and, in the winter of 1629, it turned with fresh energy to the regulation of the Church. Then the King struck a despotic blow. He dissolved parliament (March 2, 1629), sent its leaders to the Tower, and entered upon a system of personal tyranny. For eleven years no parliament was to meet in England. Religious reform and political liberty had gone down in common ruin, the end of which no man then could see.

The continent of Europe offered no hope. Every form of Protestantism there seemed doomed. Wallenstein's victorious troopers were turning the Protestant provinces of Germany into wilderness homes for wild beasts; and in France the great Richelieu had just crushed the Huguenots.<sup>1</sup>

This gloomy outlook is expressed in a letter written by John Winthrop, in London, to his wife at their manor house (June 1629): "I am verily persuaded God will bringe some heavye Affliction upon this Land, and that speedylye." The times, he continues, grow worse and worse; all the other churches (outside England) have been smitten and made to drink the cup of tribulation even unto death. England, seeing all this, had not turned from its evil ways. "Therefore He is turninge the Cuppe towards us also, and because we are the last, our portion must be to drink the verye dreggs."

Such were the conditions that fronted the English Puritans in the summer of 1629. Accordingly, the more dauntless of them turned their eyes to the New World.

There they saw a marvelous opportunity. At Plymouth was the colony of the Separatists, not large, but safely past the stage of experiment; and close by was the prosperous beginning of a commercial colony controlled by a Puritan company in England and managed directly by well-known Puritans like Endicott and Higginson. How natural to try to convert this Massachusetts into a refuge for Low-church Puritanism, such as Plymouth already was for "Puritans of the Separation."

But the men of this new movement had no idea of becoming part of a mere plantation governed by a distant proprietary company, however friendly. They themselves were of the ruling aristocracy of England, — justices of their counties, and, on occasion, members of Parliament. And so a number of them gathered, by long horseback journeys, and signed the famous "Cambridge Agreement" (August 25), promising one another solemnly that they would embark for Massachusetts with their families and fortunes, if they could find a way to take with them the charter and the "whole government." 2

<sup>1</sup> The course of the Puritan struggle in England is told compactly in the Modern History, in about ten pages (§§ 236-243). Brief explanation of the events referred to in Germany and France can be found in the same text, §§ 229-231.

<sup>&</sup>lt;sup>2</sup> Source Book, Nos. 58, b, and 59.

- 59. Transfer of Company and Charter to America. A proposal to transfer the government of the Company to America had been made a month before at the July meeting of the Company in London. The plan was novel to most of the members; but in September, after repeated debates, it was approved. The new men of the Cambridge Agreement now bought stock; many old stockholders drew out; the old officers resigned (since they did not wish to emigrate); and John Winthrop, the most prominent of the new men, was elected "governor" (October, 1629). The next spring, Winthrop led to Massachusetts a great Puritan migration, the most remarkable colonizing expedition that the world had ever seen.
- 60. The Great Migration, 1630–1640. In the spring of 1629, Endicott had a hundred settlers at Salem. In June, when Higginson arrived with two hundred more (§ 57), another plantation was begun at *Charlestown*. The next winter slew nearly a third of the colonists; and in June of 1630 Winthrop found the survivors starving and demoralized. Four fifths of them were servants of the Company; but they had accomplished nothing, and Winthrop thought it cheaper to free them than to feed them.<sup>3</sup>

The migration now had become a Puritan movement. In this same summer, seventeen ships brought two thousand settlers to Massachusetts, and six new towns 4 were started

<sup>&</sup>lt;sup>1</sup> For a detailed discussion on the transfer of the charter, cf. Source Book, No. 53, and comments at close.

<sup>&</sup>lt;sup>2</sup> Previously the governor had been Matthew Cradock, and his term would not have expired regularly until the next May. This position corresponded to that of "treasurer" in the London Company. It must not be confounded with the subordinate "governorship" held by Endicott, any more than Sandys' position as executive head of the London Company in 1619 is to be confounded with the position of Yeardley in Virginia. Winthrop was the second governor of the Company. When he came to America, he superseded Endicott (for whose separate office there was no further need), and became second governor of the colony also. The two offices merged.

<sup>8</sup> Find authority for this in the Source Book.

<sup>&</sup>lt;sup>4</sup> Boston, Dorchester, Watertown, Roxbury, and minor settlements at Lynn and Newtown (afterward Cambridge).

along the Bay. But conditions proved sadly different from expectations. Two hundred immigrants returned home in the ships that brought them, or sought better prospects in other colonies, and two hundred more died before December; while only the early arrival of supplies (in February) saved the colony from utter destruction.¹ The deserters spread such discouragement in England that for the next two years emigration practically ceased. In 1633, however, it began again. Soon the ship-money ² troubles gave it new impetus, and it went on, at the average volume of three thousand people a year, until the Long Parliament was summoned.

Thus the eleven years of "No Parliament" saw twenty-five thousand selected Englishmen transported to New Engand at the tremendous cost, for those times, of four million of dollars. In 1640 the movement stopped short. Says Winthrop, "The parliament in England setting upon a general reformation both in church and state, . . . this caused all men to stay in England in expectation of a New World" there. Indeed, the migration turned the other way; and many of the boldest and best New England Puritans hurried back to the old home, now that there was a chance to fight for Puritan principles there.

<sup>&</sup>lt;sup>1</sup> Immediately on his arrival, Winthrop, in fear of famine before summer, had sent back a ship for supplies. When it returned he had just given his last measure of meal to a destitute neighbor, if we may believe Cotton Mather's anecdote.

<sup>&</sup>lt;sup>2</sup> For this and other references to English history in this period, see *Modern History*, §§ 241-244.

<sup>&</sup>lt;sup>3</sup> The sudden stop in immigration caused great industrial depression. Until that time the colony had been unable to raise sufficient supplies for its use. Newcomers brought money with them, and gladly paid for cattle and food the price in England plus the cost of transportation. In an instant this was changed. The colony had more of such supplies than it could use, and high freights made export impossible. Both Bradford and Winthrop lament the falling in prices,—for a cow from £20 to £5, etc.,—without very clear ideas as to its cause. The phenomenon has been repeated many times on our moving frontiers.

<sup>&</sup>lt;sup>4</sup> Winthrop's third son and one of his nephews went back and rose to the rank of general under Cromwell, while the Reverend Hugh Peter, — rather a troublesome busybody in the colony, — became Cromwell's chaplain. Such

New England was to have no further immigration of consequence until after the Revolution. All the more clearly, this coming of the Puritans during the ten years of hopelessness in England is one of the fruitful facts in history. For mere numbers, the exodus has no parallel until the migration to Pennsylvania, almost at the close of the century, and the twenty-five thousand are the ancestors of about a sixth of our population to-day. But the mighty significance of the movement lay in the character of the emigrants. To that we owe much more than a sixth of our higher life in America. Said an old Puritan preacher, with high insight, "God hath sifted a nation, that he might send choice grain into this wilderness." This sifting took place just when England had been lifted to her highest pitch of moral grandeur; and that chosen seed has given to America not only "the New England conscience," but a finer thing, - a share of the Puritan's faith in ideals.

This high character did not hold for all the twenty-five thousand immigrants of the ten years. They were not all Puritans; and the Puritans were not all saints. Some little communities, like Marblehead, were made up wholly of rude fishermen with little interest in the Puritan movement; and the Puritan settlements themselves contained many "servants"—about the same proportion, probably, as were usual in English society. These were sometimes a bad lot, with the vices of an irresponsible, untrained, hopeless class.

facts help us to understand that the larger figures on the small New England stage, like Winthrop and his gallant son, John Winthrop, Jr., were fit companions for the greatest actors on the great European stage in that great day.

¹ Cotton Mather tells how a preacher from another town, visiting Marble-head and praising their devotion to principle, was interrupted by a rough voice,—"You think you are talking to the people of the Bay: we came here to catch fish."

<sup>&</sup>lt;sup>2</sup> Winthrop alone had some twenty male servants, some of them married, in his "household."

<sup>&</sup>lt;sup>3</sup> On the voyage, cheats and drunkards from this class had to receive severe punishment. After reaching America, the better ones were sometimes demoralized by despair. They saw vastly greater opportunity for free labor than they had ever dreamed; but they had ignorantly bound themselves to service through the best years of their lives. Brooding upon this led some to crime or suicide. (Find authority for these statements in the *Source Book*.)

Nor should we think of the most exalted Puritans as moved by ideal motives only. They, too, expected to better their wordly condition. Their title to heroism lies in the fact that, when this dream faded, the more steadfast spirits never wavered, proving that after all it was not material considerations, but higher aims, that moved them most.

Even John Winthrop had been impelled to migration largely by the decay of his fortune in England, which was such (as he explained, in the third person, to his friends 1) that," he cannot live in the same place and calling [as before] and so, if he should refuse this opportunity, that talent which God hath bestowed upon him for publick service were like to be Many of the 1630 migration had been deluded by "the too large commendations" of New England which Higginson had sent back in the preceding summer, just after his arrival. Dudley, a disappointed but stout-hearted companion of Winthrop, in his Letter to the Countess of Lincoln (Source Book) speaks with charity of "falling short of our expectations, to our great prejudice [loss], by means of letters sent us hence into England, wherein honest men, out of a desire to draw others to them, wrote somewhat hyperbollically of many things here." So, too. after the first hard months, the disillusioned Winthrop wrote to his wife in still nobler strain, "I do hope our days of affliction will soon have an end . . . Yet we may not look for great things here . . . [But] we here enjoy God and Jesus Christ. I thank God, I like so well to be here as I do not repent my coming; and if I were to come again. I would not have altered my course though I had forseen all these afflictions.

61. Danger of Interference from England. — For a time, extreme peril threatened from the home government. In the first year after Winthrop's arrival in America, two agents of Gorges in Massachusetts were arrested, severely handled, and shipped back to England. In 1632, Gorges brought the matter before the royal Council, claiming that the Massachusetts charter had been secured fraudulently and that the government there in any case had exceeded its authority. This first attack was resisted successfully by the friends of the plantation in England. But in 1634 the king appointed a standing committee of twelve members of his Council "to regulate all plantations." This first establishment of a distinct organ of gov-

<sup>&</sup>lt;sup>1</sup> Considerations for J. W. (Source Book, No. 59, b. See also, No. 59, a.) Cf. § 18, for statement of like motives in bringing leaders to Virginia.

ernment to deal with the colonies was an exceedingly wise step; but, unhappily for Massachusetts, at the head of these "Lords Commissioners of Plantations" was Archbishop Laud. Gorges, sure of a powerful sympathizer, now renewed his attack, with more effect. The committee ordered Cradock, governor of the original Massachusetts Company, to produce the charter and justify the acts of the colonial government. When it was discovered that the charter was in America, a series of peremptory demands were sent to the authorities there for its return, and legal processes were begun in the courts to secure its overthrow. Meantime, in 1635, the New England Council surrendered its charter, and Charles appointed Ferdinando Gorges "governor general" over all New England. Gorges began to build a ship and to get together troops, and things looked dark for the Puritan experiment.

The leaders in the colony did not weaken. After consulting with the ministers, it was agreed, "that, if a general governor were sent, we ought not to accept him, but defend our lawful possessions (if we are able); otherwise, to avoid or protract." At its next meeting the General Court voted a tax of £600 (many times larger than had before been known in the colony), and began a series of fortifications, not on the frontier against the Indians, but on the coast to resist an English ship. Bullets were made legal tender in place of small coin; and a committee was appointed "to manage any war that may befall," with power to establish martial law.<sup>2</sup> No one thought of sending back the charter. Quaint excuses were sent in plenty; and, when these wore thin, the orders were quietly ignored, and, at last, openly defied.

<sup>&</sup>lt;sup>1</sup> This was the office that had been given by the Plymouth Council to the younger Gorges some years before, when there were hardly any settlements to govern. Gorges' commission would have left the Massachusetts General Court; but it would have superimposed another authority over it.

<sup>&</sup>lt;sup>2</sup> The committee, renewed from time to time, was authorized to imprison suspects without trial and to inflict a death penalty upon traitors after such trial as it saw fit. (Source Book, No. 72.) This was plainly in excess of the powers conferred by the charter.

This policy of "protracting" won. Gorges' ship was ruined by an accident in launching, and he could not get money to build another or to keep his troops together. The King, economizing rigidly, in the midst of the ship-money troubles, would give commissions, but no gold. The English courts did finally declare the charter void (1638); but the ship that brought word of this brought news also of the rising of the Scots, and the colony "thought it safe" bluntly to refuse obedience to the "strict order" for the surrender of the document, even hinting rebellion (Source Book, No. 76). In England, matters moved rapidly to the Civil War and the Commonwealth. Massachusetts was left untroubled to work out her experiment.

Winthrop wrote, toward the close of 1638: "The troubles which arose in Scotland about the book of common prayer, which the king would have forced upon the Scottish churches, did so take up the king and council that they had neither heart nor leisure to look after New England." And, years later, Cotton exclaimed exultingly (regarding the wars in England, Scotland, and Ireland): "God then rocqued three nations with shakeing dispensations, that He might provide some little peace for His people in this wildernesse." After the Restoration, the legal authorities in England decided that, since the charter had not actually been surrendered, the process against it was incomplete and ineffective.

## C. POLITICAL DEVELOPMENT FROM OLIGARCHY TO REPRE-SENTATIVE ARISTOCRACY, 1630-1634

(In the Source Book, Nos. 69-79, will be found much illustrative material besides that specifically referred to in the following paragraphs.)

62. Oligarchic Usurpation. — The Puritan fathers did not find it easy to stretch the charter of a merchant company into the constitution of a commonwealth, — especially as there were aristocratic and democratic factions in that commonwealth pulling different ways. According to the charter, all important matters of government were to be settled by the stockholders ("freemen") in "General Courts." But only some twelve freemen of the corporation had come to America in 1630. These were all of the gentry class, and, before leaving England, had all been made magistrates (governor, deputy governor, and "Assistants"). Independently of such office, and

merely as freemen, the twelve had sole authority to rule the two thousand settlers and make laws for them, in four stated "General Courts" each year. The little oligarchy began at once to use this tremendous power.\(^1\) A popular movement also showed itself at the very beginning; but for a time it was half-hearted and ill-directed, and the first two years belonged to the oligarchy.

The first General Court was held in October, 1630. By death and removal, the twelve possessors of power had shrunk to eight; and these eight gentlemen found themselves confronted by a gathering of one hundred and nine sturdy settlers demanding to be admitted freemen. Since the Company had become a political corporation, this was simply a demand for citizenship. Apparently, it represented concerted action by nearly all the heads of families above the station of unskilled laborers. To refuse the request was to risk the wholesale removal of dissatisfied colonists: to grant it was, possibly, to endanger the peculiar Puritan commonwealth at which the leaders aimed, and, certainly, to introduce more democracy than they believed safe.

In this dilemma, the shrewd leaders kept the substance and gave the shadow. They postponed action on the application until the next spring. Meantime they passed two laws — absolutely in violation of the charter — first (October, 1630), that the Assistants should make laws and choose the governor, and second (May, 1631), that the Assistants should hold office during good behavior instead of all going out of office at the end of a year. Then they admitted 116 new freemen, having left them no power except that of electing new Assistants "when these are to be chosen." A handful of oligarchs, under color of

¹Indeed, the Assistants from the first went beyond the charter provisions. At the first court of Assistants in America (Source Book, No. 69,) they created the office of justice of the peace, defined its powers, and appointed six of themselves to that position. According to the charter, such action as this belonged, not to the minor "Assistants' courts," but only to the "Great and General Courts." The August meeting of Assistants also fixed the wages of laborers (forbidding a carpenter or mason to take more than two shillings a day); but this was a power that then belonged to magistrates in England, and it was regarded probably as an administrative, not a legislative, function.

law, had usurped the power of electing the governor, making laws, and extending their own office indefinitely.<sup>1</sup>

The applicants, in their anxiety to get into the body politic, agreed readily to these arrangements. Indeed, they were ignorant as to what their rights were. The charter was locked in Winthrop's chest, and only the magistrates had read it or heard it. For a year more, that little body of seven or eight continued to tax and legislate and rule, admitting a few new freemen now and then, as it saw fit.

The chief founders of New England had a very real dread of democracy. John Cotton, the greatest of the clerical leaders, wrote:—

"Democracy I do not conceive that God did ever ordain as a fit government for either church or commonwealth. If the people be governors, who shall be governed? As for monarchy and aristocracy, they are both clearly approved and directed in the Scriptures,—yet so as setteth up theocracy as the best form of government in the commonwealth as in the church."

And the great Winthrop always refers to democracy with aversion. He asserts that it has "no warrant in Scripture," and that "among nations it has always been accounted the meanest and worst of all forms of government." At best, Winthrop and his friends believed in what they called "a mixt aristocracy,"—a government in which the people (above the condition of day laborers) should choose their rulers,—provided they chose from still more select classes; but in which the rulers so chosen were to possess practically absolute power, owning their offices somewhat as an ordinary man owned his farm.<sup>2</sup> With this idea, too, these leaders mingled a certain "divine right" idea for the elected magistrate, much as the Stuart kings did for hereditary magistrates.

Calvin, the master of Puritan political thought, teaches that to resist even a bad magistrate is "to resist God" (Source Book, No. 61). His language is often followed closely by Winthrop. In 1639, after the people in Massachusetts had secured a little power, the magistrates tricked

<sup>&</sup>lt;sup>1</sup> Cf. Fiske's curious error as to all this in *Beginnings of New England*, 105. Besides a wrong view point, he mistakes a fact, and assumes that the new freemen were admitted in 1630.

<sup>&</sup>lt;sup>2</sup> Cf. Cotton's sermon, § 64.

them out of most of it for a while by a law decreasing the number of deputies, so that they should not outvote the aristocratic magistrates in the court. Some of the people petitioned modestly for the repeal of this law. Winthrop looked upon the petition much as King James did upon the famous Millenary Petition (as "tending to sedition"). "The lawfulness" of such a petition, said Winthrop, "may well be questioned: for when the people have chosen men to be their rulers, now to combine together . . . in a public petition to have an order repealed . . . savors of resisting an ordinance of God. For the people, having deputed others, have no power to make or alter laws themselves, but are to be subject." 1

63. The Watertown Protest: the Freemen resume Part of their Rights. — The first protest came, after good English precedent, upon a matter of taxation. In February, 1632, the Assistants voted a tax for fortifications. Watertown was called upon to pay eight pounds. Now, Watertown had been settled by a church almost of the Separatist type, and it inclined, therefore, to democracy in politics also. Moreover, the magistrates had interfered with the minister and church there, and this may have piqued the inhabitants. At all events the minister now secured a resolution from the people "that it was not safe to pay moneys after that sort, for fear of bringing themselves and posterity into bondage." Governor Winthrop at once summoned the men of Watertown before him at Boston as culprits, rebuked them for their "error," and so overawed them

<sup>&</sup>lt;sup>1</sup> The quotations from Winthrop come from his *History of New England*. (This invaluable "Journal" has been printed only with modernized spelling. When a Winthrop quotation is given with antique spelling, it comes from his *Letters*). Cf. *Source Book*, Nos. 67, 70, 73, and especially 77; also § 64, note, for illustrations of this undemocratic feeling.

Winthrop regards the combining of citizens for a political purpose as a "conspiracy," just as English and American law long continued to regard any combining of workmen to negotiate for higher wages. This shows, in part, why the men of the American Revolution put so much stress upon the "right of petition" in all their Bills of Rights, commonplace as that right seems to us. It shows, too, how far Winthrop's theory of government was from Lincoln's idea of a government "of the people and by the people"; but it savors strongly of some recent talk against modern democratic innovation.

that they "made a retraction and submission . . . and so their offence was pardoned." Probably, however, on the walk back to Watertown through the winter night, the "error" revived. Certainly, during the next months, there was much secret democratic plotting and sending to and fro among the towns of which we have no record; for when the General Court met, in May, the freemen calmly took back into their own hands the annual election of governor and of Assistants, and then sanctioned the Watertown protest by decreeing that each town should choose two representatives to act with the magistrates in matters of taxation.\(^1\)

This was not yet representative government. The town deputies acted in taxation only. The magistrates still kept their usurped power to make laws. And it will not do to say that the magistrates too were representatives, being elected each year. No one was so democratic as to dream of making a magistrate out of a common man under the rank of "gentleman"; and gentlemen of prominence were not yet numerous. Therefore, though the charter ordered that eighteen Assistants should be chosen each year, the number was kept down to seven or eight at this period, and for many years did not rise above twelve. The same men were reëlected year after year, almost inevitably, unless there was particular grievance in some special case; and new men of station were elected even before they arrived in the colony, — so completely was the office of Assistant a property and a duty going with a certain social position.<sup>2</sup>

For a time, too, the method of nomination made most elections in the

Our information comes almost wholly from the brief "Records" and from Winthrop's "Journal." The democrats never wrote their story, and many important steps have no history. A week before the General Court, Winthrop warned the Assistants "that he had heard the people intended . . . to desire [vote] that the Assistants might be chosen anew every year, and that the governor might be chosen by the whole court, and not by the Assistants only." "Upon this," adds Winthrop's "Journal," "Mr. Ludlow [an Assistant] grew into a passion and said that then we should have no government, but there would be an interim wherein every man might do what he pleased."

<sup>&</sup>lt;sup>2</sup> Thus Winthrop tells us of the elections at this court of 1632: "The old governor, John Winthrop, was chosen; accordingly, all the rest [of the magistrates] as before; and Mr. Humphrey and Mr. Coddington, also, because they were daily expected." These were two English gentlemen, who, as a matter of fact, did not come until one and two years later.

General Court only a polite form. The people did not nominate two or three candidates and then choose between them. The Secretary nominated the officer whose term had just expired. On this nomination the freemen had to vote. Unless they first deposed an old officer, they had no chance to try to elect a new one. Moreover, for three years more the vote was "by erection of hands," not by secret ballot.

7 64. The Revolution of 1634. — Two years later came the second step, which it is no exaggeration to call a peaceful revolution. The impulse to this great movement was economic and social. It began as a protest against "special privilege." The people felt that the magistrates were legislating in the interest of their own class. A law authorizing the killing of swine found in grain fields was especially resented, and the attempts to fix wages may have contributed to a like feeling.

The common freemen determined to find out how far they had power to stop this class legislation. In April, 1634, the usual notice was sent out, calling the freemen to the General Court in May. Suddenly, on a given day, two men from each of the eight towns 2 came together in Boston, to agree upon a program. 3 This "convention" asked to see the charter, and at once called Winthrop's attention to the fact that, according to that document, the making of laws belonged to the whole body of freemen (now some two hundred). Winthrop told them loftly that "for the present they were not furnished with a sufficient number of men qualified for such a business," but that they might once a year choose a committee to review the laws of the magistrates and suggest changes.

This lordly condescension of the good governor was not enough. The "plotting" went on; and, when the General Court met (May 14), three deputies appeared from each of the

<sup>&</sup>lt;sup>1</sup> Winthrop was as piously and honestly dismayed that workmen should ask higher wages as that they should aspire to a voice in affairs of state. Find authority for these statements in the *Source Book*.

<sup>2 § 60</sup> and note.

<sup>&</sup>lt;sup>3</sup> By what steps were these deputies arranged for? No record answers this question; but plainly there must have been much democratic planning and journeying to secure it.

eight towns. This was revolutionary. The twenty-four deputies outnumbered the Assistants and made the Court really a representative body. Other freemen were present also to vote, but not to discuss. Neither charter nor laws knew anything of representatives. But the freemen saw very properly that the whole body could not engage in lawmaking on equal terms with the trained and compact body of Assistants, and so they fell back upon the English device of representation.

The aristocrats evidently felt their power in danger. At the opening of the court, John Cotton preached a sermon,—

"and delivered this doctrine, that a magistrate ought not to be turned into the condition of a private man, without just cause, and to be publicly convict, no more than the magistrate may not turn a private man out of his freehold, etc., without like public trial." 1

The answer of the freemen was to demand a ballot;<sup>2</sup> to drop Winthrop from the office he had held for four years;<sup>3</sup> and to

At another time Winthrop tells, with evident approval, how "it was showed from the word of God that the magistracy ought to be for life."

<sup>&</sup>lt;sup>2</sup> We should not know this important fact except for a note, "chosen by papers," in the margin of Winthrop's manuscript, opposite the name of the new governor. "Papers" were used, undoubtedly, as a democratic device,—to secure a free expression of opinion, where so influential a man as Winthrop might otherwise overawe voters. This was the first use of the ballot in America for political purposes; but papers had been used before in a church election at Salem, and the ballot was familiar to English boroughs and business corporations, though unknown in parliamentary elections. (See Rules of the London Company, in Source Book, No. 23.) Now that one of these corporations had moved to America and become a political corporation, for it to use the ballot, as soon as differences of opinion arose, was inevitable.

<sup>&</sup>lt;sup>8</sup> As opportunity offered, the aristocratic doctrine of Cotton was further rebuked by the election of a new governor for each of the two following years also. Then, in a period of great trouble, the trusted Winthrop was chosen again, and kept in office by annual elections, except for five years, until his death in 1649.

Even while out of the governor's chair, Winthrop was chosen Assistant each year; but, in 1635, Mr. Ludlow (see note above) was dropped out of office altogether. Winthrop says the people did this "partly to show their absolute power"; but he also shows a sufficient and proper reason. The deputies met before the election of the governor, and agreed to support a democratic gentleman,—who accordingly was chosen. The Assistants did this sort of thing constantly on their side. Indeed, they adopted a written rule

impose fines upon some of the magistrates for abuse of power. The Court then proceeded to make the revolution permanent. It decreed that the four General Courts each year should consist (as this one did) of deputies elected by the several towns, and of the governor and Assistants. Only such Courts thereafter were to admit freemen, lay taxes, or make laws. The Court in May each year was to be also a Court of Elections for the choice of governor and Assistants. For this election, at the opening of the Court, all freemen might attend; but when the choice had been made, all were to withdraw except the regular deputies and magistrates.

The transfer of the charter to America and the liberal admission of freemen had transformed the charter of a merchant company into the constitution of a commonwealth; and that commonwealth had developed from a narrow oligarchy into a representative aristocracy. The early usurpations of the Assistants were now all corrected. The freemen had recovered all the powers they could claim under the charter, and had found a way, outside the charter (the device of representation), to exercise their powers effectively.

The revolutionary Court of 1634 took other democratic action. It ordered jury trial in all important criminal cases (§ 80), and it admitted eighty-one new freemen, increasing the voting body by a third. But Massachusetts was still far short of a democracy (§ 65 ff.).

65. The Franchise. — The most obvious limitation upon democracy lay in the franchise. The "freemen" were only a fraction of the free men. The General Court of 1631, which admitted the first new freemen, decreed that thereafter only church members should be admitted. This did not mean that

to consult together in private, so that their united voice in public "might bear as the voice of God." But Ludlow flew into a passion when the deputies caucused. He declared that for them to do such a thing was equivalent to conspiracy and that it rendered the whole election void. The freemen rebuked him by voting him out of office. The ballot was used in this election, also.

<sup>1</sup> On the day the Court met, the Assistants had gone as far as they were willing to go, admitting twenty-three freemen. The representative Court at once admitted almost four times as many more.

all church members could vote. The people comprised five distinct classes:—

- a. Gentlemen, who had a right to the title Master (Mr.);
- b. Skilled artisans and freeholders, the backbone of the colony, usually addressed as "Goodman Brown" or "Goodman Jones";
- c. Unskilled laborers, for whose names no handle was needed, and for whom indeed the surname was not often used;
  - d. Servants, who eventually passed into class c or b;
- e. Slaves, of whom there were soon a small number, both negro and Indian.

Men of the lowest three classes were often admitted to the church, but never to political citizenship; while any man of the first two classes, who was also a member of an approved church (§ 83) and who applied to the General Court for citizenship, was pretty sure to be welcomed. Thus, law prescribed a religious qualification for voting, and the feeling of the people added, in practice, a social and property qualification. Only about a fourth of the adult males had the suffrage in Massachusetts at any time in the seventeenth century. (Certain other limitations upon democracy are noticed in §§ 66–70.)

Gentlemen were set off from the lower classes by a social line hardly less distinct than that which in England separated gentlemen from lords. About one family out of fourteen in early Massachusetts belonged to the gentry. That ordinary "people" should show subordination to these social superiors was almost as essential as to obey express law. For one distinct legal privilege, the gentleman was exempt from corporal punishment. Thus, in 1631, Mr. Josias Plaistowe was convicted of stealing corn from the Indians. His servants - who had assisted, under orders - were condemned to be flogged; but the court merely fined Plaistowe and ordered that thenceforward he "should be called by the name of Josias, and not Mr., as formerlie." This was severe punishment, equivalent to degrading an officer to the ranks. For another offense, Josias would no doubt be whipped, like an ordinary man. This exemption of the aristocracy was embodied in written law in 1641.1 Ten years later the court declared its "detestation" of the wearing of gold lace or silk by men or women "of mean condition," admitting that such apparell was fitting for gentlemen (Source Book, No. 75, b). The student will do well to

<sup>1</sup> Body of Liberties, 43; in No. 78 of Source Book.

compare the class distinctions described for England by William Harrison in 1578 and those portrayed in Massachusetts in 1635 in the "Answer" to Lord Say and Lord Brooke (Source Book, Nos. 1 and 75).

# D. Evolution of a Two-chambered Legislature, 1634-1644

(The class may use Nos. 68, 75, 77, 79-80, of the Source Book at this point; and look up authority there for the statements of the text.)

- 66. Lines of Division in the One-chambered General Court. For ten years, deputies and Assistants continued to sit together in the General Court, as one body. But, from the first meeting, a distinct line of separation appeared between these two orders. The deputies were usually democratic in sympathy, and often came from a rank lower than that of "gentlemen." They held office for only a few days in the year, and their work was mainly legislative. The Assistants continued to be a highly aristocratic class, and, on the whole, the same men served year after year. The causes for the aristocratic character of the Assistants were partly in the political machinery, partly in the nature of their office, and partly in popular feeling.
- a. Method of nomination and election. The voters for Assistants, it is true, were the same men who chose deputies; but the franchise was exercised in different ways for the two offices. The deputies were chosen two or three in a town by their own townsmen. It was easy, therefore, to elect a "common" freeman, known only within his town. The Assistants, on the contrary, were chosen at large, and in one general Court of Election. Only men of wealth or position such as to make them known throughout the whole colony could get consideration.

<sup>&</sup>lt;sup>1</sup> This truth has an important bearing upon politics to-day. Small electoral districts tend to give democratic results; larger ones, aristocratic results. In most of our States, the State senate is elected just as the lower House of the legislature is, except that the electoral districts for the senate are larger; but the senates are made up of richer and better-known men. So, in a large city, if aldermen are elected by districts, one or two for each ward, it has hitherto proved easier for a workingman to be elected now and then, than if the election is at large, — all the aldermen for the city elected on one ticket.

For a time this tendency was intensified by the bad system of nominations (§ 63, close). In 1635, to be sure, the ballot was introduced in the election of Assistants (as it had been a year earlier in the election of governor); but the nomination continued as before. The secretary named an Assistant already in office. The people brought in "papers." Those in favor of electing the nominee marked their papers with a scroll (they were not asked to write the name because so many freemen could not write); those opposed deposited blank ballots. If there were more marked papers than blanks, the candidate was declared elected. If he were defeated, another nomination might be made, to be accepted or rejected by itself in like manner. There was no opportunity to choose between two men, and ordinarily the man in office would be continued there.

- b. The court of Assistants was largely a judicial court; and it was necessary that the Assistant should know something of law. Moreover, the Assistants had to meet frequently, and the office was unpaid. Only "gentlemen" were fitted for the work, or could spare time for it.
- c. The Assistants were "ruling magistrates," with considerable executive and administrative power. The most ardent democrats believed that such officers ought to come from the gentry class, not from the lower ranks of society.
- 67. Many matters of dispute arose between the two orders. Some were trivial, except for the class feeling involved. The deputies wished to fine heavily an unpopular "gentleman" for charging exorbitant prices for merchandise; the Assistants insisted upon reducing or remitting the fine. Then the Assistants gave judgment for slander against a poor woman who had accused the same "gentleman" of stealing her pig (which had strayed into this gentleman's yard and after some time had been killed by him); the deputies sided with the woman. But more important differences were not lacking. (1) The Assistants succeeded in getting a law passed in favor of a Council for Life; but the deputies kept this Council from acquiring any real power, and after three years, they secured, indirectly, its abolition. (2) The Assistants tried to cut down the number of deputies, arguing that the freedom of the people lay not in the number of representatives, but "in the thing,"—in having repre-

<sup>&</sup>lt;sup>1</sup> In 1643, the law ordered that kernels of corn should be used instead of papers,—the white to signify election; other colors, rejection. For changes in the system of nominations, see § 78.

sentatives at all; while the deputies, with their towns at their back, were anxious to have a number sufficient to outweigh the Assistants.<sup>1</sup> (3) The deputies wished a *written code of laws*; and secured it, after six years' struggle, against active and passive opposition by the Assistants (§ 81).

68. The Negative Voice of the Magistrates. - Early in these conflicts, the Assistants put forward an amazing claim, under which they bade fair to rob the freemen of all that was really worth while in the representative government they had won. The charter provided that a quorum of seven magistrates (out of eighteen) must be present to enable any Court to do business. To prevent embarrassment, in 1631, while they were keeping the number of Assistants small, the magistrates themselves had enacted (unconstitutionally) that five should be a quorum. In the summer General Court of 1634 (the first court after the introduction of representative government), a vote obnoxious to some of the magistrates was passed by a good majority; but the magistrates (even those who had voted for the measure) declared it not carried "because there were not seven magistrates in the vote." That is, they not only restored the charter provision, now that it suited their class, but they interpreted it to mean that seven magistrates must vote in favor of a motion to enable it to carry, no matter what the vote of the deputies might be. Since there were then so few magistrates, this meant that the deputies could carry no measure for which the Assistants were not practically unanimous.

The Assistants called this their right to a negative voice. It was never recognized in law in just this form; but the ministers were brought in, upon occasion, to argue for it, when the deputies grew restive; and, in practice, the few Assistants secured a veto upon the larger body of deputies.

Israel Stoughton, a deputy from Dorchester, attacked this claim in a book with "many weak arguments," complaining also of the great discretionary power of the Assistants in their judicial work. He was called up as a culprit, and made to recant. His book was burned, and he was dismissed from office and disfranchised for three years, despite a petition

<sup>1</sup> This contest has been referred to in § 62.

in his favor by his constituents. Winthrop had written a book in favor of the negative voice. The magistrates saw nothing wrong in controversy on that side.¹ But free speech and a free press were no more part of the Puritan political scheme than was the right of petition (§ 62).

- 69. Separation into Two Houses. After ten years of such disputes, deputies and Assistants agreed to separate into two Houses, each House to have its own organization and to manage its own debates; each to have the right to introduce bills; and the consent of both to be necessary before any bill became law. Three steps may be traced in the evolution of this first bicameral legislature in America.
- a. In 1636 it was decreed that the two orders, still sitting together, should vote separately, and that a majority of each order should be necessary to carry a measure.

This was not at all equivalent to two Houses. It left the Assistants a great advantage. They would do most of the debating, and they could most easily combine upon a policy (being a permanent body with frequent meetings outside the General Court). The arrangement sanctioned their veto without granting any compensation to the deputies.

- b. By 1641 the deputies were permitted to organize separately with a "speaker" of their own, whenever a special occasion made such action desirable.
- c. In 1644 the division became regular and permanent. The immediate occasion was the long dispute over the poor woman's stray pig (§ 67). Well does Winthrop say,—"There fell out a great matter upon a small occasion." But of course the real causes were the deeper differences.<sup>2</sup>

¹ The magistrates recognized the right of free debate in the General Court, because of the emphasis in English history upon freedom of speech in parliament. Stoughton might have spoken his "weak arguments" in the meetings of the legislature with impunity. The thing in question was the right of a citizen outside the legislature to criticize the government. It is interesting to note that as soon as Stoughton's "disfranchisement" had expired, the people elected him to the Board of Assistants.

<sup>&</sup>lt;sup>2</sup> When these disputes had rendered life under one roof unendurable, the existence of a two-House parliament in England pointed to a remedy. The law of Massachusetts in 1644 refers to European example as one justification for the change (Source Book, No. 80, close). The leaders had recognized for

The magistrates kept their negative voice; but the deputies had won separate organization, freedom from interference in their debates, and greater dignity in their own eyes. In time, as their sense of independence increased, their size gave them the preponderance. The separation came as the result of a democratic demand, and was at the time a democratic victory. (Cf. § 41, for Maryland.)

4 70. Excursus: Two-House Legislatures Then and Now. 1—Before the Revolution, all the colonies had two-House legislatures except the two latest founded, —Pennsylvania and Georgia, —and by 1790 these States also had adopted that form. 2 That system has continued universal ever since in the States of our Union, and until recently its wisdom has hardly been questioned. It is clear, however, that the reasons given to-day for preserving the two-House arrangement never occurred to the men who established it, and that their reasons have wholly faded away.

In the seventeenth century, aristocracy was so strong that the aristocratic "Council" (whether elected as in Massachusetts, or appointed as in Virginia) dominated a one-House Assembly. The change to two Houses was set in motion everywhere by the democratic element, as a step toward greater freedom of action. This condition has disappeared absolutely.

When we reach the Revolution, democracy has gained in power; and it was the aristocracy which preserved the two-House system. The upper House was desired as a separate and coördinate branch, in order that property and station might intrench themselves safely in it, to veto further encroachment by the rising tide of democracy. The democratic forces. too, were reconciled to the plan by an argument which was falsely supposed to have democratic value. Government had so long meant despotism, that, for a while, men who loved liberty believed that government the best which was weakest and could not govern. Hence arose the favorite eighteenth century device of weakening government by an elaborate system of checks and balances, setting one part over against another, and regarding a deadlock as a palladium of liberty. But to-day no one would openly use the aristocratic argument: nor do we any longer fear government. We do not look upon it as a dangerous enemy or a cruel master, to be chained, but as a helpful servant, to be made efficient; and ardent democrats begin to question whether we should not strike from that servant's limbs these old seventeenth and eighteenth century fetters.

some years that such a change must come. See the famous Cotton letter to Lords Say and Brooke in *Source Book*, No. 75, for evidence of this.

<sup>&</sup>lt;sup>1</sup> This section may be discussed in class, with books open.

<sup>&</sup>lt;sup>2</sup> Vermont had a one-House legislature from 1777, when she split off from New York (§ 154, note), until 1791, when she was admitted to the Union.

A new reason, however, has been brought forward in favor of the division. Government, it is urged, should express the people's will, not their whim; and the deliberate action necessitated by a two-House arrangement prevents hasty and unconsidered action. Whether this is a sufficient reason to overbalance the inconveniences of the system is the question to be decided. The historian may point out that it is a new reason, and also that, outside America, two Houses is not the modern democratic custom. That plan is found, it is true, in many countries, either to intrench aristocracy or as a historic survival; but the numerous states of Switzerland, the new nations of the Balkans, and most of the Canadian provinces, all have one-House legislatures, — as did the Dutch republics in South Africa while they lasted.

The desirability of two Houses in our national legislature is a somewhat different question. The Senate was adopted there partly to intrench wealth and aristocracy, as the debates of the Federal Convention show (§200), but partly to suit the new federal plan, — one House to represent the State governments, the other to represent the people. A similar reason has led the Swiss, the Australians, and the Canadians each to make their central legislature on the two-House plan.

# \* E. LOCAL GOVERNMENT

"Town meetings are to liberty what primary schools are to science."— Tocqueville.

71. Origin of Town Government. — Most New England towns in the seventeenth century were mere agricultural villages. Farmers did not live scattered through the country, as now, each on his own farm. They dwelt together, somewhat after European fashion, in villages of from thirty to a hundred or two hundred householders, with their fields stretching off in all directions.

These local units developed a system of government for their local affairs wholly distinct from the general colonial government we have been studying. At first, the General Court and Assistants tried to care for the whole business of government, local as well as central, appointing justices and constables for each settlement. But this left multitudes of important matters unprovided for. So, in 1633, Dorchester

<sup>1</sup> Modern History, § 36.

and Watertown set up town governments, with a new machinery of town meetings and selectmen. In 1634 several new towns were founded (§ 60), and the number increased rapidly in the next few years. All these units, old and new, quickly followed the Dorchester example; and a little later the settlements in Plymouth colony took similar action (§ 53).

From the first, on special occasions, the people of a town met to discuss matters of interest, as at the famous Watertown meeting of 1632. But now the towns ordered that such meetings be held regularly (once a month, perhaps), to settle matters of local concern. Each town chose a town clerk, to keep records of the by-laws, or town laws, passed in the meetings, and elected a committee ("the seven men," "the nine men," "the selected townsmen") with a vague authority "to manage the prudentials of the town" between the town meetings.

72. Relation of the Town to the Colony. — These local governments seem to have grown up, out of the needs of the people, without definite legal sanction; but very soon the General Court adopted them as essential parts of the political scheme. In theory, the towns derived their powers from the central government, and possessed only such authority as that government delegated to them.<sup>2</sup> From this viewpoint, the town was primarily a division of the state for various purposes: (1) for military organization, — each town being compelled to maintain a train band; (2) for political organization, — delegates to the General Court being chosen by towns; (3) for the organization of a school system; (4) for the assessing and collecting of taxes; and (5) for the administration of justice. The central legislature located the town, gave it its territory, named it, and required it to maintain roads, schools, and certain military and

<sup>&</sup>lt;sup>1</sup> About the middle of the century, this term came to be written "Selectmen"; but the New Englander still pronounces it "Select Men." See Source Book, Nos. 66, 81, 83, 89, 105, c, for the growth and character of town government.

<sup>&</sup>lt;sup>2</sup> When the later colonies of Rhode Island and Connecticut were founded, it happened that towns came into existence *before* any definite central government had been provided. As a result, in these states the towns have always preserved a peculiar degree of independence.

police arrangements. Fines were imposed by the legislature upon towns that failed to come up to the standard set by law.

73. Self-government of the Town. — In actual practice, however, a marvelous degree of independence was left the town. The town meeting appointed all local officers, — not merely selectmen and clerk, but school trustees, hog reeve, fence viewer, constable, treasurer, pound keeper, sealer of weights and measures, measurer of corn and lumber, overseer of chimneys, overseer of the village almshouse; and for most of these officers it alone defined all the powers and duties. It divided the town lands among the inhabitants, — such a part as it chose to divide, — deciding also upon the size of building lots, whether quarter-acre, acre, two acres, or five; and it passed ordinances regarding the remaining town fields and pastures, the keeping up of fences, the running of cattle and hogs, the term of the school and its support, the support of the church, and of the town poor.

This town democracy had its disadvantages. Action was slow, and was often hindered by ignorance and petty neighborhood jealousies. But the best thing about the town meeting, — better than anything it did, — was the constant training in politics it gave to the mass of the people. Fitly it has been called the best school of political liberty the world ever saw.

74. Town Citizenship. — All the people in a town could come to town meeting and could speak there; 1 but not all could vote. At the base of society in every town was a class of "cottagers," or squatters, who were permitted to reside in the place at the town's pleasure only, 2 and who could not acquire land there, nor claim any legal right to the use of the town pasture, or "commons." Servants whose term of service was up, and strangers who drifted into the town as mere day laborers, usually passed at first into this class.

<sup>1</sup> Body of Liberties (12), in Source Book, No. 78.

<sup>&</sup>lt;sup>2</sup> For instance, the Hartford *Records* contain a grant of "lotts" to certain "cottagers," "to have *onely at the Townes courtesie*, with libertie to fetch wood and keepe swine or cowes on the common."

The people in a town who held full town citizenship were known as "inhabitants." This term had a fixed meaning. A "cottager," however worthy, or a newcomer, of whatever rank, could be "admitted inhabitant" only by vote of the town. In practice, this class included all gentlemen and industrious artisans and freeholders (§ 65). That is, it included all who had the colonial franchise, — all "freemen," — and many others, because church membership was not necessary for admission.

Thus the town government in Massachusetts was more democratic than the central government. The body of citizens was more extensive, and the citizens acted directly, not through representatives. And this town democracy was significant, because the town governments touched the life of the people at many more points, and at more vital ones, than did the central government.

75. Excursus: The Virginia County and the New England Town. — The political difference between Virginia and Massachusetts lay more in local government than in the central. Especially after 1691 (§ 101), the central governments of the two provinces grew much more alike, but the local governments grew farther and farther apart; and the influence of local government upon society is so great that Virginia as a whole grew more aristocratic, and Massachusetts more democratic.

At bottom, the causes of the difference were largely physical. In Virginia the soil, climate, and products made it profitable to cultivate large plantations by cheap labor under overseers. In Massachusetts, with its sterile soil, farming was profitable only

¹ This divergence was not pleasing to the central government. At first (September, 1635) the General Court decreed that the town franchise should belong only to freemen; but this narrow policy quickly became a dead letter in practice. Then, the General Court tried to compel the towns to choose town officers only from "freemen"; but the towns disregarded this restriction also; and in 1642 the Court decreed that other inhabitants might be chosen, provided a majority of the town board were freemen. In 1656 a law of the General Court set up a low property qualification for town citizenship. All inhabitants worth £24, in estate, were recognized as entitled to full citizenship for town purposes. This, of course, did not make them "freemen," but it removed all check upon their holding town office.

when a man tilled his own ground, with at most one or two servants working under his own eyes. In Virginia, therefore, population became scattered, while in New England it remained grouped in little agricultural villages. In Virginia, all the people could not easily come together for effective action. The county became the political unit, and control fell naturally to the wealthy planters in small Boards (§ 103). New England had no counties for some time, and then only for judicial purposes. Throughout the colonial period, the town remained the political unit: and all the people of the town came together frequently. to take part in matters that concerned their common life. The Virginia type of local government developed the most remarkable group of leaders that the world has ever seen. The New England type trained a whole people to democracy by constant practice at their own doors. Both contributed something to our national development; but the New England type has done most to Americanize our institutions.

76. Excursus: Later Developments in Local Government. — The Middle colonies, soon to be founded, developed an intermediate type of local government, with both towns and counties. Then, after the Revolution, Virginia and New England became centers for distributing population south and west (ch. vii). The people of each district carried with them their own form of local government. The Virginia county prevails generally over the South. In the West the result was mixed. The New Englanders carried the town to Ohio, Indiana, and Illinois; and the Virginians, coming into the southern parts of the same States, brought the county. The two institutions wrestled, but neither won a complete victory. Throughout the West there resulted a mixed type, somewhat like that of New York or Pennsylvania.

Moreover, the extreme types have gradually come somewhat nearer

<sup>&</sup>lt;sup>1</sup> This will be more easily understood after a treatment of later Virginia history (§§ 102-106, and the references to Virginia in the story of the Revolutionary disturbances). If it seems best, §§ 76 and 77 can be deferred until after § 106; and in any case they may be reviewed then with profit.

<sup>&</sup>lt;sup>2</sup> In New York, which had many settlers from New England, the town was more important than the county; while in Pennsylvania the county was the more important.

one another in their first homes. In the South, the town system has made some gains; while in New England it has lost some of its early vitality—through the influx of foreign populations and the growth of city life.<sup>1</sup>

In some States to-day, in the West and Central divisions, there is an annual town meeting (primarily for the election of officers), at which any business of the town can be settled; while special meetings may be called on occasion. But no district out of New England has reproduced the weekly or monthly meeting; and the town officers count for more in the West than in the original New England town. School matters are often managed by a distinct organization. In some States, where there is no town meeting proper, the voters do still elect a board of supervisors, who manage town affairs.

The county usually has a legislative board of supervisors or commissioners, besides its administrative and judicial officers, with extensive powers over raising and expending county money, and over the care of the poor, of highways, and of public health.

Exercise.<sup>2</sup>—1. Study some "town" in your county (or in a neighboring one) for size, population, amount of taxable property, rate of taxation. Make a table of the town officers, showing how elected, for what terms, with what general powers and duties. Has the town any judicial officers? Are school affairs managed by the town or by a separate organization? (If the latter, describe it.) Is there a town meeting?

2. Study the early New England town in the Source Book, No. 83.

<sup>1</sup>Outside New England, the nearest approach to the old-fashioned town meeting as an organ of frequent government is the school district meeting in small towns and villages in the West.

The decay of the town meeting is a serious matter. It was a direct democracy. Almost all modern local government is indirect, representative democracy. The town meeting will never be restored to its old vitality; but many thinkers believe that some substitute must be found to give the political training which it once gave, and hope to find such a substitute in the devices of "direct democracy" known as the initiative, referendum, and recall (§§ 463–470).

<sup>2</sup>This study may be carried on, by degrees, while the class is proceeding with the history; but most of the historical background for an understanding of town and county government in the United States has now been supplied. The study of city government belongs to a later period (§ 465). The following references for local government may be useful: Bryce, American Commonwealth, chs. 48, 49; Wilson, The State, 524 ff. Much information may be found in the Legislative Manual for the State (of which every school should have copies) and in standard books upon the State government.

3. Are the members of your county board elected by districts or "at large"? For how long a term? Who collects taxes in your county? Make a table of administrative officers of the county, corresponding to that suggested above for town officers. Where are the county buildings, and what are their uses? Who decides when a new one shall be built? Who decides where they shall be located? Compare (in any large atlas) the boundaries of the counties in the western States in general with those in the older States for regularity.

# F. EVOLUTION OF POLITICAL MACHINERY

77. The Ballot.—Reference has been made to the ballot in England (§ 64, note) and to its introduction into politics in Massachusetts,—first (1634) to defeat Winthrop for governor, and then to drop Ludlow from the Board of Assistants. In both cases the voters resorted to the ballot to protect themselves against intimidation. From this time its use was unbroken at the Court of Elections in choosing the officers of the central government.<sup>1</sup>

The next step was to introduce the same democratic device in town elections. This was done first at Boston, in December, 1634, when a committee was chosen to divide public lands among the inhabitants. The people "feared that the richer men would give the poorer sort no great proportions of land," and they used the ballot in order the more easily to leave out the aristocratic element <sup>2</sup> In the following September, a law of the General Court established vote by secret ballot in the towns as the regular method of electing deputies to the General Court.

<sup>1</sup> See Source Book, Nos. 67, a, 70.

<sup>&</sup>lt;sup>2</sup> Source Book, No. 71. The seven men of the committee were all of "the inferior sort," except that Winthrop himself barely got on at the bottom of the poll. Winthrop tells the story with naïve dignity. "Mr. Winthrop refused to be one upon such an election . . . telling them that though he did not apprehend any personal injury, . . . yet he was much grieved that Boston should be the first who should shake off their magistrates." Then Mr. Cotton "showed them that it was the Lord's order among the Israelites to have all such business committed to the elders," and persuaded them to have a new election.

There is another way in which the ballot aids democracy. Its use makes it possible for men to vote at their own homes, in small election districts, instead of being required all to come to one central point. Such an arrangement permits more voters to take part in elections; and the men of Massachusetts soon used the ballot for this purpose. In March, 1636, it was ordered that the freemen of six outlying towns might send "proxies" to the next Court of Elections. During the next December, Governor Vane resigned, and a special election was called. "In regard of the season," any freemen who chose were authorized "to send their votes in writing." And the next spring (March, 1637) this method of voting for governor and Assistants was made permanent. Out of the use of proxies a true ballot in the several towns had developed.

- 78. Nominations. When men came to elect the governor and Assistants in the several towns, as just described (instead of all coming to the General Court in Boston for the purpose), it was necessary, of course, to know in advance from what names the choice was to be made. The old system of nomination ( $\S$  63, close, and  $\S$  66, a), always unsatisfactory and undemocratic, broke down; and two democratic methods were tried.
- a. A primary election. In 1640, it was decreed that in each town in March the freemen should nominate Assistants by ballot, and the votes of all the towns should be carried to Boston and counted. The eighteen men having the highest total vote were declared nominated; and at the elections in May no one could be voted for whose name was not on the list. At that election, if a nominee failed to get a majority of the votes cast, a vacancy was left on the Board until next year.
- b. A representative convention. The troublesome thing about this primary system in that day was that different towns might vote for wholly different sets of nominees. No machinery had been devised for candidates to be suggested in advance to the entire colony. So, after two trials, in 1642, another system of

An admirable example of "development": first some voters for one time; then all voters for one time; then all for all times.

nomination was attempted. Each town chose one or two representatives, and these delegates met in a central convention to nominate candidates to be voted on at the next election.

In the absence of political parties and other modern political machinery, neither system worked altogether satisfactorily; and for years Massachusetts oscillated back and forth between the two. At a later time in American politics the convention became universal; but a little before 1900 there began a drift to the primary election in a better form (§§ 323–324, 461).

#### G. EVOLUTION OF A JUDICIARY

79. Courts. — Soon after Winthrop landed, the Assistants appointed from their own number a "justice of the peace" for each important town, to punish minor offenses and to decide minor cases (Source Book, No. 63 (1)). Above these local courts was the central Court of Assistants; and higher still was the "General Court," which sometimes dealt with judicial matters. But the exact relations between these grades of courts were not clearly defined. Any matter, however unimportant, might come originally into the highest court if a member of that body chose to introduce it; and the two higher courts mingled executive and legislative matters with their judicial functions at the same sittings.

In 1636 and 1638 the system was reorganized. (1) The justices' court gave way to a more complete system of town courts, no longer wholly appointed from above, but elected in part by the local units. (2) The towns were grouped into four districts, known later as counties, each with its county court ("inferior quarter courts") meeting four times a year. (3) The Assistants began to hold special meetings four times a year ("great quarter courts") solely to administer justice, leaving other business to other meetings. (4) The General Court kept its function of a "Supreme Court" on special occasions.

The county courts were the new element. Like the town courts, they were partly democratic in composition. Each consisted of at least one Assistant, residing in the district, and of three or four other men chosen for

the purpose by popular vote. This court could deal with all civil suits (suits about property) in which less than £20 was involved, and with criminal cases where the penalty did not extend to death or mutilation; but any case might be appealed from it to the "great quarter court."

That higher court, therefore, was an "appellate court" for these minor matters, and also a "court of original jurisdiction" for the more important cases above the province of the county courts. It remained aristocratic in composition, and indeed was simply the Board of Assistants sitting for a special purpose at stated times.

80. Juries. — Early in the first summer in Massachusetts, a man was found dead under suspicious circumstances. The magistrates at once appointed a body of sworn men to investigate the matter. This was a coroner's jury, an old English institution. It accused a certain Palmer of murder. Palmer was tried before the Assistants with a trial jury (petit jury) of twelve men. After hearing the evidence, this jury gave a verdict of "not guilty," and the magistrates declared Palmer acquitted. Soon after, a jury was impaneled to try Captain Endicott on a charge of assault and it gave a verdict against the hot-tempered captain.

This was merely in accord with English custom.<sup>2</sup> There was no written law on the matter until 1634. Then the revolutionary General Court, which set up representative government, established also this judicial bulwark of liberty, by enacting that thereafter all criminal trials involving life or limb must be held before a jury.<sup>3</sup> By custom, the jury continued to be used in minor criminal cases also.

A year later the English jury of inquest was introduced. So far, offenders had been brought to trial only on the initiative of some magistrate; but in the spring of 1635 the General Court ordered that two "grand juries" should meet each year, fall

<sup>1</sup> The teacher may well afford time to illustrate such terms as "appellate" and "original jurisdiction," and "civil" and "criminal" cases, until the concepts are clear.

<sup>&</sup>lt;sup>2</sup> On the origin of the jury in England, see Modern History, §§ 130, 144.

<sup>&</sup>lt;sup>3</sup> The Plymouth code of 1636 provided for a jury in all cases. Cf. also the Massachusetts Body of Liberties in the Source Book, No. 78.

and spring, to present to the court all offenders against the law and the public welfare.1

Thus the first five years in Massachusetts saw the adoption (first by custom and then by statute law) of the English practice of juries in the administration of justice,—the grand jury for inquest (with its special variety, the coroners' jury for a particular kind of inquiry), and the petit jury for trial. It is sometimes said, with much exaggeration, that in the absence of written law, the Puritans always followed the Jewish law. Sometimes they did so in fixing penalties; but in this supremely important matter of legal machinery and methods they followed the English Common Law, not the Old Testament.

81. Written Laws. — At the spring Court of 1635, the deputies made a demand for a written code of laws, "conceiving great danger to our state, in regard that our magistrates, for want of positive laws, might proceed according to their discretions." The magistrates were making law, almost at will, in their judicial decisions, as cases arose, — sometimes, ex post facto laws. The demand of the democratic deputies was proper,<sup>2</sup> and too strong to be openly denied; but for a time it was evaded. The Court appointed a committee of four magistrates to prepare a code; but the committee failed to report. A year later, it was enlarged to eight, and ordered to report at the next Court; but all the members still came from the gentleman class. Mr. Cot-

<sup>&</sup>lt;sup>1</sup>The terms grand and petit have reference only to the original size of the two kinds of juries in England. The first grand jury in Massachusetts, in the fall of 1635, indicted 100 offenders, showing itself much more active than the magistrates had been.

<sup>&</sup>lt;sup>2</sup>Cf. the democratic demand for a written code in early Athens, and in Rome (Ancient World, §§ 108, note, 313). To be sure, in Massachusetts the division between classes was very much less than in those early states, but the same general tendency may be traced. In Massachusetts the magistrates gave one reason, not of a class nature, for resisting the demand. They had certain customs in church matters in direct conflict with English law. Such opposition was forbidden by their charter; and, if those customs were reduced to writing, it could not be concealed. On the other hand, "the people thought their condition very unsafe while so much power rested in the discretion of the magistrates." For ex post facto legislation by the judges, see Source Book, No. 65, and elsewhere.

ton, one of the committee, did present a code modeled wholly upon the Mosaic law; but this was so unsatisfactory that no notice was taken of it. Two years later still (1638), the democratic element had learned their lesson. They took the initiative into their own hands, ordering that the deputies should collect suggestions from the freemen of their several towns, and present the same in writing to a new committee made up partly of deputies. Now matters began to move. The suggestions from the towns were reduced to form in 1639, and sent back to all the towns for further consideration, "that the freemen might ripen their thought," and make further suggestion. The next lot of returns were referred to two clergymen, John Cotton and Nathaniel Ward; and, in 1641, each of these gentlemen presented a full code to the General Court. After further deliberation and discussion, and some amendment, the code presented by Ward was adopted the same year. This is the famous Body of Liberties. In name and character it marks a great advance in the history of legislation. (Source Book, No. 78.)

# H. THEOCRATIC ELEMENTS IN THE COMMONWEALTH

82. Religious Purpose of the Colonists.—In England the High-churchmen had been wont to reproach the Low-churchmen with being secretly Separatists. The Low-church Puritans repelled the charge indignantly, and, to prove their good faith, joined vehemently in denouncing the Separatists. But when they reached America, they found themselves more in accord with that despised sect than they had themselves suspected.¹ Very soon they did separate wholly from the English

<sup>&</sup>lt;sup>1</sup>Thomas Hooker was one of the greatest of the Puritan clergy. Before he came to America, while a fugitive in Holland, he was called a Separatist. But Cotton Mather says he had "an extreme aversion" to that sect; and he himself wrote, "To separate from the faithful assemblies and churches in England, as no churches, is an error in judgment and a sin in practice, held and maintained by the Brownists [Separatists]; and to communicate with them in this opinion is utterly unlawful." So, too, Francis Higginson ex-

Church, refusing even to recognize its ordination of elergymen. On the other hand, they did not adopt the Separatist program regarding relation to the state, nor did they entirely separate one congregation from another in matters of church government. They wished to maintain a union between church and state. Indeed, to their mind, the first use of the state was to preserve their religion and their church discipline.

To preserve this union effectively, they adopted three distinct devices: (1) restriction of the franchise to church members; (2) restriction of churches to those approved by the government and by the other churches; (3) reference of political questions to the clergy organized in synods. The first step was taken in 1631. The second was necessary to make the first effective, and it was taken in 1636. The third measure came about gradually.

The ministers did not hold office, but from the first they were active in politics.<sup>2</sup> Their sermons abounded in political teaching; and from time to time individuals among them were consulted by the magistrates on matters of importance. Soon, the government came to seek the *collective* opinion of the ministry by circulars of inquiry. This did not result in unanimity; and the final step consisted in bringing the clergy together to formulate an opinion which might weigh as that of a united body. This was done first on a purely political occasion, — the question of resisting a governor from England (§ 61); but in 1637 the clergy began to hold synods for religious matters, and advantage was taken of this opportunity to secure greater clerical influence upon politics.<sup>3</sup>

claimed, as the shores of England receded from view (§ 57): "We will not say, as the Separatists are wont to say, Farewell, Rome! Farewell, Babylon! But we will say, Farewell, dear England; Farewell, the Church of God in England, and all Christian friends there." Longer and more emphatic expressions of this early attitude of the Puritans are given in the Source Book, No. 60 and the closing passages in Nos. 52 and 62, c.

Winthrop declared that their purpose in coming to America was "to seek out a place of cohabitation under a due form of government both civil and ecclesiastical." See the preamble to the Connecticut Fundamental Orders (Source Book, No. 93) for a fuller statement by a Puritan commonwealth.

<sup>2</sup> Cf. the part of the minister of Watertown in 1632, and of Cotton at the General Court of 1634, and of Cotton and Ward in codifying the laws.

<sup>8</sup> Winthrop tells, with evident approval, how Mr. Cotton, from numerous scriptural texts, "proved . . . that the rulers of the people should consult

- 83. The Massachusetts ideal was an aristocratic theocracy, a government by the best, in accordance with the law of God. But, in practice, the ministers in politics proved a bulwark of class domination. In every controversy between aristocracy and democracy, the ministers found an interpretation of some Biblical passage which would support the aristocracy; and the "people" were able to make headway against this preponderating influence only with great difficulty. Indeed, democratic progress depended, more than once, upon the appearance of a rare democratic champion among the ministers, like Ward of Ipswich (§ 81) or Hooker of Connecticut (§ 87).1
- 84. Persecution. The purpose of the early Massachusetts Puritans (in their own words) was "to build a City of God on earth." They came to the wilderness not so much to escape persecution as to find a freer chance to build as they saw fit, where there should be none with right to hinder them; and they did not mean that intruders should mar their work. This plan forbade religious toleration. Religious freedom was no part of the Puritan's program. He never claimed that it was. It was fundamentally inconsistent with his program. The Puritan was trying a lofty experiment, for which he sacrificed home and ease; but he could not try it at all without driving out from his "City of the Lord" those who differed with him.<sup>2</sup>

The leaders claimed that the charter gave them power to expel any who troubled them. Unfortunately for Puritan logic, the Massachusetts charter conferred very restricted authority in this respect.<sup>3</sup> Like all other charters, it sanctioned force against invaders; but most charters also forbade newcomers to settle without the special permission of the government. No such provision was in this charter; but none the less the Massa-

with the ministers of the churches upon occasion of any war to be undertaken, and any other weighty business, though the case should seem never so clear, as David in the case of Ziklag." History, I, 283 (1853 edition).

<sup>&</sup>lt;sup>1</sup>By 1639 the democracy had learned a lesson from their opponents, and managed sometimes to put forward democratic ministers to preach "election sermons." Find evidence in the Source Book, No. 77.

<sup>&</sup>lt;sup>2</sup> See statements by Winthrop's companions, in Source Book, No. 84.

<sup>8</sup> Source Book, No. 53.

chusetts government assumed authority to regulate immigration. In November, 1630, two "gentlemen" from England came to Massachusetts by way of Plymouth. They were introduced by Miles Standish; "but," says Winthrop, "having no testimony, we would not receive them." In the following March, the Assistants shipped back to England six men at one time, without trial, merely upon the ground that they were "unmeete to inhabit here"; while for years there were occasional entries in the records like the following: "Mr. Thomas Makepeace, because of his novile disposition, is informed that we are weary of him, unless he reform"; or "John Smith is ordered to remove himself from this jurisdiction for divers dangerous opinions which he holdeth."

All this gives the point of view from which to study the famous expulsions of Roger Williams and Anne Hutchinson.

Roger Williams was one of the most powerful and scholarly of the great Puritan clergy. He was a robust character, of the wildest contradictions. He had rare sweetness of temper; but, along with it, a genius for getting into bitter controversy. He was broad-minded on great questions; but he could quarrel vehemently over fantastic quibbles. The charitable Bradford describes him as possessing "many precious parts, but very unsettled in judgment." <sup>2</sup>

Driven from England by Laud, Williams came to Massachusetts in the supply ship in the winter of 1631 (§ 60). He was welcomed warmly by Winthrop as "a godly minister"; but it was soon evident that he had adopted the opinions of the Separatists. In the pulpit he scolded at all who would not utterly renounce fellowship with English churches, and

<sup>&</sup>lt;sup>1</sup> Cases of this kind are totally different, of course, from banishment for crime, — though it is doubtful whether the colony had even that power, any more than the modern State of Massachusetts. The extreme caution in this particular case was due to the fact that these intending settlers were of the gentry class, and therefore sure to be influential. No such care was used, ordinarily, of common men. Cf. Source Book, No. 65 (4).

<sup>&</sup>lt;sup>2</sup> Bradford didn't like Williams: "I desire the Lord to show him his errors and reduce him into the way of truth, and give him a settled judgment and constancy in the same; for I hope he belongs to the Lord." Eggleston hits off Williams' weakness well in saying that he lacked humor and sense of proportion, and "could put the questions of grace after meat and of religious freedom into the same category."

he preached against any union of church and state, holding that the magistrate had no right to punish for Sabbath-breaking or for other offenses against "the first table" (the first four of the Commandments).

At Williams' arrival, it was intended to settle him in Boston; but, with such views, Boston was no place for him. He went to Plymouth for a time, but soon returned to the larger colony as the pastor of Salem. Just at this time that town wanted more lands. The court of Assistants paid no public attention to the request, but let it be known privately that, if Salem expected the grant, it had best dismiss Williams. On his part, Williams referred to the other churches of the colony as "ulcered and gangrened," and called the clergy "false hirelings."

An opportunity soon offered to get rid of him. He publicly denied the title of the colony to its lands, affirming that the King had told "a solemn lie" in the charter in claiming right to give title. Such words, unrebuked, might embroil the little colony with the home government, with which it was already in trouble enough (§ 61). The magistrates seized the excuse, and ordered Williams back to England.<sup>2</sup> This was in winter. On account of the bitter season, the order was suspended until spring. The magistrates seem to have understood that Williams agreed meantime not to teach these troublesome doctrines. He continued to do so, however; and an officer was sent to place him on board ship. Forewarned by Winthrop, he escaped to the forest, and found his way to the Narragansett Indians. The next spring a few adherents joined him; and the little band founded Providence, the beginning of the colony of Rhode Island (1636).

Williams had few followers, and was easily disposed of. The Hutchinson episode divided the colony for a time into not unequal parts; and the majority, to maintain their tottering supremacy, resorted to dubious political devices.

Anne Hutchinson is described by Winthrop (who hated her) as a woman of "ready wit and bold spirit." She was intellectual, eloquent, and enthusiastic. Her real offense seems to have been her keen contempt for many of the ministers and her disrespect toward the magistrates; but she held religious views somewhat at variance with the prevailing ones.<sup>3</sup>



<sup>&</sup>lt;sup>1</sup> Cannot the student see, in the early history of Salem, a possible explanation why that town was more inclined to Separatist doctrines than was the rest of the Bay Colony?

<sup>2</sup> If Williams had been at one with them in religion, no doubt the magistrates would have found some nominal punishment for his overzeal,—as they did with Endicott, who just at this time cut the cross out of the English flag, calling it an idolatrous symbol.

<sup>8</sup> Just what the difference was it is hard to say. At one time Winthrop

In particular, her language regarding an "inner light" was twisted by her critics into a claim that she enjoyed special and direct revelations from the Holy Spirit. For a time Boston supported her with great unanimity, but a majority in all the other churches was soon rallied against her.

Among Mrs. Hutchinson's adherents were the minister Wheelwright, and young Harry Vane, governor at the time. In the winter of 1637. Wheelwright preached a sermon declaiming violently against the ministers of the opposing faction. For this the next General Court (in March) "questioned" him, and voted him guilty of sedition, in spite of a lengthy petition from Boston for freedom of speech. The majority adopted also To lessen the influence of heretical Boston, they a shrewd maneuver. voted to hold the approaching "Court of Elections" not at that town as usual, but at Newtown. When that Court assembled, in May, "there was great danger of tumult"; 1 but the orthodox faction finally elected Winthrop over Vane, and even dropped three magistrates of the other party off the Board of Assistants. To prevent the minority from receiving expected reinforcements from England, they then decreed that newcomers should not settle in the colony, nor even tarry there more than three weeks, without permission from the government.2

In the following summer a synod of clergy solemnly condemned the Hutchinson and Wheelwright heresies. Winthrop regarded the dissentients as "clearly confuted and confounded"; but they refused to be silenced; and at the General Court in November the majority, "finding

confessed, "Except men of good understanding, few could see where the differences were; and indeed they seemed so small as (if men's affections had not been formerly alienated . . .) they might easily have come to a reconciliation."

"Those of that side [the Hutchinsonians] grew into fierce speeches, and some laid hands on others; but, seeing themselves too weak, they grew quiet."

With naïve candor, Winthrop tells an incident which shows the unscrupulous determination of his party to seize advantage. "Boston, having deferred to choose deputies till the election was passed [i.e. the election of governor and magistrates] went home that night, and the next morning they sent Mr. Vane, the late governor, and [the other discarded magistrates] for their deputies. But the Court, being grieved at it, found a means to send them home again; for two of the freemen of Boston had no notice of the election. [Winthrop and one other had remained at Newtown and so had not been formally notified of the town meeting.] So they went all home again, and the next morning they returned the same gentlemen again upon a new election [Winthrop being notified this time]; and the Court not finding how they might reject them, they were admitted."

<sup>2</sup> No idle provision. A brother of Mrs. Hutchinson soon arrived, with many friends; but Winthrop forbade them to remain.

that two so opposite parties could not contain in the same body without hazard of ruin to the whole," determined to crush their opponents. The two leaders were banished after a farcical trial; and "a fair opportunity" for destroying their party was discovered in the petition, now some nine months old, regarding Wheelwright. The three Boston deputies, because they had "agreed to the petition," were expelled from the Court and banished from the colony; six other leading citizens were disfranchised; and the remaining signers, seventy-six in number, were disarmed. At the same time the arsenal of the colony was removed from Boston.

In this persecution the Massachusetts Puritans were not behind their age: they merely were not in advance in this respect. In England the Puritan Long Parliament in 1641, demanding reform in the church, protested that it did not favor toleration: "We do declare it is far from our purpose to let loose the golden reins of discipline and government in the church, to leave private persons or particular congregations to take up what form of divine service they please. For we hold it requisite that there should be throughout the whole realm a conformity to that order which the laws enjoin." On the other hand, a few far-seeing men did reach to loftier vision. In that same year, Lord Brooke wrote nobly in a treatise on religion: "The individual should have liberty. No power on earth should force his practice. One that doubts with reason and humility may not, for aught I see, be forced by violence. . . . Fire and water may be restrained; but light cannot. It will in at every cranny. Now to

<sup>&</sup>lt;sup>1</sup> Fifty-eight of them lived in Boston; the rest, scattered in five other towns. The Court pretended to justify this insult by referring to the excesses of the Munster Anabaptists of a century earlier (Modern History, § 208, note): "Insomuch as there is just cause for suspition that they, as others in Germany in former times, may, upon some revelation, make a suddaine irruption upon those that differ with them," runs the preamble of the disarming order, with a sly dig at Mrs. Hutchinson's "revelations."

And now Boston church was brought back into the fold. Taking advantage of the temporary absence of twelve more of the leaders of the congregation, Cotton and Winthrop succeeded in browbeating the cowed and leaderless society into excommunicating Mrs. Hutchinson. Says Winthrop, after telling the story: "At this time, the good providence of God so disposing, divers of the congregation (being the chief men of that party, her husband being one) were gone to Narragansett to seek out a new place for plantation." This assumption of divine help in a political trick is the most unlovely sentence Winthrop ever penned.

<sup>&</sup>lt;sup>2</sup> See Source Book, Nos. 84-86, on this whole matter.

stint it is [to-morrow] to resist an enlightened and inflamed multitude.... Can we not dissent in judgment, but we must also disagree in affection?" In America Roger Williams caught this truth clearly, and made it the foundation principle of his great experiment in Rhode Island (§ 86).

For Further Reading.—The suggestions on page 43 regarding use of the Source Book are particularly applicable to all the study of Massachusetts. Secondary material should include at least Channing's History of the United States, I, 322-437. The most careful constitutional study is Osgood's American Colonies in the Seventeenth Century. An anti-Puritan viewpoint may be found in Brooks Adams' Emancipation of Massachusetts. Eggleston's Beginners of a Nation has admirable treatments of the Williams and the Hutchinson episodes. Twichell's John Winthrop, Straus' Royer Williams, and Walker's Thomas Hooker are excellent brief biographies; and interesting material will be found in Alice Morse Earle's Customs and Fashions in Old New England.

# IV. OTHER NEW ENGLAND COLONIES

By 1640, when the great migration came to an end (§ 60), there were five colonies in New England besides Plymouth and Massachusetts. English proprietors had founded fishing stations on the coasts of Maine and New Hampshire, and these settlements had been reinforced and Puritanized by Hutchinson sympathizers from Massachusetts. The New Haven group of towns began with a Puritan migration from England in 1638. This colony closely resembled Massachusetts; but it had in its make-up something more of an Old-Testament commonwealth, and something less of aristocracy.

The two remaining colonies, Rhode Island and Connecticut, represented new ideals and played new parts in history. Each was born of rebellion against one part of the Massachusetts ideal: Rhode Island, against theocracy; Connecticut, against aristocracy. In the long run the great Massachusetts plan broke down; while these two little protesting colonies laid broad and deep

<sup>&</sup>lt;sup>1</sup> Soon after 1640, both these colonies came for a time under Massachusetts jurisdiction. Both were democratic in society. See the interesting "Exeter Agreement" in Source Book, No. 46, addendum.

the foundations of America. Roger Williams in Rhode Island was the apostle of modern religious liberty; and Thomas Hooker in Connecticut was the apostle of modern democracy.

#### A. RHODE ISLAND

86. Williams founded the town of Providence in the spring of 1636 (§84). From the Indians he bought a tract of land, and deeded it in joint ownership to twelve companions "and to such others as the major part of us shall admit into the same fellowship." Later comers, during the summer, signed an agreement to submit themselves "only in civil things," to orders made for the public good by the town fellowship,—in which they are freely granted an equal voice. "Civil" in this passage is used in its common English sense in that day, as opposed to "ecclesiastical." The point to the agreement is that the people did not purpose to submit to interference in religious matters by the government.

No opportunity was lost to assert this doctrine. In 1644 Williams secured from the Long Parliament a "Patent" authorizing the Rhode Island settlements to rule themselves "by such a form of civill government," and to make "such civill laws and constitutions" "as by the voluntary consent of all, or the greater part of them, they shall find most suitable to their estate and condition." Then, in 1663, when the colony received its first royal charter (§ 98), the fundamental idea was made yet more explicit:—

"Whereas it is much on their hearts," says a preamble, quoting the petition of the colonists, "to hold forth a livelie experiment that a most flourishing civill state may stand... with a full libertie in religious concernments," accordingly, "noe person within the sayd colonye, at any tyme hereafter, shall bee any wise molested, punished, disquieted, or called in question, for any differences in opinione in matters of religion, and [i.e. provided he] doe not actually disturb the civill peace." 1

<sup>&</sup>lt;sup>1</sup> Williams' opinion upon the possibility of maintaining civil order without compelling uniformity in religion is set forth admirably in his figure of a ship, where all, passengers and seamen, must obey the captain in matters of navigation, though all need not attend the ship's prayers (Source Book, No. 90).

The practice of the colony kept to the high level of these professions. During the Commonwealth, Massachusetts complained that Rhode Island sheltered Quakers, who then swarmed across her borders to annoy her neighbors. Williams disliked the Quakers heartily; but he now replied that they ought to be punished only when they had actually disturbed the peace, and not merely for being Quakers. "We have no law," ran this noble argument, "to punish any for declaring by words their minds concerning the ways and things of God." Massachusetts threatened interference. The smaller colony appealed to Cromwell, praying,—"Whatever fortune may befall us, let us not be compelled to exercise power over men's consciences."

In Rhode Island, religious freedom was not a mere means to timorous toleration, as in Maryland (§ 42). The chief purpose of this social "experiment" was to prove that such freedom was compatible with orderly government and good morals. For a time there was much of turbulence in the colony. Providence became a "crank's paradise," "New England's dumping ground for the disorderly and excentric elements of her population." But with clear-eyed faith Williams and his friends persisted, and finally the great experiment worked itself out.

# B. Connecticut

87. Democratic Purpose. — Three Massachusetts towns had been especially prominent in the struggle against aristocracy, — Watertown, Dorchester, and Newtown.<sup>2</sup> In 1635–1636, dissatisfied with their incomplete victory, the people of these towns made a new migration to the Connecticut valley, to try their own experiment of a democratic state.<sup>3</sup>

<sup>&</sup>lt;sup>1</sup> For a partial surrender of this ideal later, see § 110, note.

<sup>&</sup>lt;sup>2</sup> Some instances of Watertown and Dorchester democracy have been given (§§ 63, 68, 71). With regard to Newtown, it was said that the people there "grew very jealous of their liberties" soon after the arrival of their pastor, Hooker, from England.

<sup>8</sup> When the seceding towns enumerated their reasons for the migration, they put emphasis upon "the strong bent of our spirits to remove." This surely has reference to their dissatisfaction with the existing régime in Massachusetts. But other motives had part in the movement, — among them, a desire for the

The inspirer of this movement was Thomas Hooker, pastor of Newtown. Hooker became to Connecticut even more than Cotton to Massachusetts. These two great clerical leaders were widely different in their lives and feelings. Cotton belonged to the aristocratic English gentry. Hooker's father was a yeoman. He himself had been a menial "sizar" at Cambridge University, and his wife had been a ladies' maid. By birth and association, as well as by conviction, he was a man of the people. Over against the aristocratic doctrines of the great Massachusetts leaders, Hooker stated admirably the case for democracy.

When Winthrop wrote to him that democracy was "unwarrantable" because "the best part is always the least, and of that best part the wiser part is always the lesser," Hooker replied: "In matters... that concern the common good, a general council chosen by all, to transact business which concerns all, I conceive... most suitable to rule and most safe for relief of the whole." Winthrop and Cotton taught that the magistrates' authority had some undefined divine sanction (§ 63). Hooker preached a great political sermon to teach that (1) "the foundation of authority is laid in the consent of the governed"; (2) the choice of magistrates belongs to the people"; and (3) "those who have power to appoint officers, have also the right to set bounds to their authority."

Democratic theory found here its first clear expositor in America. Fiske calls Hooker "the father of American democracy." Alexander Johnston says, "It is under the mighty preaching of Thomas Hooker... that we draw the first breath of that atmosphere now so familiar to us; the birthplace of American democracy is Hartford."

88. Constitution and Government. — For a time the three Connecticut towns kept their Massachusetts names. Later, they were known as Hartford, Wethersfield, and Windsor. At first they recognized a vague authority in certain commissioners appointed over them by Massachusetts; but each town managed

more fertile land of the valley. The journey through the forests, with women and children, herds, and household goods, was the first of the overland pilgrimages which were to become so characteristic of American life.

<sup>&</sup>lt;sup>1</sup> This term will be familiar to students who know Tom Brown at Oxford.

<sup>&</sup>lt;sup>2</sup> Sixty years later, the gossipy Cotton Mather insinuated that Hooker instigated the Connecticut migration because he was jealous of Cotton's fame in Massachusetts. This seems to be a wholly gratuitous slander, without a particle of evidence back of it,—although many later writers have repeated it.

freely its own local affairs, and, in 1639, an independent central government was provided by a mass meeting of the inhabitants of the colony. This gathering adopted a set of eleven "Fundamental Orders," - "the first written constitution" in the modern sense.1 The document set up a plan of government similar to that which had been worked out in Massachusetts, emphasizing, however, all democratic features found there and adding a few of its own. The "supreme power of the Commonwealth" was placed in a "Generall Courte" of deputies and magistrates.2 The deputies were chosen by their respective towns. The magistrates corresponded to the Massachusetts "Assistants" or the Virginia "Council." They were nominated in a way more democratic than Massachusetts had then used, but which was soon imitated there (§ 78), and were elected at a "Courte of Elections," for one year only. by papers, just as the like officers in Massachusetts had been chosen since 1635. The governor held office for one year only. and he could not serve two terms in succession.8 He had no veto, and in two other respects he lacked authority usually possessed by an English executive: (1) the General Court could not be dissolved except by its own vote; and (2) it could be elected and brought together, on occasion, without the governor's summons.4 The right of the General Court is expressly asserted to "call into question" magistrate or governor, and even (in modern phrase) to "recall" them during their short term of office.

<sup>1</sup> The document deserves study (Source Book, No. 93, with comment).

<sup>&</sup>lt;sup>2</sup> They sat in one House until 1698. The constitution, however, guaranteed to the deputies the right of caucusing by themselves (as had come to pass in Massachusetts), and the power to judge of their own elections.

<sup>&</sup>lt;sup>8</sup> The democratic party had tried in vain to establish this rule by practice in Massachusetts.

<sup>&</sup>lt;sup>4</sup> In Massachusetts, the revolutionary General Court of 1634 had decreed that the legislature should be dissolved only by its own vote; but the right of the legislature to come together without executive sanction was a new thing in all English history. The revolutionary Long Parliament tried to establish both these democratic measures two years later in England. Cf. § 38 for Virginia. This is an early example of the way in which the newer, progressive American communities have always reacted upon the older communities.

The franchise was never restricted to church members, as in Massachusetts. At first it was regulated by the towns: any one whom a town allowed to vote in town meeting could vote also at colonial elections. In 1659 the General Court set up a property qualification: no one could be made a "freeman," according to this law, unless he were possessed of thirty pounds' worth of property, real or personal. Even in democratic Connecticut this qualification stood, with slight change, until long after the American Revolution; but it was not necessary to own land in order to vote, as in Virginia or Maryland.

89. Connecticut did not intend to reject theocracy. Hooker believed in a Bible commonwealth as zealously as Cotton did, though he understood his Bible differently on political matters. The governor had to be a member of a church; the preamble of the Orders states the first purpose of the government to be the maintaining of "the discipline of the churches, which according to the truth of the gospell is now practiced amongst us"; and the code of 1650 authorizes the government "to see [that] the force, ordinances, and rules of Christe bee observed in every Church according to his word." In actual fact, the General Court did, at times, place ministers, define their powers, and even decide who should be admitted to the sacraments. So far as the old theocracy was weakened at all in Connecticut, that weakening came incidentally, as a result of the democratic ideal.

## V. THE NEW ENGLAND FEDERATION

90. Origin. — The New England colonies had hardly established themselves in the wilderness before they began a movement toward federal union. The Connecticut valley was claimed by the Dutch of New Netherlands. Moreover, the English settlers in the valley found themselves at once involved in war with the Pequods. Connecticut felt keenly the need of protection by the other English colonies, and, in 1637, the leaders proposed to Massachusetts a federal compact.

<sup>&</sup>lt;sup>1</sup> Hooker of Connecticut was present at Boston in the synod of elders which had been called to condemn Mrs. Hutchinson, and it was at this time that the proposal was made. A sort of ecclesiastical union preceded the idea of political union.

For the moment the negotiations fell through because of States-rights jealousy. Much as Connecticut feared Dutchman and Indian, she feared interference in her own affairs hardly less, and hesitated to intrust any real authority to a central government. But, in 1643, commissioners from Massachusetts, Connecticut, New Haven, and Plymouth met at Boston, and, after considerable deliberation, organized the New England Confederation.

91. The Articles of Confederation 2 established "a firm and perpetual league." Each colony was to keep its "peculiar jurisdiction." For matters of common concern, there was created a congress of eight commissioners, two from each of the confederating colonies, elected annually, with "full power from their severall Generall Courtes respectively" to determine upon war or peace, divide spoils, admit new confederates, and manage "all things of like nature, which are the proper concomitants or consequents of such a Confederation for amity, offence, and defence, not intermedling with the Government of any of the Jurisdictions, which . . . is reserved entirely to themselves." The vote of six commissioners was to be final in all matters; but if in any case six could not agree, then the matter was to be referred to the several colonial "Courts" for negotiation between them. Special provision was made for the surrender of fugitive criminals or "servants" escaping

¹ Rhode Island and the New Hampshire towns asked in vain for admission to the union. The leaders of Massachusetts were wont to refer to Rhode Island as "that sewer"; and regarding the exclusion of New Hampshire, Winthrop wrote: "They ran a different course from us, both in their ministry and civil administration... for they... had made a tailor their mayor and had entertained one Hull, an excommunicated person, and very contentious, to be their minister."

<sup>&</sup>lt;sup>2</sup> This document should be studied (Source Book, No. 94). The date suggests an important relation between English and American history. The union of the colonies without sanction from England was really a serious defiance of authority. The United States would not permit such a subordinate union between a group of the States to-day. But war had just broken out in England between King Charles and the Puritans. Accordingly, the colonies could excuse themselves (as they did) on the ground of necessity, since the home government was temporarily unable to protect them; while

from one colony to another, and for arbitration of differences that might arise between any two colonies of the union.

92. Nullification. — This document compares well with the constitution of any earlier confederation in history. Its weak points were common to all previous unions. In practice, the great difficulty arose from the fact that one of the confederates was much larger than the others. Each of the three smaller colonies had about three thousand people: Massachusetts alone had fifteen thousand. Consequently she bore two thirds of all burdens, while she had only a fourth share in the government. The Bay Colony strove persistently to secure some precedence in the federal congress, —the right to preside or to vote first, — and in 1648 she made an earnest demand for three commissioners. The smaller states unanimously resisted such claims.

Under these conditions, the Bay Colony soon became dissatisfied. In 1653 six of the federal commissioners voted a levy of five hundred men for war upon New Netherlands. Massachusetts, which was to furnish most of the men, felt least interested in the war; and her General Court refused to obey the requisition. In the language of later times, she nullified the act of the federal congress.<sup>1</sup>

After this, the commissioners were plainly only an advisory body. Then the absorption of New Haven by Connecticut, in 1662–1664, weakened the confederation still further; and it finally disappeared when Massachusetts lost her charter in 1684 (§§ 98–101).

For Further Reading. — See suggestions on page 109. Exercise. — Who chose the governor of Massachusetts colony in 1629?

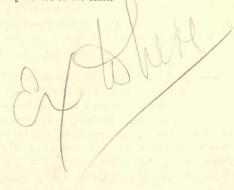
really they were influenced still more by the fact that it could not interfere. The preamble to the Articles states all other motives for the union admirably, but, naturally, it omits this last consideration. This is an illustration of the fact that official "sources" sometimes omit the most significant matters, — which the historian must read in, between the lines

<sup>1</sup> Source Book, Nos. 95, 96.

in 1631? in 1635? Who was the first governor of the colony? of the Company? When was representative government established in Massachusetts? After that event, why were the deputies more democratic than the Assistants? (Four or five distinct reasons.) When did the two orders separate into two Houses? What intermediate forms of organization did they try between a one-House and a two-House plan? While they sat together, what were the chief matters of difference between them? How did Cotton's doctrine that it was wrong not to reelect a magistrate year after year differ from our modern idea of "civil service reform "? A man arrives in Boston in 1635: under what conditions and by what steps can he become a "freeman"? By what different devices was a union between church and state maintained in Massachusetts? Give instances of political influence by Massachusetts ministers. guish between the ideals of Massachusetts, Connecticut, and Rhode Island. Distinguish between the ideals of Connecticut and Plymouth. powers have been mentioned as exercised in Massachusetts which were not authorized by the charter of 1629? Name four limitations upon the usual power of a colonial governor in the Connecticut Fundamental Orders. How many of the "theme sentences" at the head of chapters or divisions can you repeat? What other phrases or passages in your reading have you found worthy of exact memorizing? instances in the history so far of the aristocratic classes trying indirectly to regain power which they had agreed to surrender. What distinction can you make, for Massachusetts history, between the colonial franchise and the local franchise? If the class have access to the Source Book, let members phrase questions based upon material found there and not covered in this text, - especially as to town government.

Let each member of the class make a list of ten questions on New

England for brief answers by others of the class.



San Mater Horses and Outs.

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#### CHAPTER III

# ENGLISH AMERICA FROM 1660 TO 1690

#### I. GENERAL TENDENCIES

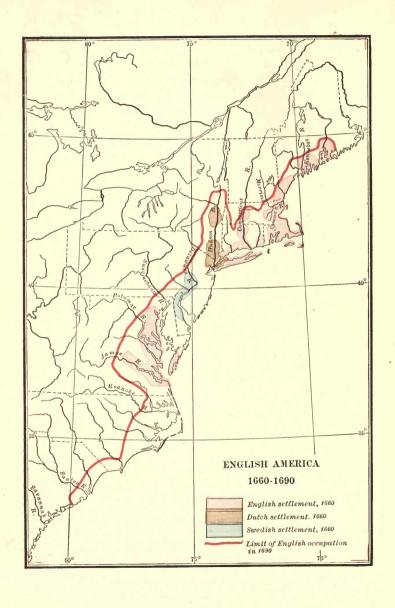
93. The "Restoration" of Charles II in England began a new era for the English race; but the two divisions of Englishmen on opposite sides of the Atlantic encountered very different fates. In England itself, the second Stuart period (1660–1688) was a time of infamy and peril. In America, it was singularly progressive and attractive. For the first time the government of the home land took an active part in fostering the plantations; and the separate colonies first began to have a common history.

Three great characteristics mark the period:

- a. English territory in America is greatly expanded and consolidated.
- b. The English government establishes its first real "colonial department," to regulate colonial affairs and to draw the plantations into a closer dependence upon England.
- c. This new attitude of the home government, both in its wise and unwise applications, stirs the colonists to a new insistence upon their rights of self-government.

Thus there develops an "irrepressible conflict" between the natural and wholesome English demand for imperial unity and the even more indispensable American demand for local freedom. Of this struggle the culminating and most picturesque episodes are Bacon's Rebellion in Virginia (§ 105) and the Andros incident in New England (§ 100). The conflict was intensified by evil traits on both sides, — by the personal despotic inclinations of the sovereign and of some of his chosen agents in the colonies, and by pettiness and ignorance on the part of the colo-

and ignorance and jectings on the part of off The chief character of the period the struggle colonists to present self government. In 1660 - they had two Estiges of land one as The Hudson and the other around the cheshealow. years liter they had a solid strip from the Canal to the Lavernah new colonies the Carolinas, venns, vania, and new york, new georg and beloware and her English. " a dipartment for Colonyal affairs was establish and they had to look after the polyces of the colonies and foreign countries; get copiered whe colonies charters and a general way, try to bring the colonies together under or beloand one way of government so that it would essent administer fristice. The there things that tepraturent was trying to accomplish was: - highest chonial administration 3 - plan for better military defe



nists; and each party was blinded to what was good in the aims of the other. Still, the unquenchable determination of the colonists to manage their own affairs, even though inspired in part by narrow prejudice, is the central fact of the period. If we characterize the period by one phrase, we may best call it the era of the struggle to preserve self-government.

- 94. Territorial Expansion.—In 1660 the English held two patches of coast on the continent of North America; one, about the Chesapeake, the other, east of the Hudson. These two groups of settlements were separated by hundreds of miles of wilderness and by Dutch and Swedish possessions. Moreover, for more than twenty years no new English colony had been founded. Twenty years later the English colonies formed an unbroken band from the Penobscot to the Savannah.¹ To the south of Virginia the Carolinas had been added (1663); to the north of Maryland appeared the splendid colony of Pennsylvania (1681); while meantime the rest of the old intermediate region had become English by conquest (New York, New Jersey, and Delaware), and all the colonies had broadened their area of settlement toward the interior. Population rose from 60,000 in 1660 to 250,000 in 1690.
- 95. A Colonial System. This transformation, from isolated patches of settlement into a continuous colonial empire, brought home to English rulers the need of a uniform colonial policy and of new machinery for carrying out a policy. The colonial "Council" of Charles I (§ 61), and a similar body appointed by the Long Parliament, had exercised no real control. In 1655 the conquest of Jamaica by Cromwell's government called forth from one of his officials certain "Overtures touching a Councill to bee erected for foraigne Plantations," suggesting various measures to make the colonies "understand . . . that their Head and Centre is Heere." After the Restoration this document seems to have secured the approval of the King; certainly much of it is incorporated in the Instructions issued by him for his new "Councill appointed for Forraigne Plantations" in 1660.

<sup>&</sup>lt;sup>1</sup> See map facing page 147.

This body contained many of the greatest men of the time. It was instructed to inform itself of the state of the plantations and of the colonial policies of other countries; to secure copies of the colonial charters and of the laws and regulations in force under them; and to have a general oversight of all colonial matters. In particular it was to endeavor "that the severall collonies bee drawn . . . into a more certaine, civill, and uniform waie of Government and distribution of publick Justice, in which they are at present scandalously defective."

The creation of this "colonial department" marks the definite establishment of a colonial policy which had its roots, in nearly all respects, in the Commonwealth period and which endured for a century longer. The fact that it remained so consistent, amid the many vicissitudes of English politics, "whether the ruler was called Oliver or Charles or William or George," suggests strongly that it grew out of actual needs. During the period now under consideration, the Council was hard-working, honest, and well-meaning; but it was necessarily ignorant of the affairs, and out of touch with the people, that it was trying to rule.

Its three great objects were: (1) greater uniformity and economy in colonial administration; (2) more efficient military defense; and (3) new commercial regulations, in the interest of the empire as a whole (§ 96).

96. Navigation Acts. — In the seventeenth and eighteenth centuries, European countries valued colonies (1) as a source of goods not readily produced at home, and (2) as a secure market for home manufactures. Consequently each colonizing country adopted "navigation acts" to restrict the trade of its colonies exclusively to itself. Without the prospect of such restrictions, it would not have seemed worth while to any one to found colonies at all. By modern standards, all these commercial systems were absurd and more or less tyrannical; but, on the commercial as on the political side, the English system was more enlightened, and far less selfish and harsh, than that of Holland or France or Spain.

<sup>&</sup>lt;sup>1</sup> In 1674 the first "Council for Foreign Plantations" was succeeded by the "Lords of Trade," and in 1696 by the permanent "Board of Trade and Plantations." The first commission, of 1660, is in the *Source Book*, No. 99. See also Nos. 110, a and 111, a for work of the Council.

At the other end of the scale was Spain.¹ For two hundred years all commerce from Spanish America could pass to the outer world only through Spain, and through only one Spanish port, — first Seville, and afterward Cadiz. Worse still, until 1748, goods could be imported from Europe through only the one favored port in Old Spain, and, for all the wide-lying New Spain in North and South America, to only two American ports, and at special times. Two fleets sailed each year from Spain, — one to Porto Bello on the Isthmus, for all the South American trade; the other to Vera Cruz in Mexico. All other trade, even between the separate Spanish colonies, was prohibited under penalty of death. From the most distant districts, —Chile or Argentina, — goods for export had to be carried to Porto Bello to meet the annual fleet. Then was held a forty-days' fair, to exchange the European imports for precious metals, tropical woods, and hides.

By this arrangement, in many parts of South America, the prices of European commodities were increased to five or six times the natural amount, while the products with which the colonies paid were robbed of value by the cost of transportation. There were no legal restrictions upon raising cattle in the vast plains of the Argentine, but all natural outlets for the products were closed; and when those products had been carried across the continent to Peru, thence by sea to Panama, again across the Isthmus to Porto Bello, and (one chance a year) from that port to Seville, their value had vanished. In the early years of the eighteenth century, at Buenos Aires, an ox was worth a dollar, and a sheep three or four cents; and values had risen to this point only because of a considerable contraband trade that had sprung up, in spite of the terrible penalties. To go from Spain to America, except to a few favored places, was not merely to go into exile, but to renounce civilization. The restrictions on trade prevented the colonists from starting with the achievements of European civilization, and drove them back, in many cases, to the barbarism of the natives.

Compared with this sort of thing, England's policy was modern. English statesmen did not aim consciously to benefit the home island at the expense of the plantations. They hoped to make the parts of the empire mutually helpful. Their extreme intra-imperial system of "protection" was designed to render the empire as a whole self-supporting and economically independent of the rest of the world.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup>This paragraph is condensed from the admirable account in Bernard Moses' Establishment of Spanish Rule in America, 20-26 and 285-292.

<sup>&</sup>lt;sup>2</sup> Much the same *motives* as those which influenced Clay and Calhoun in establishing "protection" in the United States after the War of 1812 (§ 279).

As a continuous system, this policy began with the so-called "First Navigation Act" of 1660.\(^1\) This law had two purposes. The original and main one was semi-military, to increase the shipping of the empire. For forty years, most European goods, even most English goods, had been carried to the colonies by Dutch vessels. England's navy had sunk low. But the safety of the island and of her colonies rested upon command of the seas. In that day, commercial vessels were transformed easily into war vessels; and to build up a merchant marine was a natural measure of naval protection. Accordingly this law provided that all trade between England and the colonies should be carried only in ships owned, and, for the most part, manned, by Englishmen or colonials.\(^2\)

This part of the Act was eminently successful. Holland's carrying trade, and her naval supremacy, received a deadly blow. Nor did these provisions in any way discriminate against the colonies in the interest of England. Rather it directly benefited them, especially the northern ones. Temporarily, trade suffered from lack of ships, and from consequent high freights; but the Act created the great shipbuilding industry of New England. In less than twenty years the colonies were selling ships to England. By 1720 Massachusetts alone launched 150 ships a year, and the shipbuilders of England were petitioning parliament, in vain, for protection against this invasion upon their ancient industry. The carrying trade of the empire also passed largely into the hands of New Englanders; and this trade was protected by the English war navy, to which the colonists contributed only a few masts from their forests.

A second part of the law (added at the last moment by amendment) somewhat restricted exports. Certain enumerated

<sup>&</sup>lt;sup>1</sup>The germs of the policy are found in the tariff provisions of the first charters and in the restrictions on the early Virginia tobacco trade; and it appears well developed in a law of the Long Parliament in 1651 (never enforced), which was the immediate model for the Act of 1660.

 $<sup>2^{**}</sup>$  . . . ships which truly . . . belong to the people of England or Ireland . . . or are built of and belonging to any of the said Plantations or Territories . . . and whereof the master and three fourths of the mariners at least are English." The word "English" always included all the subjects of the English crown, and therefore the colonials. In this case the word was specifically defined in this sense by a supplemental Act two years later. See Source Book for both laws (No. 100,  $\alpha$  and note).

articles, — sugar, tobacco, cotton-wool, ginger, fustic and other dyewoods, — were thereafter to be carried from a colony only to England or another English colony. These "enumerated articles" were all semi-tropical; and tobacco was the only one produced for export at that time on the continent of North America. New England could still send her lumber, furs, fish, oil, and rum to any part of the world — if only they were carried in her own or English ships. For the restriction on tobacco, too, England gave an offset. She forbade her citizens to raise that commodity or import it from foreign colonies, so as to give Virginia and Maryland a monopoly of her market.

The import trade was first restricted by the Navigation Act of 1663. Thereafter, it was ordered, all European goods must pass to the colonies only through English ports. This act was designed to keep colonial trade from falling into the hands of other countries. It increased the profits of English merchants; but, to guard the colonists against paying double taxes, a rebate of the English import duties was allowed on all goods reshipped for the colonies.

This was as far as the system went in the Stuart period. (1) The subtropical colonies could export their products only to England or other English colonies; (2) all imports to the colonies must come through England; (3) all ships in the colonial trade must be English or colonial. A Massachusetts ship could still carry any product of that colony to any part of the world, exchange for goods there, carry these goods to England, and then "reship" them for an American port, or exchange them for other European goods in the English markets, to be then carried to America. Says Channing (United States of America, Cambridge series, 32): "It is impossible to say whether the net result of the system... was in favor of Great Britain or the colonies." Certainly, whenever the restrictions on the import trade were seriously troublesome, they were evaded by smuggling. In 1700, it is estimated, one third the trade of New York was of this character.

<sup>&</sup>lt;sup>1</sup> In 1660 tariff duties, both for the colonies and for England, had been imposed on a long list of goods. In the colonies, however, this Act was always practically a dead letter. There was no proper machinery to enforce it; and no serious attempt was made to do so.

For Further Reading.—The best brief treatment of the general phases of this period is Andrews' Colonial Self-Government, 3-40. See also Channing's History of the United States, II, 1-13. Osgood's English Colonies, III, gives much material.

# II. THE COLONIES BY SECTIONS, 1660-1690

#### A. NEW ENGLAND

97. Early Disturbances. — At his accession, Charles II found himself beset with accusations against Massachusetts. 1656 Quakers had appeared in that colony. Three, who persisted in returning after banishment, had been hanged, while several others, women among them, had been flogged brutally. The Quakers complained to Charles, and he ordered the colony to send all the imprisoned Quakers to England for trial. the men of Massachusetts were resolved to permit no appeal from their own courts. They chose rather to empty the jails before the royal order came, and temporarily to drop the persecution. The King was irritated also by learning that Massachusetts had usurped the right to coin money (the famous "Pine Tree Shillings"), and that two of the "regicide" judges who had passed sentence on his father were sheltered in New England. Worst of all, perhaps, the Bay Colony disregarded the Navigation Acts, and, in 1661, even adopted a daring resolution styling such legislation "an infringement of our rights."

during the register that

Afterward, for a time, the persecution was renewed with Charles' approval, though no more executions took place. Imprisonments and whippings were the common fate of Quakers in England and in all the other colonies of that time except Rhode Island. It must be borne in mind that these Quakers were not the quiet, sober brethren of later times. Many of them were half-mad fanatics. "It was a little hard," says Lowell, "to know what to do with a woman who persisted in interrupting your honored minister in his sermon, calling him Priest of Baal, and breaking empty bottles over his head" (in sign of his emptiness). None the less, the three executions remain a bloody blot on the fame of Massachusetts. Nowhere else was a death penalty inflicted by law. It does seem a little strained, however, to speak, as a recent historian does, of "wholesale hangings" of Quakers in Massachusetts. The Source Book, No. 88, gives some interesting documents from the Quaker side.

For the moment, however, Charles contented himself with demanding (1) that an oath of allegiance be taken in the colony; (2) that the Episcopalian service be permitted; and (3) that the franchise be extended to all men orthodox in religion and "of competent estate." The colony complied with the first demand, ignored the second, and evaded the third. An act of General Court did provide that a non-churchmember might be made a freeman, if his orthodoxy and good character were testified to by the minister of his town and if he paid a ten-shilling "rate" (local tax). But the Puritan ministers gave few such certificates to those outside their own folds, and it is doubtful whether under the existing system of taxation many men were called upon to pay ten shillings in a single rate. At all events, the number of freemen did not materially increase.

98. New Liberal Charters. - Connecticut, New Haven, and Rhode Island were all without any lawful standing in England. The people were squatters, and the governments unauthorized. Now that order was restored in England, it was plain that something must be done. All three colonies sent agents to England to secure royal charters. Connecticut and Rhode Island were successful almost beyond belief. They were left with very complete self-government, to be exercised practically as during the preceding period. In neither colony did the crown reserve the appointment of a governor or of any other important official. This remarkable liberality was due, presumably, partly to the careless good nature of Charles in the early portion of his reign; partly to the general enthusiasm among English officials just then for all colonial projects; and partly, perhaps, to a willingness to build up other New England governments to offset the stiff-necked Bay Colony.

All that the Massachusetts charter had become through its unsanctioned transfer to America and the stress of circumstances,—this and more these new charters were from the first. They created the body of settlers a "corporation upon the place," and sanctioned advanced democratic organization. (Source Book, Nos. 97, 98.) With good reason they were cherished and venerated. At the time of the Revolution they re-

ceived the name of constitutions; and they continued in force without other alteration, in Connecticut until 1818, and in Rhode Island until 1842.

A glance at the map shows sufficient reason why New Haven and Connecticut should not both receive charters. The question was which should swallow the other. New Haven used little diplomacy in her negotiations; <sup>1</sup> and possibly she was too much of the Massachusetts type to find favor in any case. Her territory was included in the Connecticut grant, and thus was begun the process of consolidation which was soon to be tried on a larger scale.

99. Continued Friction with Massachusetts. — Church of England men in Massachusetts continued to complain that for thirty years they had been deprived of civil and religious rights; and in 1664 Charles sent commissioners to regulate affairs in New England. Receiving scant welcome in Massachusetts, they passed on to the smaller colonies and to the conquest of New Netherlands from the Dutch, with whom England was now at war. Connecticut, Rhode Island, and Plymouth recognized the authority of the commissioners cordially,<sup>2</sup> and permitted them to hear appeals from colonial courts.

This matter of appeals (§ 98) was a chief point in their instructions. It was to be the means of enforcing royal authority. But upon their return to Boston, they were completely thwarted. After some weeks of futile discussion, the commissioners announced a day when they would sit as a court of appeals. At sunrise on that day, by order of the magistrates, a crier, with trumpet, passed through the city, warning all citizens against recognizing the court. No one of the discontented ventured to disobey the stern Puritan government, and the chagrined commissioners returned to England, recommending the overthrow of the Massachusetts charter.

<sup>&</sup>lt;sup>1</sup> See Johnston's Connecticut for material for an interesting report.

<sup>&</sup>lt;sup>2</sup> In New Hampshire they were hailed as deliverers by certain "petitioners," presumably Episcopalian, who complained of being "kept under Massachusetts by an usurped power, whose laws are derogatory to the laws of England. Under which power, five or six of the richest men of the parish have ruled and ordered all offices, civil and military, at their pleasure, engrossing into their own hands the greatest part of the lands within this plantation."

But the next year the victorious Dutch fleet was in the Thames. Then came the great London fire and the plague, with various political distractions for Charles at home. The Colonial Board did repeatedly order Massachusetts to send an agent to England to arrange a settlement; but the colony procrastinated stubbornly, and for ten years with success. In 1675, however, the great Indian outbreak, known as King Philip's War, weakened Massachusetts. Just at this time, King Charles, entering upon a more despotic period at home, began to act more vigorously toward the colonies also; <sup>1</sup> and in 1684 the highest English court declared the charter of 1629 forfeited and void.

100. Rule of Andros. - The Lords of Trade had decided that to have so many independent governments "without a more immediate dependence upon the crown" was "prejudicial" to England's interest. They drew up a plan for the union of Massachusetts, Plymouth, and the Maine and New Hampshire towns, under one strong royal government. They would gladly have included Connecticut and Rhode Island, and so consolidated all New England into one province; but charters stood in the way. Unlike Massachusetts, the two smaller colonies had given little excuse for legal proceedings against them. Still, writs of quo-warranto were issued against their charters, but success in even the Stuart courts was doubtful. Meantime Charles died; and, with high-handed tyranny, James II forced the union. He appointed Sir Edmund Andros governor-general of all New England, and instructed him to set aside the legal governments of Connecticut and Rhode Island by force.

The original plan of the Lords of Trade had included one elected legislature for consolidated New England, and a royal governor-general. The King struck out the representative element, leaving the government despotic 2 as well as unified.

<sup>&</sup>lt;sup>1</sup>The Source Book (No. 110, a) gives Randolph's report of 1676.

<sup>&</sup>lt;sup>2</sup>This was done despite the declaration of the attorney-general in England that the colonists had the right "to consent to such laws and taxes as should be made or imposed on them."

He also once more extended the territory to which the plan should apply. He was already proprietor of New York and New Jersey, and these colonies were soon consolidated with New England under the rule of Andros.

Andros was a bluff, hot-tempered soldier, but not brutal, nor tyrannical beyond his instructions. He was commander of the soldiery he brought with him and of the colonial militia: and. with the consent of an appointed council, he was authorized to lay taxes, make laws, administer justice, and grant lands. His management of military affairs was admirable, and the colonists gave him scant credit for the services he rendered in protecting them against serious Indian danger. In other matters it was inevitable that he should clash violently with the settlers. No one act offended the Puritans more bitterly than his not unreasonable insistence that Episcopalian services should be held on at least part of each Sunday in one of the Boston churches. Land titles, too, were a fruitful source of irritation. In granting lands and recording titles, the colonies had paid little attention to the forms of English law or to any desirable precaution against future confusion.1 Andros and his council now provided for surveys, and compelled old holders to take out new deeds, with small fees for registration. They treated all the common lands, too, as crown land.

More serious to the modern student seems the total disappearance of self-government and even of civil rights. Andros ordered the old taxes to be continued. Some Massachusetts towns resisted, notably Ipswich, where a town meeting voted that such method of raising taxes "did infringe their liberty as free-born English subjects." The offenders were tried for "seditious votes and writings," not before the usual courts, but by a special commission. The jury was packed and browbeaten<sup>2</sup>

<sup>&</sup>lt;sup>1</sup>Cf. Source Book, No. 89.

<sup>&</sup>lt;sup>2</sup> The presiding judge bullied jury and defendants, telling them that "the laws of England would not follow them to the ends of the earth. . . . The King's subjects in New England did not differ much from slaves, and the only difference was that they were not bought and sold."

into a verdict of guilty, and leading citizens who had joined in this opposition to tyranny were imprisoned and ruinously fined.

This period of absolute government lasted two years and a half. It seems beyond doubt that rebellion was preparing. Under ordinary conditions a rising would have been put down bloodily. Thanks to the "Glorious Revolution" of 1688 in Old England, the rising when it came was successful and bloodless. In April, 1689, came the news that James II was a fugitive. The new king, William of Orange, had issued a "Declaration," inviting all boroughs in England, and all officials unjustly deprived of charters and positions by James, to resume their former powers. The colonists assumed that this sanctioned similar action by them also. The people of Boston and the surrounding towns rose at once, seized the fort and a war vessel in the harbor, imprisoned Andros, and reestablished the government according to the old charter. like manner, Connecticut and Rhode Island revived their former charter governments.

101. The Settlement of 1689–1691. — Though a constitutional monarch, William III would have been glad to continue part of the Stuart policy in America. He wished, so far as possible, to consolidate small jurisdictions into large ones, and to infuse vigor and unity into the administration by keeping the executive and judiciary in each colony dependent upon himself. The Connecticut and Rhode Island charters stood in the way of a complete rearrangement along these lines. The King's legal advisers assured him that those grants remained valid, since the legal proceedings against them had never been completed. Massachusetts, however, did not fare so well. Her charter had been surrendered, and there was no legal obstacle to such a reorganization there as the King and the Board of Trade desired. The colony strove strenuously and skillfully 2 to obtain a re-grant

<sup>&</sup>lt;sup>1</sup> Modern History, §§ 249, 250.

<sup>&</sup>lt;sup>2</sup>To conciliate William, the promised reform in the franchise was at last made effective. The certificate of a clergyman as to the applicant's fitness was not required, and the taxpaying qualification was reduced from ten shil-

of the original patent; but the best it could do was to accept a new document, and the Charter of 1691<sup>1</sup> created a government more like that of Virginia than like that of Connecticut. Six features of the new charter may be noted.

- $\alpha$ . The crown reserved the appointment of the governor, whose powers were greatly augmented.
- b. The representative Assembly nominated the Council, but these nominations were valid only after the governor's approval.
- c. The governor could adjourn or dissolve the Assembly at will, and he held an absolute veto upon all its acts. The crown reserved a further veto upon legislation for three years after its passage.
- d. The higher judiciary were appointed by the governor; and appeals from the colonial courts to the king in council were provided for, in cases where the sum in dispute amounted to £300 (cf. §§ 97, 99, and 110, note).
  - e. Religious freedom for all Protestant sects was promised.
- f. The franchise was placed upon a property basis. All men owning freeholds of forty shillings annual value, or possessing forty pounds in personal estate, became voters.

The last two provisions in great measure overthrew the old theocracy; the first four to all practical intents made Massachusetts a royal province. At the same time, Maine, Plymouth, and Nova Scotia were included in the Massachusetts jurisdiction, and New Hampshire became a royal province.

For Further Reading on New England from 1660 to 1690, excellent material will be found in Andrews' Colonial Self-government (41-73, 252-272) and in Channing, II (65-79, 156-185). The Source Book has been referred to freely in the footnotes.

lings to four. Then, in a few weeks, 909 new freemen were admitted — more than in the preceding sixteen years.

Notwithstanding this sudden access of liberality, there were within the colony considerable bodies of people dissatisfied with the Puritan rule. Several petitions were sent to the King against the renewal of the old charter,—one with signatures of two hundred and fifty persons who call themselves "Merchants and inhabitants of Boston." Nos. 86 and 87 of the Source Book indicate the growth of such dissatisfaction.

1 Source Book, No. 110, b.



# B. VIRGINIA, 1660-16901

102. The "Cavaliers." — During the Commonwealth and the early years of the Restoration, Virginia enjoyed a rapid growth and teeming prosperity. When the attempts of the Puritan Commonwealth at constitutional rule in England gave way to the despotism of the sword under Cromwell and his major generals,² the oppressed royalist gentry turned their faces toward the New World, — as the oppressed Puritan party had done in their hour of gloom a generation earlier. At the Restoration, Charles II did little for the dispossessed Cavaliers (except for a relatively small number of courtiers), and the movement to America received new impetus. Practically all this emigration went to Virginia. Between 1650 and 1670, the population of that colony rose from 15,000 to 40,000; and more than half of this increase must have come from immigration.

No other migration of that century, except the ten-year Puritan movement, brought to American society so valuable a contribution. It was now that Virginia became the land of the Cavaliers. In this period, there appeared in America the ancestors of our Revolutionary Harrisons, Lees, Masons, Madisons, Marshalls, Monroes, Nelsons, Nicholases, Pages, Peytons, Pendletons, Randolphs, Wythes, Washingtons.

The party epithets, Cavalier and Roundhead, should not blind us to the intimate likeness between the gentry elements in Massachusetts and Virginia. The "Cavalier" emigrants were not graceless, riotous hangers-on of the court, slavishly subservient to despotism, as jealous ignorance has sometimes pictured them. They were God-fearing, high-minded gentlemen, who had loved liberty only a degree less than they had feared anarchy,—men of the same social stamp and habits of thought as the Winthrops, Dudleys, and Humphreys of the Bay Colony, and the Hampdens, Pyms, and Eliots in England, with whom they had stood shoulder to shoulder there for a generation of constitutional struggle before the Civil War, and from whom they separated at last with mutual grief when the great war came to sunder friends and set brother against brother.

Reread §§ 22-37 before taking up this division.

Modern History, § 248.

These country gentry fitted into the rural organization of Virginia as natural leaders, and made there an attractive and lovable society, somewhat less active intellectually than the Puritan leaders, less stimulated by the friction of town life and by religious controversy, less inclined to mark out new ways in state or church; but instinct with the best traditions of rural England in England's greatest century, — robust, dauntless, chivalrous, devout. The earlier migration to Virginia (§ 18) had given that colony a noble history; but it was this Cavalier immigration of the fifties and sixties which a century later was to produce Virginia's splendid galaxy of Revolutionary leaders, and, a little later still, to justify to the Old Dominion her proud title, "Mother of Presidents."

103. Political Reaction. — In 1660 a new Virginia Assembly was elected, in the flush of enthusiasm for the Restoration. Naturally it brought to the front the hot-heads and extremists among the Cavalier party. Berkeley, moreover, in this second term (cf. close of § 38) was an old man, tortured by ill health, arrogant, peevish, vindictive, — an easy tool for a ring of greedy favorites. His administration (1660–1677) lasted so long, too, that the Council, to an unusual degree, became dependent upon him instead of acting as a check. The period, accordingly, was one of misgovernment and political reaction.

The governor and Council had ceased, of course, to be elective (§ 37). Berkeley received a commission from King Charles which he regarded as superseding his election by the Assembly (§ 38) and as freeing him from the limitations that accompanied that election. According to the royal instructions, he resumed the veto and the ancient power of dissolving Assemblies at will. These changes restored the government to the conditions preceding the Commonwealth.

But this was far from all. By a new law of 1670, all non-freeholders were disfranchised; and, by a wholly arbitrary stretch of authority, Berkeley in effect disfranchised all voters for half a generation. Since 1628, Assemblies had been elected at least once in two years. But in England the "Cavalier Parliament" of 1660 was kept alive by King Charles for eighteen years without a new election. In Virginia, Berkeley followed this example, keeping his "Cavalier Assembly" of 1660 without a new election until 1676.



<sup>&</sup>lt;sup>1</sup> The franchise in Virginia had been exceedingly liberal. All free white males seem to have had votes,—including servants, when their terms had

The restrictions upon democracy so far described concern the "central government." In local government, the loss was even more serious. The colony contained two kinds of smaller units,—counties and parishes. The parish was not important in matters of government. In the main it had to do with church affairs. Still (so close were church and state), the parish government cared for the poor, punished drunkenness and other minor offenses, and had some other functions that now belong to towns.¹ Its government had been democratic: it now became oligarchic.

The governing body of the parish was the vestry. Until 1645 the vestry meeting had been open to all free white males ("open vestry"). It then became representative, — a law providing for the election from time to time in each parish of twelve vestrymen to regulate parish matters. In 1662 a law of Berkeley's Assembly turned the representative vestry into the closed vestry. The position became an office for life; and, when a vacancy occurred, it was filled, not by popular election as before, but by the remaining vestrymen.

If the parish was less important than the New England town, the county in Virginia was vastly more important than the county in New England. It had charge of almost all local taxation and the expenditure of local funds, and it passed "by-laws" of considerable importance.<sup>2</sup> At first these matters were managed by the county court, — a meeting of all free white males. After the Restoration, however, most of these powers were transferred from the open court to a Board of

expired. In 1655, indeed, a law was passed restricting the right to "householders," but it was repealed the next year on the ground that it was "hard and unagreeable to reason that any shall pay equal taxes and not have a voice in elections." (Source Book, No. 35; cf. also No. 105 for the law of 1670.) The law of 1670 tried to justify itself by English precedent: "Whereas the laws of England grant a voyce in such election only to such as by their estates . . . have interest enough to tye them to the endeavor of the publique good . . ." etc.

<sup>&</sup>lt;sup>1</sup> See an excellent account in Fiske's Old Virginia, II, 97.

<sup>&</sup>lt;sup>2</sup> In 1632 the county became the unit for the choice of representatives to the General Assembly.

eight "Justices" appointed by the governor from the more important landowners of each county.

Along with this political reaction went many other serious faults. Taxes were exorbitant, and were expended wastefully. There was much unjust "class legislation," such as the exemption of counselors and their families from taxation. The sheriffs (appointed by the governor on the advice of the county justices) and other law officers charged oppressive fees for simple and necessary services. The governor granted to his favorites vexatious trade monopolies, which indirectly robbed the people.

104. Social and Economic Conditions.<sup>2</sup> — The forty thousand inhabitants of 1670 included two thousand Negro slaves and six thousand White bond servants. There were also several thousand ex-servants who had not acquired land and who remained as laborers on the plantations of others. The rest of the population consisted of a few hundred large planters and a large body of small planters.

Discontent was chronic in the servant class, and now the small planters also were restless. They were practically unrepresented, and they felt rightly that they were overtaxed and discriminated against. The navigation laws (§ 96) of the mother country intensified their grievances. The lack of vessels to transport tobacco to the English market was felt in only slight degree by the large planters, whose crops would be taken care of first; but, for a time, the small planter often found his entire crop left on his hands, or (if he shipped at all) his small profits were eaten up by the increased freights.

<sup>2</sup>Cf. Source Book, No. 104 (Berkeley's Report of 1671).

¹ This aristocratic type of local government had already come into force in England, to continue there until well toward the close of the nineteenth century. Cf. Modern History, §§ 538, 540. Few Virginia counties of that time contained more than four parishes, and the Justices usually were also vestrymen. Thus, in a county of three or four thousand people, only forty or fifty men had any legal control in local government. The other men still could come to the county courts as spectators, but their political power was limited to casting a vote now and then in the election of a new Assembly.

105. Bacon's Rebellion was an armed 1 rising against "special privilege." The occasion of this remarkable movement was an Indian outbreak which Berkeley's inefficient government permitted to run without check. Finally the savages ravaged an outlying plantation of Nathaniel Bacon, a newly arrived energetic young planter. Bacon raised troops and punished the Indians terribly in two campaigns. Berkeley declared the young captain and his followers rebels, because no commission for military action had been given them. There followed an obscure quarrel over a commission extorted from the governor, recalled, and again secured; and this quarrel merged into a civil war. From a valiant Indian fighter, Bacon is suddenly transformed into a popular champion and a democratic hero. Finding arms in their hands, he and his party tried to use them for social and political reform. The fundamental cause of the rebellion was not disgust at the inefficiency of the government against the Indians, but social discontent.

Berkeley was deserted. During much of the struggle, he could hardly muster a corporal's guard. The aristocracy, however, did not join Bacon. They were too much opposed to rebellion, and too jealous toward the democratic features of the movement; so they simply held aloof from either side. But Bacon was supported by the great body of small planters.

These honest, respectable people were villified, of course, especially after the failure of the rebellion, by aristocratic contemporaries. One Virginian gentleman refers to them as "Tag, rag, and bobtail." Another declared that Bacon "seduced the Vulgar and most ignorant People (two thirds of each county being of that Sorte) Soe that theire whole hearts and hopes were set upon him." Another describes the rebels as "a Rabble of the basest sorte of People whose condicion was such as by a chaunge could not admitt of worse . . . not 20 in the whole Route but what were Idle and will not worke, or such whom Debaucherie or Idle Husbandry has brought in Debt beyond hopes or thought of payment." Every democratic movement in history has been similarly regarded by its adversaries.

<sup>1</sup> Cf. § 64, opening.

When the rebellion had just begun, the popular clamor forced the governor to dissolve his fossilized Assembly. In the election of a new one, the restrictions upon the franchise were largely ignored.¹ This body is known as Bacon's Assembly, and its admirable attempts at reform are called Bacon's Laws. Representative vestries, for short terms, and manhood suffrage were restored; a representative Board was established in each county to act with the Justices in all matters of taxation and local legislation; the exemptions of the privileged families were abolished; fees were strictly regulated; and various minor abuses corrected. This legislation shows why Bacon's party wished to seize power.²

Bacon himself seems, as a matter of fact, to have had little to do directly with the Assembly, but he stood for an even more democratic program. Soon after the meeting of the Assembly he held a convention of his party at "the Middle Plantation," and there issued a proclamation in the name of "the Commons of Virginia," signing it "Nath Bacon, Gen'l By the Consent of the People." This document denounced the group of Berkeley's favorites as "sponges" that had sucked up the public treasure and as "juggling parasites," and declared all who sheltered them to be "traitors to the people."

While Bacon was still in full tide of success, a sudden fever carried him off — and the Rebellion collapsed, for want of a leader. Berkeley took a shameful vengeance, until removed by the disgusted king.

106. Aristocratic Reorganization.— There followed a series of grasping or inefficient governors during the rest of the Stuart rule, with constant friction between them and the colonists. At the king's direction

<sup>&</sup>lt;sup>1</sup> One peevish gentleman declared, "Such was the prevalency of Bacon's Party that they chose, instead of Freeholders, Free men that had but lately crept out of the condition of Servants (which were never before Eligible) for theire Burgesses, and such as were eminent abettors to Bacon,—and for faction and ignorance fitt Representatives of them that chose them."

<sup>&</sup>lt;sup>2</sup> See Source Book, No. 106, for these laws. Cf. also No. 108 for explanations by the counties after the Rebellion had been crushed.

<sup>&</sup>lt;sup>8</sup> Cf. Source Book, No. 107.

tion, the Assembly declared void all of the reforms in Bacon's laws (Source Book, No. 109). The minor ones were reënacted by subsequent Assemblies; but the limitation of the franchise to freeholders and the closed vestry became permanent features of Virginian life. This aristocratic organization in politics, and especially in local government, was to continue for two centuries.

At the close of the Stuart period, representative government won a significant victory. In 1686 Governor Effingham tried to make the Burgesses consent to the levy of taxes by governor and Council. This demand was resisted in a stormy session, during which the Burgesses even denied the governor's veto power and "boldly disputed the king's authority." The next year King James approved the governor's position. But the Assembly still resisted; and its right to control taxation was promptly confirmed by William III after the English Revolution.

107. Excursus on the Franchise. — In spite of the restriction of the franchise to freeholders, a large part of the population took part in elections, when there were any elections. There was none of the voting upon the many questions of local government, with general discussion, that marked the New England town; nor was there the frequent choice of the many local officials that characterized New England politics. But, all the more, perhaps, the poorer Virginian was inclined to use his one political power, — that of voting once a year or once in two years for a member of the Assembly. The elections took place at the county courts, which became social gatherings also, with games and feasting; and the speechmaking on such occasions by rival candidates afforded no mean political training. Statistics seem to prove that a larger portion of the free white population voted in Virginia, through most of the colonial period, than in New England, though upon a much smaller range of matters and much less often.

Indeed, after a few years, the limitation to freeholders was for a time generally evaded. Large landowners deeded small tracts of land to their hangers-on,—one or two acres of wild land to a man,—so as to make them "freeholders" within the letter of the law. There was no true democracy in this arrangement, of course. It merely intensified the aristocratic character of Virginian politics, and helped limit political struggles to the families with the largest following of clients. The abuse was so marked that in 1736 the term "freeholder" in the franchise law was defined to mean the owner of one hundred acres of wild land, or of fifty acres of improved land, or a house and lot in town, the house to be not less than twenty-four feet square. Shortly before the American

Revolution these qualifications were cut down each one half. In this reduced form they remained the law in Virginia until 1830.

Exercise. — Review §§ 75, 76, on local government, with §§ 103-106. A freeholder came of age in 1661 in Virginia: how old must he have been before he could cast his first vote? (§ 103.) Let members of the class propose lists of questions, naming the parts of this book or of the Source Book where answers may be found.

For Further Reading.—Andrews, Colonial Self-Government, 202-231; Fiske's Old Virginia, II, 1-130, 174-267; Channing, II, 82-91. The Source Book contains much material. No. 108, not referred to in notes above, is especially valuable.

## C. NEW COLONIES

(In the opinion of the author, Division C should receive only one reading, with explanation of difficult points.)

108. New York. — In New Jersey and the Carolinas, during this period, the settlers waged a sturdy constitutional struggle for self-government, frequently ignoring or opposing the proprietary claims. But, instructive as the story is, it cannot be told here. Some features of New York and Pennsylvania history, however, demand attention.

While New York was the Dutch New Netherlands, there had been two distinct periods in its history. Until 1626 it was a huge plantation (like early Virginia) under the arbitrary rule of the "Director General" and his appointed Council. After 1626 this authority was modified by the presence of the almost independent governments of the patroons, — great landed proprietors with extensive jurisdiction over the settlers on their lands. But while the government had lost in efficiency and unity, it had not gained in democracy. Says Doyle (English Colonies, IV, 3): "The Dutch settlers succumbed to difficulties which the English escaped, because the latter easily, almost spontaneously, adopted machinery which enabled the popular voice to make itself heard; while the Dutch in like circumstances were feeling for such machinery helplessly and blindly."

The only promising movement for self-government under Dutch rule came from English immigrants. Four English towns had been established on Long Island, while it was claimed by Connecticut. These afterwards passed under the jurisdiction of New Netherlands. In 1653 a meeting of representatives from various parts of the colony was held, to demand from Director Stuyvesant a measure of self-government. This meeting was inspired by the English towns, and it was dominated by

their delegates. The "remonstrance" to Stuyvesant was drawn in the English language; the signatures are largely English names; and the document contains the democratic English phrases of that day. Stuyvesant, in explaining the matter to the authorities in Holland, wrote: "It ought to be remembered that the Englishmen, who are the authors and leaders in these innovations, enjoy more privileges than the Exemptions of New Netherlands grant to any Hollander."

Before true representative government grew out of this agitation, came the English conquest of New Amsterdam in 1664. King Charles gave the conquered province to his brother James, Duke of York, for whom it was renamed. The population was mainly non-English; and, as a conquered people, it had no constitutional claim to political rights. Accordingly, the charter to James gave him arbitrary power, making no reference to any share by the people in the government. Spite of this, and of the long Dutch precedent, the governor, Nichols, found himself obliged to satisfy the Long Island towns by promising them privileges "equal to those in the New England colonies," and it soon proved necessary to introduce a representative Assembly (1682). Down to the Revolution, however, the governor had more extensive prerogatives in New York than in any other colony.

109. Founding of Pennsylvania. — William Penn is one of the striking figures in history. Son of a famous and wealthy admiral, and himself an intimate at court, he risked his inheritance, as well as all prospect of worldly promotion, at the call of conviction, in order to join the Quakers. Happily for the world, his material resources were not taken from him after all, and he kept the warm friendship of men so different from himself as the royal brothers, Charles and James. Through his connection with the Duke of York, Penn helped some Quaker friends organize the colony of New Jersey, and thereby became interested in trying a "Holy Experiment" in a colony of his own. The Council for colonial affairs had already become jealous of proprietary grants; but James readily gave Penn the Swedish settlements on the Delaware; and, inasmuch as he wished a still freer field to work in, he secured from King Charles, in consideration of a large debt due him from the crown, a grant of wild territory west of the Delaware between New York and Maryland. The

<sup>&</sup>lt;sup>1</sup>Cf. Source Book, No. 102. Owing to geographical ignorance, the grant conflicted with those of Massachusetts and Connecticut, and especially with those of New York and Maryland. The adjustment with Maryland was not finally accomplished until 1767, when Mason and Dixon, two English surveyors, ran the boundary line that goes by their name.

charter of 1680 gave Penn the usual proprietary jurisdiction (§ 39) with some limitations. Settlers were guaranteed the right of appeal from colonial courts to the king in council, and all colonial laws were to be subject to a royal veto. The Quaker colony was required to tolerate the established English church. Especial emphasis was placed upon obedience to the navigation laws; and a unique clause renounced all authority on the part of the crown to tax the colonists without the consent of the Assembly or of parliament,—an indirect recognition of the possibility that parliament might tax the colony.

Pennsylvania knew none of the desperate hardships that make so large a part of the story of the earlier colonies. The wealthy Quakers of England and Wales helped on the enterprise cordially. The Mennonites (a German sect somewhat resembling Quakers) poured in a large and industrious immigration.<sup>4</sup> There were no Indian troubles, thanks to Penn's wise and just policy with the natives. Population increased rapidly, and material prosperity was unbroken. By 1700 (when only twenty years old) the colony stood next to Virginia and Massachusetts in wealth and numbers. Unlike other colonies, except conquered New York, the population was at least half non-English from the first, — Welsh, German, Swedes, Dutch, French, Danes, and Finns.

110. Democratic Progress. — Penn took no thought to extend his own powers. His ideas, for the time, were broad and noble; but many of his devices in government did not work smoothly. Perhaps he gave too little value to easy-running political machinery.

"The nations want a precedent for a just and righteous government," he wrote.... "The people must rule." And again, in a letter to a friend,

<sup>&</sup>lt;sup>1</sup> The question of appeals arose soon after the Restoration (§§ 97, 96). The grant of New York to James in 1664 contained the first charter provision for such appeals; the Penn charter was the next opportunity; and the same provision was found in the Massachusetts charter of 1691 (§ 101).

<sup>&</sup>lt;sup>2</sup>This restriction appeared also in the next charter granted by the crown, that of Massachusetts in 1691 (§ 101).

<sup>&</sup>lt;sup>8</sup> The Delaware settlements were not covered by the charter. For them a separate form of government was devised, though they belonged to the same proprietor.

<sup>&</sup>lt;sup>4</sup> A settlement of German Mennonites voiced the first protest against slavery in America in 1687: "Those who steal or rob men, and those who buy or purchase them, — are they not all alike? Here is liberty of conscience . . . and here ought to be likewise liberty of the body. . . . To bring men hither or to robb or sell them against their will, we stand against."

"I propose... to leave myself and successors no power of doing mischief—that the will of one man may not hinder the good of a whole country." To the expected settlers he proclaimed (1681), "You shall be governed by laws of your own making, and live a free and, if you will, sober and industrious people... Any government is free to the people under it, whatever be the frame, where the laws rule and the people are a party to those laws; and more than this is tyranny, oligarchy, or confusion... Let men be good, and the government cannot be bad."

In 1683 Penn issued a charter to the colonists,—the famous "Frame of Government." The "freemen" (landholders or taxpayers) were to choose a "Council,"—one third retiring each year,¹—to prepare all laws. The proposals were to be posted in public places for a month, and then accepted or rejected (not discussed or amended) by a one-House "General Assembly" elected by the freemen. The proprietor reserved no veto power (except upon amendments to this constitution) and little more voice in the government than belonged to any elected member of the Council.

But even with a proprietor so unselfish, and with settlers as good as Penn's, the colony saw many troubled years and much bad government. In 1684, Penn was called to England to defend his colony against the territorial claims of Lord Baltimore, and he delegated all his powers to the Council. Dissension of the bitterest character broke out at once between that body and successive Assemblies; and each of the two bodies sought to encroach upon the authority of the other, heedless of Penn's entreaties for peace. In the midst of these troubles, came the English Revolution of 1688. Penn's proprietary rights were taken from him for a time, because of his friendship with the deposed James, and Pennsylvania was governed by royal appointees. In 1694, however, the colony was restored to Penn. The question at once arose whether this act restored also the Frame of Government. The people, through the Assembly, forced the governor (appointed under royal rule and temporarily

<sup>&</sup>lt;sup>1</sup>This is the first example in American or English history of a permanent political body renewed one part at a time, like our National Senate to-day.

continued in office by Penn) to agree to a new and exceedingly radical constitution. Penn, however, refused to sanction this instrument. In 1699 Penn returned to the province, but, because of attacks in England, was able to remain only two years. The great event of this period is the adoption of a new fundamental law, — the Charter of 1701, granted by Penn and accepted by the colonists.

This document (Source Book, 103, b) remained the constitution of Pennsylvania until 1776. Dr. Channing calls it "the most famous of all colonial constitutions, because it contained . . . many of the most important features of all workable written constitutions." The Council became an appointive body, with executive powers only, -to assist the governor. The governor was appointed by the proprietor, and had a veto upon all legislation. The elected one-House Assembly, however, had complete control over its own sittings. The charter fixed a date for the annual meeting, and provided that the Assembly should be dissolved only by its own vote. Freedom of conscience was guaranteed, as in the earlier charters from Penn, to all who believed in "one Almighty God"; and political power was only restricted to those who accepted Christ as the "Savior of the World." - a clause which excluded Jews. 1 These religious provisions were placed beyond amendment, so far as the wording of the charter could accomplish such an arrangement. All other parts of the charter could be amended by the joint action of the proprietor and six sevenths of the Assembly. This was the first written constitution to provide a definite machinery for its own amendment.

For Further Reading.—Channing's History of the United States, II, 94-129, 313-340, and Andrews' Colonial Self-Government, 75-128, 162-201.

Exercise. — Name ten dates, worthy memorization, in the seventeenth century. Point out which ones stand for some important relation between American and English history.

<sup>&</sup>lt;sup>1</sup> Pennsylvania was the only colony in which Roman Catholics had political rights in the eighteenth century. Rhode Island disfranchised them in 1719.

# CHAPTER IV

# Ald y Dw PROVINCIAL AMERICA, 1690-1760

#### MATERIAL PROSPERITY

111. Population; Non-English Immigration; New Frontiers. — Despite the frequent wars, the seventy years between the English Revolution and the American Revolution (1690-1760) were a period of marvelous prosperity for the colonies. The older districts grew from straggling frontiers into rich and powerful communities marked by self-reliance and intense local patriotism. A new colony, Georgia, was added on the south (1732), and new frontiers were thrown out on the west. Population rose sixfold - from 250,000 at the opening of the period (§ 94) to 1,600,000 at the close; and large non-English elements appeared, especially in the middle colonies.

The most numerous of these were the German Protestants, driven from their homes in South Germany by religious persecution and the wars of Louis XIV. This immigration began to arrive about 1690. mainly to New York and the Carolinas and especially to Pennsylvania (§ 109). To the latter colony alone, more than 100,000 Germans came between 1700 and 1775. A smaller but exceedingly valuable contribution to American blood was made by the Huguenots, driven from France after 1683 by the persecution of Louis XIV.1

112. The "West" and the Scotch-Irish. - Another immigration of this period belongs especially to a new geographical section. The first frontier in America was the "tidewater" region, extending some fifty miles up the navigable streams. Near the mouth of such rivers, or on the harbors along the coast,

<sup>&</sup>lt;sup>1</sup> The Huguenots came mainly to the Carolinas; but some settled in New England, New York, and Virginia. The names Paul Revere, Peter Faneuil, and Governor Bowdoin suggest their services in Massachusetts.

arose the first line of cities,—Boston, Portsmouth, Providence, New York, Philadelphia, Annapolis, Charleston. By 1660 (that is, by the end of the first half century of colonization), when the first frontier had been transformed into settled areas, a second thin frontier had pushed on fifty or a hundred miles farther inland, to the eastern foothills of the Appalachians. Here, during the next half century, at the head of navigation and on the site of abundant water power, appeared a second line of towns,—Trenton, Princeton, Richmond, Raleigh, Columbia,—while the frontier passed on over

Trenton

Trenton

Piniadelphia

Ralgies

Augusta

35

Columbia

Augusta

36

25

THE WATERCOURSE FALL LINE.

the mountain crest.

So far, settlement had been fairly continuous. Frontier had kept in touch with settled area. Now, however, about 1700, when the third frontier leaped the first range of mountains, into the long, narrow valleys running north and south between the Alleghenies and the Blue Ridge, it left a tangled wilderness between itself and civili-This condition zation. created a new sectionalism between East and West; and the tendency

was intensified by the further fact that this third frontier (like most of the successive frontiers for more than a hundred years) was made by a new type of American settler, the Presbyterian Scotch-Irish.

These were really neither Scotch nor Irish in blood, but Saxon English. For centuries their fathers had lived in the Lowlands of Scotland as frontiersmen against the Celtic Scots of the Highlands. In the reigns of

Elizabeth and James they had colonized northeastern Ireland, — frontiersmen again against the Catholic and Celtic Irish. But after the English Revolution, the new English navigation laws crushed their linen manufactures, — the chief basis of their prosperity there, — and the English laws against the Irish Catholics bore heavily also upon these Presbyterian "dissenters" from the English Church. So, soon after 1700, with hearts embittered toward England, they began once more to seek new homes, — this time in America. The volume of this immigration increased rapidly, and it has been estimated that between 1730 and 1750 it amounted to an average of 12,000 a year. In numbers and in significance, the Presbyterian English of the West rank in our nation-making alongside the Episcopalian English of Virginia and the Congregational English of New England.¹

The Scotch-Irish came to America mainly through the ports of Philadelphia in the north and Charleston in the south. Multitudes stopped in the settled areas; but a steady stream passed on directly to the mountains and over them to the frontiers. Reaching the Appalachian valleys in the far north and south, the two currents drifted toward each other, until the center of the Scotch-Irish population was found in the Shenandoah valley in western Virginia; and thence, just before the American Revolution, under leaders like Boone and Robertson, they began to break through the western wall, to make a fourth frontier at the western foothills and farther west, in what we now call Kentucky and Tennessee (§§ 163–172).

Unlike the areas east of the mountains, this new frontier had its real unity from north to south. Politically, it is true, the settlers were divided by the old established colonial boundary lines, running east and west; but, from New York to Georgia, the people of this new West were one in race, religion, and habits of life, — hard, dogged farmers, reckless fighters

In both Scotland and Ireland, there had been, no doubt, some mixture of blood; but the dominant strain in the "Scotch-Irish" remained English. Non-English elements have played a great part in the making of America. In the colonial day, Frenchman, Dutchman, German, gave us much of our blood and even our thought; and later, Norseman, German, Irishman, and, last of all, Slav and Latin, have made the sinew of our national life. But after all, the forces that have shaped that life have been English, especially the three English elements here mentioned. Besides the general services hinted at in the text, the Scotch-Irish have furnished many leaders to our national life,—such as Andrew Jackson and "Stonewall" Jackson, Horace Greeley, Jefferson Davis, Patrick Henry, William McKinley.

<sup>&</sup>lt;sup>2</sup>A New England immigration was to come into Ohio and the northern parts of Illinois and Indiana, after the Revolution and in the first part of the next century; but the Scotch-Irish made the great Middle West and Southwest.

and hunters, tall and sinewy of frame, saturnine, restless, dauntless of temper. Other immigrants to the New World had forced themselves into the wilderness, for high reasons, with gallant resolution, against natural inclination. But these men loved the wild for itself. Unorganized and uncaptained, armed only with ax and rifle (in the use of which weapons they have never been equaled), they rejoiced grimly in their task of subduing a continent. First of American colonists did they in earnest face away from the Old World, and begin to look west toward the glorious destiny of the new continent.

113. New Viewpoints. — Thus the first half of the eighteenth century saw the mingling of the elements of a new nation, — young, strong, unconscious as yet of its power. About 1700, the point of view for the study of our history shifts. In the seventeenth century, the colonists were still Englishmen in outlying America; in the eighteenth, they had become colonial Americans, still dependent, it is true, upon England.

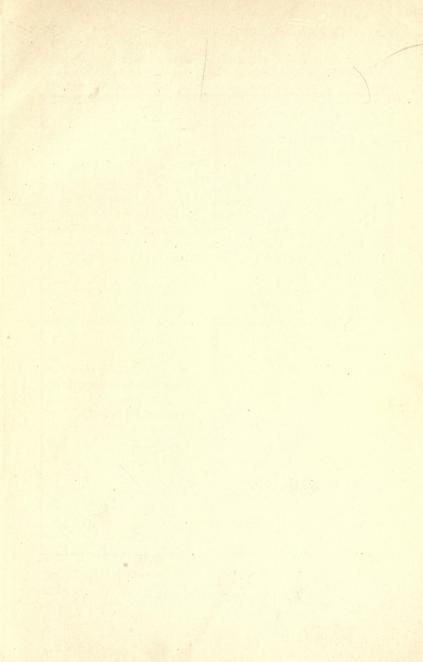
To this dependence the colonies were held partly by affection for the mother country, partly by mere custom, and mainly by the pressing need of protection against the French terror on the north.

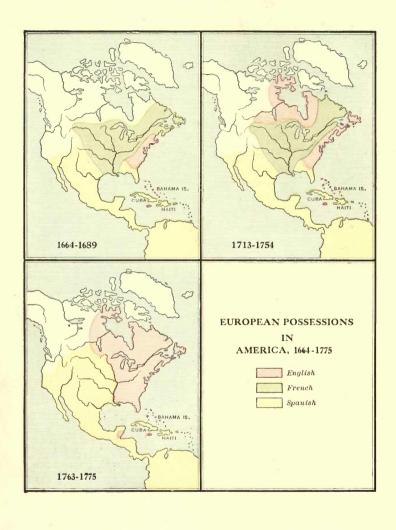
The three phases of our history in this period are the material growth just treated, the constitutional agitation (§§ 115-119), and war. For the first two a somber background is furnished by the third. The almost incessant war with the French and their dreaded Red allies was a condition not for a moment to be forgotten by a colonist who moved his home in search of cheaper or better lands, or who took part in a contest between an Assembly and royal governor over supplies or privileges.

# II. INTERCOLONIAL WAR

114. From 1689 to 1763, with slight pauses for breath, France and England wrestled for the splendid prize of the Mississippi valley. To tell the story in detail is not the province of this volume. Indeed, for the most part, the decisive campaigns were fought on European fields. The dissensions between various English colonies, the lack of a central governing authority, and lack of agreement in a given colony between governor and Assembly many times cost dear, — as did also the blundering stupidity of

Till about 1850, they were the typical American frontiersmen. Other elements mingled with them, of course; but their stock showed a marvelous ability to assimilate these other elements,—German, French, Welsh, and even the real Irish and the real Scotch, when these came, in small numbers, just before the Revolution.





a long series of third-class English generals in America. But at bottom the conflict was not determined on the battlefield. It was a contest between two opposing civilizations; and the fundamental weaknesses of France have already been briefly suggested. In the closing chapter of the story, — the Great French War, 1754–1763, — the interest heightens, centering about two heroic antagonists. But England's command of the seas made it impossible for France to send to *Montcalm* the supplies he pled for; and *Wolfe's* victory at Quebec only showed to the world that the struggle was over. Far-reaching causes had determined that *North America was to be English in speech and institutions* (§§ 14-16).

By the final treaties England received Florida from Spain, and Canada and the eastern half of the Mississippi valley from France. The rest of the valley France ceded to her ally, Spain; and, except for some West Indian islands, she ceased to be an American power. North America was left to the vigorous English commonwealths and to decaying Spain, with

a dividing line, temporarily, at the great central river.

# III. CONSTITUTIONAL DEVELOPMENT

115. General Features. — From the English Revolution to the American Revolution, constitutional history is dull and obscure. These seventy years have been called "a forgotten half century." There are no brilliant episodes, no heroic figures, and no new principles; but much is done in extending institutions already established and in learning to work them. The central theme is the continuance of that inevitable conflict that appeared in the preceding period (§ 93, c). Under the pressure of ceaseless war, England felt, even more keenly than before, the need of controlling her colonies effectively; and the colonies, realizing dimly their growing strength, felt more and more their right to regulate their own affairs.

The projects of the English government to extend its influence in the colonies had two phases, commercial and political, considered in the next two sections.

# A. NEW NAVIGATION ACTS

.116. Restriction of Manufactures. — To the "enumerated articles" to be exported only through England (§ 96), rice was added in 1706, and copper, naval stores, and beaver skins in

1722. More important was a new kind of restriction upon American industry, - a series of attempts to restrict or prohibit manufactures. In 1696, a parliament of William III forbade any colony to export, even to England or to another colony, any woolen manufacture. In 1732, came a similar prohibition as to hats.<sup>2</sup> Bad as this was, the restrictions upon manufacturing so far were indirect: no colony had been forbidden to make any article for its own consumption. But in 1750 (almost at the close of the period) the erection or preservation of steel furnaces and slitting mills was prohibited altogether. Unlike the unpleasant features of the earlier commercial restrictions, too. this law could not be evaded. The half dozen iron mills that had appeared in the northern colonies were closed, and all manufacture of iron ceased, except for nails, bolts, and the simpler household and farm implements, such as in that day were turned out at the village smithy.3

It has been claimed, with some force, that none of this legislation actually brought serious loss to the colonists. Franklin argued, as late as 1760, that it had not been hurtful. Beaver, he said, were gone, and the colonists had already been obliged again to import more hats than they made; while other manufactures, without interference from England, had failed time and again to maintain themselves in competition with the allurement of free land. However this be, these three English laws were selfish and sinister, — the most ominous feature in all American colonial history. They must have become bitterly oppressive ere long, had the

¹It was soon arranged that the colonists might send rice directly to the southern European countries, which were the only important customers,—so that the restriction amounted to little so far as that article was concerned. Copper was hardly mined as yet. England did not want other countries to get American naval stores,—as a matter of military protection,—but she compensated the colonies by paying generous bounties upon such materials sent to her.

<sup>&</sup>lt;sup>2</sup> Making hats from beaver skins had been a prominent industry in some northern colonies and in Pennsylvania.

<sup>&</sup>lt;sup>8</sup> Attempts were made to forbid even these simpler manufactures, but such bills never passed parliament. It should be noted, too, that the vicious act of 1750 did take off English import duties on American pig iron and bar iron, so as to give colonial raw iron an advantage over foreign iron in English markets. To Virginia and other southern colonies, where the production of iron had never been carried beyond this stage, this law was a positive benefit.

colonists continued under English rule; and at the time they deserved to the full the condemnation visited upon them by the great English economist, Adam Smith: "Those prohibitions, perhaps without cramping the colonists' industry or restraining it from any employment into which it would have gone of itself, are only impertinent badges of slavery, imposed upon them without sufficient reason by the groundless jealousy of the manufacturers of the mother country."

### B. ATTEMPTS AT CLOSER POLITICAL CONTROL

117. Efforts to make all Colonies into Royal Provinces. — For sixty years Virginia was the only royal province. In 1685 New York was added to this class, when its proprietor became king. William III, at the opening of his reign, made Massachusetts practically a royal government (§ 101); and, by a stretch of authority, he cut off New Hampshire from Massachusetts jurisdiction and gave it a like form.

Then came a series of attempts at even more rapid change. The Board of Trade found in the remaining colonies many just grounds for complaint. Besides the old offenses (evasion of navigation laws, refusals to permit appeals to England, discrimination against the English Church, etc.), the Board was annoyed by Rhode Island's stubborn persistence in a shameful trade with pirates, by the refusal of Connecticut to recognize the authority of royal officers over her militia in war against the French, and by the absence in Pennsylvania and New Jersey of any militia whatever for the common

¹ Unhappily the colonists seem to have felt aggrieved quite as much by the well-intended, if not always tactful, efforts of England to preserve American forests from careless and greedy destruction, and to prevent the issue of dishonest colonial paper money. Another source of justifiable irritation, however, was the "Sugar Act" of 1733 (Source Book, No. 100, c). This Act placed duties on sugar and molasses from "foreign plantations" so high as to prevent the colonists from getting these articles any longer from the French West Indies, if the law had not been rendered nugatory by smuggling. The purpose of the law was to compel the colonies on the continent to buy their sugar from another English colony, Jamaica, where the sugar planters were in financial distress, and it did aim to take from the mass of American colonists for the benefit of a specially privileged class. It is said that the law was suggested by a Boston merchant who owned plantations in Jamaica.

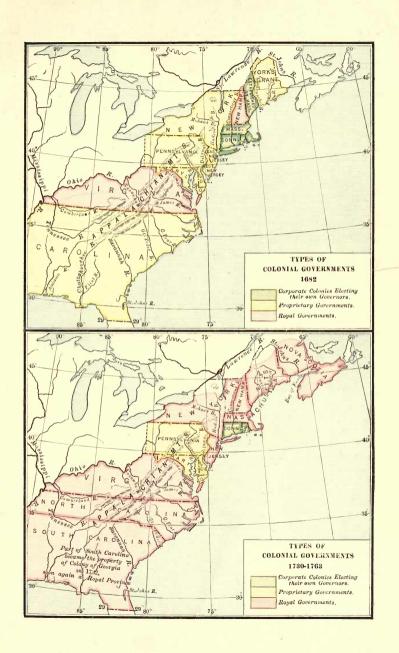
defense. Experience under the Stuarts had shown that writs of *quo warranto* against colonial charters were not to be depended upon; and so, in 1701, in a forceful paper the Board recommended that the eight charter and proprietary governments be "reunited" to the crown by act of parliament.

A bill to this effect was introduced and pushed vigorously. It passed two readings, with little opposition; but the hurried departure of King William for a campaign in Ireland forced a timely adjournment of parliament. The following year another bill was being prepared, when the death of the King forced a dissolution. In the next reign these efforts were renewed. But time had been given for the proprietors in England and the colonial governments in America to rally all their influences, public and secret; and the movement came to nothing.<sup>1</sup>

The English government then fell back upon the early policy of William III, and attacked colonial grants one by one, as occasion offered. Before 1730, by taking advantage of a legal flaw, a serious disorder, or of the willingness of an embarrassed proprietor to sell, it had extended the list of royal provinces so as to include New Jersey and North and South Carolina. Out of the last named, Georgia was carved for a proprietary province a little later; but it, too, soon came under a royal government.

The usual distinction between royal, proprietary, and charter colonies is not of great consequence. Down to the Revolution, Connecticut and Rhode Island did keep their right to elect all branches of their government. Pennsylvania, not classed as a charter colony, possessed, through its grant from Penn, the next freest constitution, in the security of its legislature from executive interruption (§ 110). Massachusetts, with its charter, had less valuable privileges, and resembled a royal province in all practical respects. But the really important thing about the colonial governments was their resemblances. All had representative Assemblies, with no small degree of control over their governors (§ 119); and all had the pri-

<sup>&</sup>lt;sup>1</sup> The report of the Board of Trade is in the Source Book (No. 111). Greene's Provincial America (58-62) gives an excellent account.



when somalized to regetty that there are let a little efects somewhat have intelled any men hermine destruction of their subs. The grayed overmed, that married out from of govern not yoursell to broughtimes, thought seeme there while process consist of the same of the same of the constant good, they they are a notained by their as well much

vate rights of Englishmen, — jury trial, free speech, freedom from arbitrary imprisonment, — which were not found in the colonies of any other country then or for long afterward.

118. Attempts at Closer Royal Control. — The next step in the new colonial policy was to attempt closer control in several respects, even in the charter and proprietary colonies: (1) to require royal approval for the appointment of proprietary governors; (2) to place the militia of charter colonies under the command of a neighboring royal governor; (3) to set up appointed admiralty courts, without juries, to prevent evasion of the navigation acts; (4) to compel colonial courts to permit appeal to the privy council in England; (5) to enforce a royal veto upon colonial legislation; <sup>2</sup> and (6) to free royal and proprietary governors from dependence upon colonial Assemblies.

Even in a royal province, the governor often showed little desire to carry out English instructions in conflict with colonial views. Partly, this was because the governor, living in close touch with the colonists, was likely to see their side of the case; but more commonly it was because his salary depended upon his keeping up a good understanding with the colonial legislature. Every governor, in the words of a colonist, had "two Masters, one who gives him his commission, and one who gives him his Pay." If the Assembly passed a bill distasteful to the home government, the governor could veto it; but the Assembly might then cut down his salary, or leave it altogether out of the vote of supply, — which, according to good English custom,

<sup>&</sup>lt;sup>1</sup> Special report on Connecticut's resistance to Governor Fletcher of New York. Cf. Source Book, No. 111. d, for Fletcher's aggrieved letter.

<sup>&</sup>lt;sup>2</sup> In theory, the King always possessed a veto, just as in parliament; but, even in Virginia, so early a royal colony, he rarely exercised it until after Bacon's Rebellion. Thereafter, it was expressly reserved in all colonial grants (as in that to Penn and in the Massachusetts charter of 1691), and the right was emphasized in every commission to a governor of a royal province (cf. Source Book, No. 112). True, a colonial law went into effect pending adverse royal decision; but the veto was no mere form. Scores of important statutes were disallowed, sometimes after they had been in force for years. Fifteen Massachusetts laws of 1692 were vetoed in 1695; fifty Pennsylvania Acts in 1706; and, as late as 1754, eight statutes of North Carolina.

<sup>8</sup> For illustrations, cf. Berkeley's Report (Source Book, No. 104).

was always the last business of the session. To free the governors from this dependence upon the popular will, the English government tried for many years, but tried in vain, to secure from the Assemblies a standing grant for such salaries.<sup>1</sup>

In 1727, Burnet became governor of Massachusetts. His predecessor, because of quarrels with the Assembly over preservation of the forests, had received no salary for some years. Burnet at once laid before the Assembly his instructions to secure from that body a fixed grant of £1000 a year. Refusal would be taken by the King as "a manifest mark of undutiful behavior." Burnet was popular, as well as able; and the Assembly voted him not £1000, but £1700, for one year. The governor indignantly refused to be "bribed" into proving false to his instructions. The Assembly raised their offer, still in vain. For three years the struggle continued. Then Burnet was killed in an accident, and the contest was renewed with Governor Belcher,—a far less able man. In want of money, Belcher finally petitioned the crown to allow him to receive the annual grant temporarily, while the question was being settled. The English government assented. Massachusetts had won.

119. Constitutional Gains. — To the credit of the monarchs, no attempt was made, in this long contest, to suppress any colonial Assembly. Indeed, while the English government did in some respects extend its powers in the colonies, still the Assemblies also made substantial gains. Everywhere the elected Houses claimed the powers and privileges of the English House of Commons. Especially did they enlarge their control over finances. After long struggles, they excluded the appointed Councils from any authority over money bills; 3 and they passed

<sup>1</sup> For illustrations, cf. Berkeley's Report (Source Book, No. 104).

<sup>&</sup>lt;sup>2</sup>The Assembly seized the chance to show that it had not been haggling to save money. It gave Burnet a magnificent public funeral, at a cost of more than a thousand pounds, and voted two thousand pounds to his children.

During each of the three years of the struggle, the Boston town meeting stepped in to hold up the hands of the Assembly (Source Book, No. 111, c). On the third occasion, the town meeting bluntly called upon the Assembly "to oppose any bill . . . that may in the least bear upon our natural rights and charter privileges, which, we apperhend, the giving in to the King's instructions would certainly do."

<sup>&</sup>lt;sup>8</sup> Just as in England, the appointed and hereditary House of Lords was no longer permitted to amend or reject bills of supply.

beyond all English precedent in the creation in each colony of a Treasurer, elected, not by the governor, but by the Assembly.<sup>1</sup>

The whole constitutional conflict was one of the chief preparations for the Revolution; and the training secured by the colonists in the struggles explains the skill with which they waged the long opposition to George III, from 1760 to 1775, before the struggle became open war. The English historian, Doyle, says of the period 1690–1760: "The demands made upon the colonists, [and] the restrictions imposed upon them, were often in perfect conformity with equity and reason. [But] it can seldom be said that the method of enforcement [by England] was sympathetic, or even intelligent. . . . The temper of mind, the habits of thought and action, which made successful resistance possible [at the time of the Revolution] had their origin in these disputes which had kept alive an abiding spirit of bitterness and vindictiveness between the colonists and those set in authority over them, and had furnished the former with continuous training in the arts of political conflict."

Private rights, too, were more clearly defined and extended. With the approval of the crown lawyers, the doctrine was established that the Common Law of England, with all its emphasis on personal liberty, was also the common law of the colonies even without express enactment.

At least one advance was made in the colonies over English custom in the matter of personal liberty — namely, a greater safety for a free press. In 1735, a tyrannical governor of New York removed the chief justice of the colony from office for personal reasons. John Zenger in his Weekly Journal published vigorous criticism of this action, declaring that, if unchecked, it threatened slavery to the people. Zenger was prosecuted for criminal libel. In England at that day such a prosecution,

¹ This step grew out of an earlier practice of occasionally making the Speaker of the Assembly the guardian of funds appropriated for some particular purpose. Sometimes an Assembly encroached upon the authority of the royal governor even further, by turning over executive functions to commissions appointed by itself. In this appearance of new officers alongside the governor, we have the germ of the character of our later State executives in America,—several heads (governor, auditor, treasurer, etc.), each independent of the others. This is by no means the only case where a movement essential to liberty in one era has burdened later times with an unsatisfactory heritage.

backed by the government, was sure of success. In New York, the new chief justice, too, showed a determination to secure a conviction. He tried to limit the jury's function to deciding only whether Zenger was responsible for the publication (a matter not denied), reserving to himself wholly the decision whether the words were punishable. This was the custom of English courts in such cases to a much later period. But Zenger's lawyer in a great speech argued that public criticism is a necessary safeguard for free government, and that, to prevent the crushing out of a legitimate and needed criticism, the jury in such a trial must decide whether the words used were libellous or true.

This cause, said he, is "not the Cause of a poor Printer alone, nor of New York alone," but of "every free Man on the Main of America." He called upon the jury to guard the liberty "to which Nature and the Laws of our Country have given us the Right,—the Liberty of exposing and opposing arbitrary Power (in these parts of the World at least) by speaking and writing the Truth." "A free people," he exclaimed bluntly, "are not obliged by any Law to support a Governor who goes about to destroy a Province."

The jury insisted upon this right to judge of the law, as well as of the fact of publication, and declared Zenger "Not guilty." Gouverneur Morris afterward styled this acquittal "the morning star of that liberty which subsequently revolutionized America."<sup>2</sup>

For Further Reading.—The plan of this volume does not allow much time for library work upon this chapter. The Source Book, relatively to the text, has about the same amount of material as before. The two best treatments available (outside of special monographs) are Greene's Provincial America (1–80) and Channing's second volume (217–281). We lose the guidance of Osgood at the year 1700, and Doyle's two huge volumes on the eighteenth century are too bulky for secondary schools. Some special studies have been referred to in the notes. Both

<sup>&</sup>lt;sup>1</sup> Cf. Modern History, page 544, note 2.

<sup>&</sup>lt;sup>2</sup> This trial was one of several at about the same time. The fullest account in a general history is in Channing, II, 475-489. Zenger's own account, resembling a modern "report," is reproduced in the *Source Book*, No. 113.

Channing and Greene give adequate treatments of the navigation acts, but a further and slightly more English view may be found in Ashley's "England and America, 1660–1760," in his *Historical Surveys*.

Exercise. — Reread §§ 93–96, as a summary. Classify the "navigation acts" under three heads, with subdivisions. Why are the restrictions on manufactures classed with navigation acts?

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# CHAPTER V

#### COLONIAL LIFE

120. "Blue Laws." - Much colonial legislation goes under the name of Blue Laws. The term is used somewhat loosely to signify either undue severity in punishing ordinary crime, or unreasonable interference with personal liberty. In the first sense (that of bloody laws), the colonists could not be blamed by Europeans of their day. Everywhere, life was still harsh and cruel; but American legislation was more humane and rational than that of England or France. Many barbarities did survive, however. The pillory and whipping post (with clipping of ears) were in universal use. As late as 1748, a Virginian law (Source Book, No. 115) required every parish to have ready these instruments, and suggested also a ducking stool for "brabbling women." Prison life was unspeakably foul and horrible. Death was the penalty for many deeds not now considered capital crimes in any civilized land; 1 and many punishments seem to us ingeniously repulsive, such as branding for robbery or adultery. If Hawthorne had placed the scene of his Scarlet Letter in Pennsylvania instead of Massachusetts, he would have had to represent Hester wearing an A, not on her clothing, but burned into her forehead.

¹ When the colonies were growing up, there were over fifty offenses punishable with death in England. This number increased to about two hundred before the "sanguinary chaos" was reformed in the nineteenth century (cf. Modern History, § 529, note); but not more than eighteen offenses were ever "capital" in New England. Virginia ran the number up to twenty-seven; but in large part this was due to her cruel slave laws, which were rarely enforced. Hog stealing was punishable by death in Virginia by a statute of 1643; but, to understand this properly, the student must remember the penalty inflicted for horse stealing in very modern times by vigilance committees all over our West.

In the second sense, — that of inquisitorial legislation, — New England comes in for just criticism. Not that she stood far apart from the rest of the world even in that respect. To-day, as a rule, legislation aims to correct a man's conduct only where it directly affects other people; but in that day, as for many centuries preceding, all over Christendom (because church and state were so connected), the state tried by law to regulate conduct purely personal. In Virginia, the colonial law required attendance at church, and forbade traveling on Sunday.¹ In the Puritan colonies such legislation was more minutely vexing, — and much more rigorously enforced.

At the same time, the most common specific charges are wholly false. It is still widely believed that in Connecticut the law forbade a woman to kiss her child on Sunday; that it prohibited playing on "any instrument of music except the drum, trumpet, and jewsharp"; and that it required "all males" to have their hair "cut round according to a cap." These "laws" are merely the ingenious vengeance of a fugitive Tory clergyman (S. A. Peters), who during the Revolution (1781) published in England a History of Connecticut. This quaint book contains a list of forty-five "Blue Laws." Some are essentially correct, and most have some basis in fact; but the "code" is popularly known almost alone by these malicious inventions.<sup>2</sup>

121. Decay of Puritanism: Witchcraft Delusions. — The English historian, Freeman, complains that students of history go wrong because they think that "all the Ancients lived at the same time." It is essential for us to see the colonist of

<sup>1</sup> Cf. § 29 and Source Book, No. 35.

<sup>&</sup>lt;sup>2</sup> The veracity of the Reverend Mr. Peters may be judged from other items in his History. He pictures the inhabitants of a Connecticut village fleeing from their beds, mistaking the croaking of an "army of thirsty frogs" (on their way from one pond to another) for the yells of an attacking party of French and Indians; and he describes the rapids of the Connecticut River thus,—"Here water is consolidated without frost, by pressure, by swiftness, between the pinching, sturdy rocks, to such a degree of induration that an iron crow [bar] floats smoothly down its current"!

1730 or 1700 as a different creature from his greatgrandfather of 1660 or 1630. Even in the first century in Massachusetts, the three generations had each its own character. The first great generation of founders (the leaders, at least) were strong, genial, tactful men, broadened by European culture and by wide experience in camp and court, and preserving a fine dignity, sometimes tender graces even, in their stern frontier lives.1 "Narrow!" exclaims Lowell, "yes, they had an edge to them." Their Puritanism was sometimes somber, but never petty. It was like the noble Puritanism of Milton in his youth. - the splendid enthusiasm of the "spacious Elizabethan days," sobered and uplifted by moral earnestness and religious devotion. Winthrop and Cotton and their fellows, who had left ancestral manor houses to dwell in rude cabins for conscience' sake. lived an exalted poem day by day in their unfaltering conviction of the Divine abiding within them and around them.

The sons and grandsons show Puritanism in the sere. True, the necessities of frontier life made them nimble-witted, inquisitive, pushing, better able than their fathers "to find their way in the woods" and to rear crops and children under New World conditions. But the unceasing struggle and petty privations (theirs not by choice now, but by compulsion), made their lives harsh and unlovely and bitter. Most of the finer thought and broad outlook of the first generation fell away. Faith gave way to formula; inspiration was replaced by tradition and cant. The second generation lost the poetry out of Puritanism; the third generation began to lose its power. Much that is vital to man always remained. Puritanism continued to teach the supremacy of conscience with emphasis never excelled in religious movements; and, in its darkest period, sweet and gentle lives sometimes blossomed out of it. But toward 1700 it did undergo a real and great decline. That decay was associated with three other phenomena that call for notice.

a. The first is a marked increase in gloom in New England life. Gloom had been an *incident* of Puritanism in its best day: now it became

<sup>&</sup>lt;sup>1</sup> See Winthrop's letters in the Source Book.

so dominant as to distort religion. The damnation scene of Wigglesworth's Day of Doom was long the most popular "poetry" in New England. Two extracts may indicate its character, whether for literature or for thought:—

"They cry, they roar, for Anguish sore,
And gnash their Tongues for horror:
But get away without delay;
Christ pities not your Cry.
Depart to Hell: there you may yell
and roar eternally.

"God's direful Wrath their bodies hath Forever immortal made . . . And live they must, while God is just, That He may plague them so." 1

To modern ears this seems comic. But men of that day preferred Wigglesworth's ghastly doggerel to Milton; and, as Lowell says with biting satire, the damnation scene was "the solace of every Puritan fireside." Cotton Mather, who admired it, predicted that its popularity would endure until the day of doom itself.

b. The second phenomenon is the "Salem witchcraft madness" of 1692. Throughout the seventeenth century, all but the rarest men believed unquestioningly that the Devil walked the earth in bodily form and worked his will sometimes through men and women who had sold themselves to him in return for supernatural powers. These suspected "witches,"—usually lonely, scolding old women,—were objects of universal fear and hate. In Switzerland, Sweden, Germany, France, Great Britain, great numbers of such wretches were put to death, not merely by ignorant mobs, but by judicial processes before the most enlightened courts. In England, in 1603, parliament sanctioned this Common Law process by a statute denouncing the penalty of death for those who should have "Dealinges with evill Spirits," 2 and the New England code con-

"civil honest men,

That loved true Dealing and hated Stealing, Nor wronged their brethren."

but whose righteousness had not been preceded by "effectual calling," in the grotesque phrase of the day.

<sup>&</sup>lt;sup>1</sup> Among these "damned," over whose fate the poet gloats in this way, he is careful to include all *unbaptized infants* as well as

<sup>&</sup>lt;sup>2</sup> This law remained on the English statute books until 1735; and in 1711 Jane Wenham was convicted under it of "conversing with the Devil in the shape of a cat."

tained similar legislation. In Virginia, Grace Sherwood was "swum for a witch" in 1705, and the jury declared her guilty; but she escaped punishment through the enlightened doubts of the gentry Justices. In Maryland a woman was executed on the charge of witchcraft. But most of the American persecutions occurred in New England.

Connecticut executed eleven witches, and about as many more suffered death in Massachusetts before 1690. Then came the frenzy at Salem: and within a few months twenty were executed, while the prisons were crammed with many scores more of the accused. The clergy took a leading part in the prosecutions; and the hideous follies of the trials are almost incredible. While the madness lasted, the flimsiest accusations were equivalent to proof. One neat woman had walked some miles over bad roads without getting herself muddy: "I scorn to be drabbled," she said. Plainly she must have been carried by the Devil! And so, says Eggleston, "she was hanged for her cleanliness." Finally the common sense of the people awoke, and the craze passed as suddenly as it had come. With it, closed all legal prosecution for witchcraft in New England, rather earlier than in the rest of the world. But the atrocities of the judicial murders crowded into those few months must always make a terrible chapter of history, and they must be charged in large measure to the weak fanaticism fostered by Puritanism in its decay.2

c. In the early eighteenth century the reaction against the witchcraft delusion, the general decline of Puritanism, and the influx of dissenting Baptists and Episcopalians into New England greatly lowered the old influence of the Puritan clergy in society and in politics. There began, too, here and there, a division within Puritan churches, foreshadowing the later Unitarian movement. This loss of religious unity brought with it for a time some loosening of morals, and part of the people ceased to have any close relation to the church,—though all were still compelled to go to service each Sunday.

About 1735, a reaction from this indifference manifested itself in "the Great Awakening." The powerful preaching of Jonathan Edwards and

<sup>&</sup>lt;sup>1</sup> In other cases in Virginia, the *juries* were plainly convinced of the guilt of the accused, but no executions ever took place in that colony. In the more progressive Pennsylvania, the most that could be secured from a jury was a verdict against an accused woman of "guilty of haveing the Common fame of a witch, but not guilty as Shee stands Indicted."

<sup>&</sup>lt;sup>2</sup> Good brief treatments of the witchcraft delusion are found in Eggleston's *Transit of Civilization*, 15–34, and in Channing's *History of the United States*, II, 456–462. Longer treatments, containing some exaggerations, are given in James Russell Lowell's "Witchcraft" in his *Works*, and in Lecky's *History of European Rationalism*.

the impassioned oratory of George Whitfield were the immediate causes of this first American revival movement.

122. Education. — Of the original immigrants below the gentry class, a large proportion could not write their names; and for many years, in most colonies except Massachusetts and Connecticut, there were few schools. Parents were sometimes exhorted by law to teach their children themselves; but all lacked time, and many lacked ability.1 The closing years of the seventeenth century were a period of deplorable ignorance, - the lowest point in book education ever reached in America.2 With the dawn of the eighteenth century, and its greater prosperity. conditions began to improve. In Pennsylvania, parents were required, under penalty of heavy fine, to see that their children could read; and several free elementary schools were established. In Maryland the statute book provided that each county should maintain a school, with a teacher belonging to the established Episcopalian Church; but, since most of the inhabitants were Catholics or Protestant dissenters, the law was ineffective. In Virginia, in 1671, Governor Berkeley had boasted, "I thank God there are no free schools here nor printing," and had hoped that for a hundred years the province might remain unvexed by those causes of "disobedience and heresy"; but by 1724, twelve free schools had been established by endowments of wealthy planters, and some twenty more private schools were flourish-South of that colony there was no system of schools whatever. Here and there, however, the churches did something toward teaching children; and of course the wealthy planters of South Carolina, like those of Virginia and Maryland, had

<sup>&</sup>lt;sup>1</sup>See the "marks" for signatures to a Rhode Island document of 1636 (Source Book, No. 89). There is much evidence of this sort. Priscilla Alden in Plymouth could not sign her name. In 1636 the authorities in that colony excused themselves for having as yet no school on the plea of poverty and the fact that "Divers of us take such paines as they can with their own"; but, in view of the fact just stated, these pains probably produced little effect. Mary Williams, wife of Roger Williams, signed by her "mark."

<sup>&</sup>lt;sup>2</sup>For instance, the Watertown Records in the *Source Book*, No. 83, show a gross and increasing illiteracy after the middle of the century.

private tutors in their families, and sent their sons to colleges in their own or neighboring colonies or to the English Universities. In New York, the Dutch churches had begun free schools; but at a later time, because of the connection with the church, these almost disappeared. Massachusetts and Connecticut from the beginning had a remarkable system of public education (§123); and the other New England colonies gradually followed in their footsteps.

By 1760, though the actual years of schooling for a child were usually few, an astonishingly large part of the population could read, — many times as large, probably, as in any other country of the world at that time; but there was still dolefully little culture of a much higher quality. Between 1700 and 1770 several small colleges were established, in addition to the older Harvard (§ 123); but none of these institutions equaled a good high school of to-day in curriculum, or equipment, or faculty.

With a few notable exceptions, the only private libraries of consequence were the theological collections of the clergy. In 1698 the South Carolina Assembly founded at Charleston the first public library in America, and about the middle of the eighteenth century Franklin started a subscription library at Philadelphia. In 1700 there was no American newspaper. The Boston News Letter appeared in 1704, and, by 1725, eight or nine weeklies were being published, pretty well distributed through the colonies. Ten years later, Boston alone had five weeklies.

123. Excursus: the Puritan School System. — The schools of early Massachusetts and Connecticut demand a longer treatment. Here was the splendor of Puritanism, — a glory that easily makes us forget the shame of the Quaker and witchcraft persecutions. The public school system of America today, in its essential features, is the gift of the Puritans.

In Massachusetts private schools seem to have existed in some villages from the building of the first rude cabins. In

<sup>&</sup>lt;sup>1</sup>William and Mary, in Virgina, 1696; Yale, 1701; Princeton, in New Jersey, 1746; King's, in New York (now Columbia), 1754; the University of Pennsylvania (through the efforts of Franklin), 1755; and Brown, in Rhode Island, 1764. South of Virginia there was no educational institution of rank.

1635, five years after Winthrop's landing, a Boston town meeting adopted one of these private schools as a town school, appointing a schoolmaster and appropriating from the poor town treasury fifty pounds (some twelve hundred dollars to-day) for its support. So Salem in 1637 and Cambridge in 1642.¹ Such schools were a new growth in this New World, suggested, no doubt, by the parish and endowed schools of England, but more generously planned for the whole public, by public authority.

So far, the movement and control had been local. Next the commonwealth stepped in to adopt these town schools and weld them into a state system. This step, too, was taken by the men of the first generation,—pioneers, still struggling for existence on the fringe of a strange and savage continent. In 1642, in consideration of the neglect of many parents to train up their children "in learning and labor, which might be profitable to the Commonwealth," the General Court passed a Compulsory Education Act of the most stringent character, authorizing town authorities even to take children from their parents, if needful, to secure their schooling.<sup>2</sup>

This Act assumed that schools were accessible in each town. Five years later, the commonwealth required each town to maintain a primary school or a grammar school (Latin school), according to its size. This great law of 1647 (written with solemn eloquence, as if, in some dim way, the pioneers felt the grandeur of their deed) was the beginning of a state system,

¹ In 1645 Dorchester—still a rude village—adopted a code of school laws of comprehensive nature, well illustrating educational ideals of the town. See extensive extracts in Source Book, No. 81. Note that these schools were free in the sense of being open to all. Commonly they were supported in part by taxation, but tuition was charged also to help cover the cost.

<sup>&</sup>lt;sup>2</sup>The Puritan purpose was good citizenship, as well as religious training. The preamble of the similar Connecticut Act of 1644 runs: "For as much as the good education of children is of singular behoof and benefit to any Commonwealth," etc. (Each Massachusetts educational statute was copied within two or three years in New Haven and Connecticut.)

and it remains one of the mighty factors that have influenced the destiny of the world.<sup>1</sup>

James Russell Lowell, after a delightful reminiscence of the New England crossroads schoolhouse, continues: "Now this little building, and others like it, were an original kind of fortification invented by the founders of New England. These are the martello-towers that protect our coast. This was the great discovery of our Puritan forefathers. They were the first lawgivers who saw clearly, and enforced practically, the simple moral and political truth, that knowledge was not an alms, to be dependent on the chance charity of private men or the precarious pittance of a trust-fund, but a sacred debt which the commonwealth owed to every one of its children. The opening of the first grammar-school was the opening of the first trench against monopoly in state and church; the first row of pot-hooks and trammels which the little Shearjashubs and Elkanahs blotted and blubbered across their copy-books was the preamble to the Declaration of Independence."

The Puritan plan embraced a complete state system from primary school to "university." In 1636, a year after Boston established the first town school, Massachusetts had established her "state university" (as Harvard truly was in the seventeenth century, though it was named for the good clergyman who afterward endowed it with his library). The law of 1647 joined primary school and university in one whole, providing that each village of a hundred householders must maintain a "grammarschool, with a teacher able to instruct youth so as they may be fitted for the University."

True, this noble attempt was too ambitious. Grinding poverty made it impossible for frontier villages of four or five hundred people to maintain a Latin school; and, despite heavy fines upon the towns that failed to do so, such schools gradually gave way, except in one or two large places, to a few private academies, — which came to represent the later New England idea in secondary education. Thus, the state system was broken at the middle, and both extremities suffered. The universities ceased finally to be state institutions; and the primary schools deteriorated sadly, especially in the period of Puritan decline about 1700, with meager courses, short terms, and low aims. But with all its temporary failure in its first home, the Puritan ideal of a state system of public instruction

<sup>&</sup>lt;sup>1</sup> See Source Book, No. 82, for this Act in full, and for extracts from other school laws of the time. See, also, extracts in No. 83 as to town schools.

was never lost in America; and it was finally made real in a newer New England in the Northwest (§§ 183, close, and 291).

124. Population: Immigration: Slaves and Servants.—A third of the inhabitants in 1775 had been born in Europe. The English nationality (if the Scotch-Irish be included), was the dominant element in every colony. In New England and tidewater Virginia—except for a small Huguenot immigration—and in Maryland, it was almost the only element. In the Carolinas the Huguenots were numerous, and in South Carolina and Georgia there was a large German population. South Carolina, too, had many Highland Scots.¹ The largest non-English elements, however, and the greatest mixture of races, were found in the Middle colonies: Dutch and Germans in New York; Dutch and Swedes in Delaware; Germans, Welsh, and Celtic Irish in Pennsylvania. In the Carolinas, Virginia, and Pennsylvania, the back counties were settled mainly by the Scotch-Irish, or Presbyterian English.

In the fifteen years preceding the Revolution (1760–1775), population had risen from 1,600,000 (§ 112) to 2,500,000. One fifth of all were Negro slaves. Nearly half the whole population was found south of Pennsylvania; but while there were some Negroes in every colony, most of them were massed south of Mason and Dixon's line, making nearly half the total population there. The South contained only a little more than half as many Whites as the North.

<sup>&</sup>lt;sup>1</sup>These came to America after the defeat at Culloden and the breaking up of the clan system. Among these fugitives was Scott's heroine, Flora MacDonald, and her husband. Curiously enough, these people were Tories, to a man, in the Revolution. The same conservative and loyal temper which had made them cling to the exiled House of Stuart in England made them in America adherents of King George.

<sup>&</sup>lt;sup>2</sup> In 1619, while Virginia was still the only English colony on the continent, she received her first importation of Negro slaves, twenty in number. As late as 1648, there were only 300 in her population of 15,000. By 1670 the number had risen to 2000 (out of a total of 40,000). A century later nearly half her population was Black; while in South Carolina, more than half was Black. In Maryland the proportion was about a fourth, and in

In New England, labor was in the main free: the indentured White servant had nearly disappeared, though something very similar was provided for minors by the cruel apprenticeship system of the time. White bond servants were still the chief supply of manual labor in the Middle colonies, and an important element in Virginia. The man who sold himself into service for four or seven years, in return for passage money for himself or his family, was known as a "redemptioner," or "free-willer." The German immigrants of the eighteenth century, like many of the English settlers (§ 19), came in this way. Besides this class, there had always been White convicts transported from England and condemned to a term of service, - seven or fourteen years. After 1717, this class increased rapidly in number, averaging 1000 a year for the fifty years preceding the Revolution. A third kind of White "servants" were those "spirited" from England by kid-· napers; but except for several thousands such unfortunates in the times of Charles II, the number was small. Classed with the convicts in law, but very different from them in character, were the political "convicts," - prisoners sold into service by the victorious parties, each in turn, during the English civil wars of the seventeenth century.

Often the convicts were not hardened criminals, but rather the victims of the atrocious laws in England at the time. Many were intelligent and capable. In Maryland in 1773 a majority of all tutors and teachers are said to have been convicts. Some of them (like a much larger part of the redemptioners), after their term of service, became prosperous and useful citizens. Even in aristocratic Virginia, a transported thief rose to become attorney-general. But of course a great many more were exceedingly undesirable. Pennsylvania and Virginia made attempts by law to stop the importation of convict servants; but such legislation was always vetoed in England.

New York, a seventh. North Carolina had fewer than the other southern colonies; and there were few slaves in New England or Pennsylvania.

<sup>&</sup>lt;sup>1</sup>Charles Thomson, Secretary of the Continental Congress, was a "redemptioner," as was also one of the signers of the Declaration of Independence. So, too, was Zenger (§ 119); and many members of colonial legislatures could be named who came to America as "bond servants."

The condition of this large class of White servants was often a deplorable servitude (Source Book, Nos. 116, 117). The colonial press, up to the Revolution, teems with advertisements offering rewards for runaway servants. More than seventy such notices are contained in the "Newspaper Extracts" published in the New Jersey Archives for that little colony, and for only the two years, 1771, 1772. This must have meant one runaway servant to each 1000 of the population; and probably not half the runaways are in those advertisements. One runaway is described as "born in the colony," about 50 years old, and as having served in the last war (French War), and a carpenter by trade.

There are still more significant and gruesome notices by jailers, proving that it was customary to arrest a vagrant workingman on suspicion of his being a runaway, and then, if no master appeared to claim him within a fixed time, to sell him into servitude for his jail fees! American law and custom permitted these barbarities upon the helpless poor in the days of Lexington and Bunker Hill.

Negroes were not numerous enough in the North (except perhaps in New York) to affect the life of the people seriously. In the South, Black slavery degraded the condition of the indentured White "servant," and — more serious still — made it difficult for him to find profitable and honorable work when his term of service had expired. As early as 1735, the result appeared in the presence of the class known later as "poor whites." In that year William Byrd, a Virginian planter, declared that these "Ethiopians" "blow up the Pride and ruin the Industry of our White People, who, seeing a Rank of poor Creatures below them, detest work for Fear it should make them look like Slaves."

<sup>&</sup>lt;sup>1</sup> In Virginia, as a rule, slavery was patriarchal and mild; while in South Carolina and Georgia (where the rice plantations were supplied with ever fresh importations from Africa) it was excessively brutal. In all colonies with a large slave population there were incredibly cruel "Black Laws," to keep slaves from running away or from rising against their masters; and

Dependence upon slave labor, too, helped to keep industry purely agricultural in the South, since the slave was unfit for manufactures or for the work of a skilled artisan.

Tobacco raising was the chief employment in the tidewater districts of Maryland, Virginia, and North Carolina, and rice cultivation in South Carolina and Georgia. These tidewater staples were grown mainly on large plantations; and the Virginia planter in particular sought to add estate to estate, and to keep land in his family by rigid laws of entail. Between this class of large planters and the "poor whites," however, there was always a considerable number of small farmers in Virginia; and in North Carolina this element was the main one in the population. The western counties of all the colonies were occupied exclusively in small farming.

In the Middle colonies, foodstuffs were raised on a large scale. These colonies exported to the West Indies (both English and French) most of the bread, flour, beer, beef, and pork used there. In these colonies, too, immigrant artisans from Germany early introduced rudimentary manufactures, — linen, pottery, glassware, hats, shoes, furniture.

In New England, the majority of the people lived still in agricultural villages and tilled small farms; but they could not wring all their subsistence from the scanty soil. Each farmer was a "Jack-at-all-trades." In the winter days, he hewed out clapboards, staves, and shingles; and in the long evenings, at a little forge in the fireplace, he hammered out nails and tacks from a bar of iron.<sup>2</sup> At the very beginning of New England

everywhere the general attitude of the law toward the slave was one of indifference to human rights. The worst phases of the law were not often appealed to in actual practice; but in New York in 1741, during a panic due to a supposed plot for a slave insurrection, fourteen negroes were burned at the stake (with legal formalities) and a still larger number were hanged,—all on very flimsy evidence.

<sup>1&</sup>quot;Entail" is a legal arrangement to prevent land from being sold or willed away out of a fixed line of inheritance.

<sup>&</sup>lt;sup>2</sup> Even in the towns, all but the merchant and professional classes had to be able to turn their hands to a variety of work if they would prosper. Mr.

colonization, too, rude sawmills, run by water, were used to convert the forest into simple forms of lumber; and the making of pearl-ash was an important industry through the whole period. Other manufactures appeared, though, with one exception, on a smaller scale than in Pennsylvania. The exception was shipbuilding. New England built ships for both American and English markets. With her splendid timber at the water's edge, Massachusetts could launch an oak ship at about half the cost of a like vessel in an English shipyard; and in 1775 at least a third of the vessels flying the English flag had been built in America. The swift-sailing schooner, perfected in this period, was peculiarly a New England creation. Another leading industry was the fisheries, — cod, mackerel, and finally. as these bred an unrivaled race of seamen, the whale fisheries of both polar oceans. New England, too, was preëminently the commercial section of America. Her merchants sent ships laden with fish, lumber, oil, and rum (manufactured from West India sugar) to all parts of the world, and carried on most of the trade between the other colonies

Thus in the South, industry was very simple, and was carried on largely by forced labor, White or Black. North of Maryland, it was more varied, carried on mainly by free men. Wages for this free labor were exceedingly low,—in 1750, about fifty cents a day for skilled artisans and thirty cents for unskilled workmen.

All the colonies imported their better grades of clothing and of other manufactures from England. The southern planters dealt through agents in England, to whom they consigned their tobacco. For the other colonies the "circle of exchange" was a trifle more complex. They all imported from England more than they sold there. But they sold to the French and English West Indies more than they bought, receiving the balance in money, — mainly French and Spanish coins, — with which they settled the adverse balances in England.

Weeden tells of a certain John Marshall, a constable at Braintree and a commissioned officer in the militia company there, who "farmed a little, made laths in the winter, was painter and carpenter, messenger, and burned bricks, bought and sold live-stock," and who managed by these varied industries to earn about four shillings a day.

#### COLONIAL LIFE



This drain of coin from America to England was incessant, and there were no "banks" to furnish currency. In the need of a "circulating medium" (especially during the Intercolonial Wars, when the governments needed funds), nearly all the colonies at some time after 1690 issued paper money. The business was always badly handled, and great depreciation followed, with serious economic confusion. In consequence, the English government finally forbade any more such issues, to the great vexation of large elements in America.

The South had few towns, - none of consequence (except Charleston) south of Baltimore. Most of the houses were frame structures, white, with a long porch in front, set at intervals of a mile or more apart, often in parklike grounds. The small class of wealthy planters lived on vaster estates, separated from neighbors by grander distances. In any case, a true "plantation" was a unit social and economic, apart from the rest of the world. The planter's importations from Europe were unladen at his own wharf, and his tobacco (with that of the neighboring small farmers) was taken aboard. Leather was tanned; clothing for the hundreds of slaves was made: blacksmithing, woodworking, and other industries needful to the little community, were carried on, sometimes under the direction of White foremen. The mistress supervised weaving and spinning; the master rode over his fields to supervise cultivation. The two usually cared for the slaves, looked after them in sickness, allotted their daily rations, arranged "marriages." The central point in the plantation was the imposing mansion of brick or wood, surrounded by houses for foremen and other assistants and by a number of offices. At a distance was a little village of Negro cabins. The chief bond with the outer world was the lavish hospitality between the planter's family and neighbors of like position scattered over many miles of territory.

A wholly different society was symbolized by even the exterior of New England, as suggested above, — small farms subdivided into petty fields by stone fences (gathered from the soil), and the clustering of all habitations in hamlets which dotted the landscape, each marked by the spire of a white

church, and, seen closer, made up of a few wide, elm-shaded streets with rows of small but decent houses, each in its roomy yard.

And yet, even in New England, people were expected to dress according to their social rank; and inferiors were made to "keep their places," in churches and public inns. The club room and the inn parlor were for the gentry only; the tradesman and his wife found places in the kitchen or tap room.

For Further Reading.—Besides references in the footnotes, attention is called to the following material: James Russell Lowell's essay "New England Two Centuries Ago" in his Works; Fiske's Old Virginia, II, 174–269; Channing, II, 367–526; Alice Morse Earle's Customs and Fashions in Old New England and Home Life in Colonial Days; C. F. Adams' Three Episodes of Massachusetts History. On American industries, see especially Shaler's United States, I, ch. 10; Eggleston's "Commerce in the Colonies" in the Century Magazine, III, V-VIII; and Bishop's American Manufactures, I. Fiction: Mary Johnston's Prisoners of Hope; F. J. Stimson's King Noanett. (Both these stories deal with White servitude.)

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# PART II

## THE MAKING OF THE NATION

### CHAPTER VI

#### SEPARATION FROM ENGLAND

125. The American Revolution is one of the great episodes of all history. It established the first independent American state,—the first of many to follow through revolution against Old-World colonial policies. It helped to make the colonial policy of all countries less selfish and more enlightened. Through its influence upon the French Revolution, it reacted upon the internal development of Europe. 1 It was the prelude to the creation in North America of a truer form of federal republic than the world had before known. It "split the English-speaking race, and so doubled its influence."

The period of the revolution covers twenty years,—from 1763 to 1783. The first twelve were spent in constitutional wrangling; the next eight in war (1763-1775, 1775-1783).

#### I. PREPARATION IN THE INTERCOLONIAL WARS

The seventy years of intercolonial wars, with which we have dealt so briefly (§ 114), furnished one indispensable preparation for the Revolution. Those wars closed in 1763. At the moment they seemed to have given England a new colonial empire; but soon it appeared that instead they had endangered her old empire. The confidence of the colonists, due to their military experience with European soldiers, was highly important; but there were three more vital influences. These wars had removed the need of English protection; they had brought about attempts to tax America; and they had partly prepared the colonies for union (§§ 126–128).

126. Preparation for Federation. — In 1763, the colonies were still divided by sectional jealousies and prejudices to a degree almost inconceivable. Common danger, however, had already done something to bring them together politically. In 1698, near the beginning of the French wars, William Penn drew up a scheme for colonial federation; and in 1754, Franklin presented to the colonial governors in council at Albany his famous draft of a constitution for a federated colonial state. Between these two dates, at least seven other plans of like nature had appeared. True, the great body of colonists everywhere ignored or rejected these proposals; but the discussion prepared men for federation when a stronger motive should arise. Without union, resistance to England would have been impossible.

127. The conquest of Canada removed the need of English protection. For some time, far-sighted men had seen that the colonies must remain true to England while the dreaded French power threatened them from Canada.<sup>3</sup> These views were not

<sup>&</sup>lt;sup>1</sup> See Source Book, No. 114.

<sup>&</sup>lt;sup>2</sup> Howard's Preliminaries, 10-15, gives a good account of them.

Thus Peter Kalm, a shrewd Swedish traveler, wrote in 1748: "It is of great advantage to the crown of England that the colonies are near a country under the government of the French. . . . There is reason to believe that the king was never earnest in his attempts to expel the French from their possessions there, though it might easily have been done. . . . I have been publicly told, not only by native Americans, but by English emigrants, that within thirty or fifty years the English colonies in North America may constitute a separate state, entirely independent of England. But as the whole country toward the sea is unguarded, and on the frontier is kept uneasy by the French, these dangerous neighbors are the reason why the love of these colonies for their metropolis does not utterly decline.

So, too, Montcalm, dying at Quebec, consoled himself: "This defeat will one day be of more service to my country than a victory. . . . England will be the first victim of her colonies." Choiseul, the French minister, signing the treaty by which France surrendered her American empire, declared that he was signing also "the death warrant of English power in America." And Vergennes, then French minister at Constantinople, prophesied to an English traveler there: "England will soon repent of having removed the only check that could keep her colonies in awe. They no longer need her protection. She will call upon them to contribute toward the support of burdens they have helped bring upon her; and they will answer by striking off all dependence."

unknown to the English government. The ministry had refused to coöperate with the colonists for the conquest of Canada during King George's War (preceding the French and Indian War). Pitt's imperial views had now brought about that conquest; but William Burke (a friend and kinsman of the famous orator) published a forceful argument that England ought to restore Canada to France, perhaps in return for a West India island, but, if necessary, without compensation, merely to secure her own safety in America.<sup>1</sup>

Such ignoble caution had been cast aside by Pitt's splendid ambition for his country and by his pride in the new England beyond seas. And if Pitt's views had continued to control England's colonial policy, no trouble in the near future would have resulted. But when Pitt's influence waned, trouble for England did follow from the situation which his statesmanship had created.

128. The intercolonial wars afforded the immediate occasion for controversy with the mother country. The colonies had been held to England by ties internal and external, — by sentiment and affection, and by fear of foreign peril. During the preceding century, however, the internal bond had been sapped, insensibly, by the large non-English immigration and by the incessant disputes over commercial regulations, paper money, royal vetoes, and governors' salaries (§ 119). Now that the external pressure was removed, only a shock was needed to separate the two halves of the empire. This shock the intercolonial wars provided, since they led parliament to tax the colonies (§§ 129 ff.). The colonists were then forced to ask themselves whether in the future the protection afforded by England would compensate them for their dependent position.

# II. THE QUESTION OPENED. ATTEMPTS AT TAXATION

The situation created by the intercolonial wars led promptly to three attempts at taxation,—the "writs of assistance" to enforce old laws; the Sugar Act of 1764; and the Stamp Act. (Later provisions, like those of Townshend and Lord North [§§ 139-141] were designed not so much to raise revenue as to vindicate previous policy and assert authority.)

<sup>&</sup>lt;sup>1</sup>The student will find a striking extract from Burke's plea in Woodburn's Lecky's American Revolution, 3-5.

129. "Writs of Assistance" mark an attempt to enforce the old Navigation Acts with a new energy. This policy began with Pitt, during the French and Indian War, and its original purpose was, not to raise revenue, but to stop a shameful trade with the enemy.

Lecky, the liberal English historian, writes: "At a time when the security of British America was one of the first objects of English policy, and when large sums were remitted from England to pay the colonists for fighting in their own cause, it was found that the French fleets and garrisons were systematically supplied with large quantities of provisions by the New England colonists." Even Bancroft, with his strong American prejudices, admits that Pitt's measures were intended not to enforce the trade laws in the interest of British commerce, but "solely, in time of war, to distress the enemy."

The indignant preamble of Pitt's instructions to the colonial governors "The Commanders of His Majesty's Forces . . . having transmitted repeated and certain Intelligence of an illegal and most pernicious Trade carried on by the King's Subjects in North America . . . to the French Settlements . . . by which the Enemy . . . is supplied with Provisions and other Necessaries, whereby they are principally, if not alone, enabled to sustain and protract this long and expensive War . . . ," therefore the officers of the crown are to make stringent exertions to stop "this dangerous and ignominious Trade."

Such treasonable trade was largely condoned by public opinion in the colonies, and was easily confused with the ordinary smuggling which had long made parts of the navigation laws a dead letter. Accordingly, the customs officials fell back upon remedies worse than the evil. In 1755, they began to use general search warrants, known as "writs of assistance." form of warrant was a recent abuse in English government. first sanctioned by law in the evil times of Charles II. It ran counter to the ancient English principle that a man's house was "his castle," into which not even the officer of the law might enter without the owner's permission, except upon definite cause shown. Unlike ordinary ("special") warrants, these new documents did not name a particular place to be searched or a particular thing to be searched for, nor did they make public the name of the informer upon whose testimony they were issued.

They authorized any officer to enter any house upon any suspicion, and "were directed against a whole people." They might easily become instruments of tyranny, and even of personal revenge by petty officials.

George III came to the throne in 1760; and, according to law, all such writs of the past reign lost validity within sixmonths. Accordingly, in 1761, an official for the port of Boston applied to the Superior Court of Massachusetts for their renewal. The Boston merchants determined to fight the case. James Otis, the brilliant young Advocate General, resigned his office rather than argue for the writs, and took the case for the merchants. He lost the case. The Massachusetts judges, with conservative subservience to precedent, were unanimous against him; and, when the General Court the next spring passed an act expressly forbidding general writs, the judges advised the governor to veto it. But meantime Otis' fiery argument stirred the minds of the people and opened the whole question of parliamentary control.

"Otis was a flame of fire," declared John Adams, many years later; "then and there the child Indépendence was born." Otis described the general warrants as "the worst instrument of arbitrary power, the most destructive of English liberty and of the fundamental principles of law, that ever was found in an English law book." He contended, he said, against "a kind of power, the exercise of which had cost one king of England his crown, and another his head." After picturing vividly the abuses to follow such an instrument of despotism, he concluded: "No Act of Parliament can establish such a writ. . . . An act against the constitution is void." 2

<sup>1</sup> This comes from Adams' later account. The other quotations in the paragraph are from notes taken at the time by Adams, then a law student.

<sup>&</sup>lt;sup>2</sup> This final argument is natural to Americans to-day, familiar as we are with the idea of a written constitution as a fundamental law, to which all other law must conform. In England to-day such an argument would be almost impossible, since there parliament has come to be so supreme that it can change the law and the "constitution" at will. In older English history, however, the Common Law and the great charters (especially in so far as they protected the rights of the individual) had been regarded somewhat as we regard our constitutions; and in the time of Otis that view had not been

Soon afterward Otis published his views upon the rights of the colonists in two pamphlets, which were widely read. "God made all men naturally equal," he affirms. Government is "instituted for the benefit of the governed," and harmful governments should be destroyed. Parliament he recognizes as supreme (so long as it governs fitly), but he urges that the colonists, besides keeping their local legislatures, "should also be represented, in some proportion to their number and estates, in the grand legislature of the nation."

130. Grenville's Policy. — In 1763, peace removed the special occasion for the writs of assistance; and, in their enthusiastic gratitude to England for protection, the Americans were ready to forget their irritation. But, in that same year, George Grenville became head of the ministry, — an earnest, narrow man, without tact or statesmanship, bent upon raising a revenue in America.

Merely as a matter of abstract logic, a good case could be made out for such action. The intercolonial wars had made England the greatest world power; but they left her, too, staggering under a debt such as no country to that time had dreamed of. The colonists were prosperous and lightly burdened. Eight millions of Englishmen owed a war debt of ninety dollars a head—incurred largely in defending two million colonials, whose public debt counted less than two dollars a head. The ministry were straining every resource at home to augment revenues, and they called upon the colonials to contribute a part toward their own future defense.

Nor could the colonists excuse themselves adequately on the ground that they had done enough in the wars. The struggles in America had been little more than scattered skirmishes,

altogether lost. Indeed a few years later (1766), the Court of the King's Bench declared "general warrants" in England unconstitutional. General "writs of assistance" (for enforcing customs duties), continued, however, to be used there until 1819.

How profoundly the argument of Otis impressed America is seen from the fact that when Virginia in 1776 adopted the first written state constitution, the declaration of rights prohibited "general warrants" (§§ 148, 149). This provision has appeared in nearly all our subsequent State constitutions, and it is found in the Federal Constitution (Amendment IV).

compared with the titanic conflicts in the Old World; and to the English fleet it was due that France had not made the contest more serious on this side the Atlantic. Moreover, even in America, England had furnished fully half the troops and nearly all the money,—repaying each colony for all expenses in maintaining its own troops when outside its own borders.

The ministry had to face "not a theory, but a condition." The victory over France had brought not only burdens for the past, but also obligations for the future. It seemed needful to maintain a garrison of ten thousand men in America, to guard against Indian outbreaks and against French reconquest. But the colonists dreaded a standing army as an in-

<sup>1</sup>Pitt had declared that he would "conquer [French] America in Germany," and he did so, by aiding and subsidizing Frederick the Great (Modern History, § 277).

<sup>2</sup> Refusing Montcalm's passionate calls for troops, the French government wrote: "If we sent a large reinforcement, there would be great fear lest the

English might intercept them."

<sup>3</sup> See Doyle's English Colonies, V, 486-487, and George Beers in Am. Hist. Association Report for 1906, I, 182-185. At Quebec, Wolfe had 8500 regulars and only 700 colonials — whom he described as "the dirtiest, most contemptible cowardly dogs . . . such rascals as are an encumbrance . . . to an army." Amherst at Louisburg had only 100 colonials with his 11,000 troops. In the Crown Point expedition of 1755 (before war was formally declared), the 3000 Provincials made the whole force; and of the 5000 troops in the field during the next year, 4000 were colonials. But after war was declared, the English troops plainly preponderated. Barry, the American historian, estimates the average proportions as about half and half.

<sup>4</sup> Pontiac's War, the most terrible Indian outbreak the colonists ever knew, came just at the close of the French War, in 1763, and raged for more than a year, sweeping bare, with torch and tomahawk, a long stretch of western country running through three colonies and including many hundreds of square miles. A few British regiments, left in the country from the preceding French War, were the only reason the disaster was not unspeakably worse. For six months they were the only troops in the field. The Pennsylvania legislature, despite frantic appeals from the governor, delayed in its plain duty to provide defense for its own frontier,—partly perhaps from Quaker principles, but more from a shameful dislike felt by the older districts for the Scotch-Irish western counties; while the savages, having worked their will in that province, carried their raids across its southern border, getting into the rear of a small force with which George Washington was striving gallantly to guard the western frontier of Virginia. Washington's force, too, was for months altogether insufficient even for its own task. His letters to the gov-

strument of tyranny, and would do nothing to help support one. Grenville determined to supply the money partly from the English treasury, partly by taxing the colonists without their consent. He would turn the navigation acts into a source of revenue—instead of merely a means of regulating trade and benefiting English merchants; and he would raise money in the colonies directly by internal taxes, which had never before been attempted.

Grenville's purpose may have been justifiable; but his means must certainly be condemned. Whether the Americans were right or not in refusing to maintain a garrison by taxing themselves, they surely were right in opposing Grenville's attempt to force them to maintain one.

Franklin, agent for Pennsylvania, urged, in conference with Grenville, that the colonists should be left to raise the necessary sums through their separate legislatures, upon requisitions from the crown; but when asked how the amount should be apportioned and how payment could be assured, he was silenced. The method of requisitions had never worked, and no blame attaches to Grenville for refusing to be deluded longer by such a snare. The blame he incurs is for the substitute he chose.

There was another alternative, stated by Lecky, which, if not satisfactory, was infinitely better than to break with fundamental principles of liberty: "It would have been far wiser... to have abandoned the project of making the Americans pay for their army, and to have thrown the burden on the mother country [where most of it was to rest anyway]. Heavily taxed as Englishmen were... the support of a small American army would not have been overwhelming, while a conflict with the colonists on this matter could lead to no issue but disaster."

There was still another possibility. If the English government had cared to do so, it could probably have secured the adoption of Franklin's "Albany Plan," with a central federal Assembly for the colonies. With one Assembly (in place of thirteen) the English government could have dealt satisfactorily.

131. The Sugar Act of 1764. — Grenville had already issued orders for rigid enforcement of the old navigation acts, which (except for Pitt's war measures) had slumbered for genera-

ernor of Virginia complain bitterly; but the governor's many and earnest entreaties to his legislature for supplies and reinforcements bore fruit very slowly. Washington declared that he would have been wholly helpless for a long and critical period, had he not had under his command a small troop of English soldiers.

tions; and zealous officers in America had begun to irritate the merchant class by numerous seizures of ships and cargoes. Then upon communities, angry and suspicious, fell news of new taxation by parliament.

The French West Indies were an important market for the products of New England and the Middle colonies (§ 124), paying in sugar and money. With rum, manufactured from the sugar, New England merchants carried on other profitable trade (especially for slaves on the coast of Africa). The Sugar Act of 1733 (§ 116) had sought to check importation of French sugar, in the interest of the British West Indies: but it had never been enforced. The "Sugar Act" of 1764 announced the purpose, not of regulating trade, but of raising revenue in the colonies "for defraying the expenses of defending, protecting, and securing the same." It was much more than a mere "sugar act"; it was a revision of the navigation system in the interest of the new policy of revenue. It also provided machinery more efficient than ever before, to enforce the laws. But its most offensive feature at the moment was its absolute prohibition of trade with the French colonies.

The commercial colonies were driven into spasms of terror. They believed with reason that enforcement of the new law meant, not merely a new and heavy tax on their trade, but its utter ruin, so that they would no longer be able to pay for the imports they needed from England. They had never so feared French conquest as they now feared the loss of French trade. With every mail from America, a storm of protests assailed the ministry, while for several months little noise was made about the Stamp Act, of which full notice had been given (§ 132).

Indeed, the Sugar Act was the more dangerous. It, too, was taxation without representation (though the tax was external, not internal, —to use a favorite distinction of the time). But it was much more than a revenue measure. Merely as a tax, it was more severe, though less direct, than the Stamp Act; and, in its other aspects, it exercised a kind of power much more likely to be abused than the power of direct taxation. But the Sugar Act did not directly affect the southern colonies; and therefore resistance to it could not arouse a united America. Moreover, though this law did aim to raise revenue, still in form it was like preceding navigation acts, to which the colonists, in theory at least, had long as-

sented. As Dr. Howard well says, the "economic grievance" of this law "lies at the bottom of the revolutionary contest," but the leaders of opinion needed a better rallying cry than it afforded.

132. The Stamp Act gave this opportunity. Early in 1764, Grenville had called together the agents of the colonies in London, to announce the nature of the proposed taxation. They argued earnestly against it, but proposed no other satisfactory method of supporting a garrison. Parliament, therefore, promptly adopted resolutions approving the proposed policy; but a year was given for the colonies to provide some other means. The colonies confined themselves to protests. In the fall of 1764, the Sugar Act fell into the background; and from colonial town meetings and Assemblies petitions began to assail the ministry against the unconstitutional nature of the Stamp Act plan. These communications seem never to have been presented in parliament. In March, 1765, the law was enacted, almost without discussion, and with no suspicion of the storm about to break.

The Stamp Act was modeled upon a law in force in Great Britain. As a tax it was not exorbitant. It required the use of stamps or stamped paper for newspapers, pamphlets, cards and dice, and for all legal documents (wills, deeds, writs). In a few instances, where the document recorded some important grant, the cost of the stamp rose to several pounds; but, as a rule, the tax ranged from a penny to a shilling or two. Not a penny was to benefit England or to help pay off past indebtedness. The whole revenue was appropriated in advance to the future support of an American garrison.<sup>2</sup>

Now came a significant change in the agitation in America. Astute leaders seized the chance to rally public dissatisfaction against England by appeals to the traditional cry,—"No taxation without representation." The opposition to the Sugar Act had rested upon a concrete money grievance; but, from 1765, the colonists contended, not against actual oppression suffered, but against a principle which might lead to oppres-

 $<sup>^1\</sup>mathrm{See}$  an admirable treatment in Preliminaries of the  $Revolution,\,104\text{--}120.$ 

<sup>&</sup>lt;sup>2</sup> See extracts from the law, and from the Sugar Act, in the Source Book.

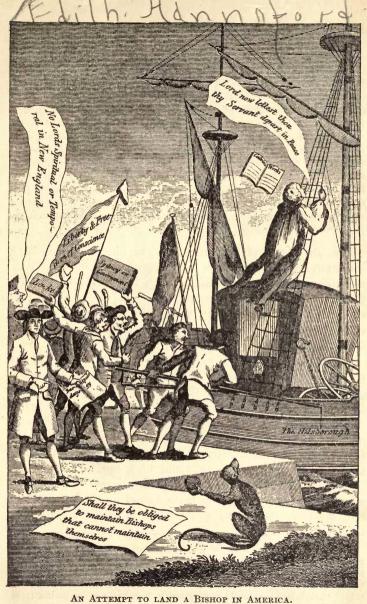
sion. "They made their stand," says Moses Coit Tyler, "not against tyranny inflicted, but against tyranny anticipated." The Americans surpassed even the English of that day in what Burke called "the fierce spirit of liberty." The freest people of their age, they were fit for more freedom, and could wage a revolution for ideas.

III. FUNDAMENTAL CAUSES

Before continuing the narrative, it will be well to understand certain underlying causes and conditions. America was of age, — able to set up for herself (§ 133); and, in growing up, she had grown away from the mother country (§ 134). Separation, or some radical readjustment, inevitable from these fundamental causes, was hastened by two other conditions, — the incompetence of the British King and ministry (§ 136), and a movement for greater democracy within American society (§ 137).

133. The Colonial System outgrown. — England's colonial system had guided and guarded the colonies while they needed help and protection. It was not tyrannical; but it was sometimes selfish and often short-sighted, and it always carried the possibility of further interference, economic, political, and ecclesiastical.¹ True, until 1764, actual interference had never been seriously hurtful. Often it had been helpful. But any interference was vexatious to a proud people, who now, through their own growth and the removal of foreign danger, felt safe enough and strong enough to manage their own affairs. The Americans had outgrown any colonial system possible in that day. The time had come for independence.

<sup>&</sup>lt;sup>1</sup> Many shrewd observers (John Adams among others) believed that the Revolution was caused largely by dread of ecclesiastical interference. Several times it had been suggested that England should establish bishops in America. Even the most strongly Episcopalian colonies, like Virginia and Maryland, resisted this proposal (needful as bishops were to the true efficiency of their form of church organization), and the other colonies were bitter in opposition, because of the political power of such officers of the church at that time. After the Revolution, bishops, consecrated in England, were received without a murmur.



(From a Colonial publication, illustrative of Colonial feeling. The vessel's name is taken from Lord Hillsborough, secretary for Colonial affairs.)

Mellin Chamberlain, in one of his historical addresses, puts the cause of the Revolution in a nutshell. Levi Preston was one of the minutemen of Danvers who ran sixteen miles to get into the Lexington fight. Nearly seventy years afterward, Mr. Chamberlain interviewed the old veteran as to his reasons that April morning. "Oppressions?" said the aroused veteran; "what were they? I didn't feel any." "Stamp Act?" "I never saw one of the stamps." "Tea tax?" "I never drank a drop of the stuff; the boys threw it all overboard." "Well, I suppose you had been reading Sidney or Locke about the eternal principles of liberty." "Never heard of them. We read only the Bible, the Catechism, Watt's Hymns, and the Almanac." "Then what did you mean by going into that fight?" "Young man, what we meant in going for those redcoats was this: we always had governed ourselves, and we always meant to. They didn't mean we should."

134. Divergence of Institutions. — The blundering ministry could not see that the Americans had become a nation. Worse still, they chose just this time for an irritating policy which made the Americans themselves see that tremendous fact sooner than otherwise they might. In part, at least, this colossal mistake was due to the other fundamental cause underlying the necessity of separation.

The first part of our history has dealt with the development of colonial institutions out of selected English institutions transplanted into a new environment. If all of England could have been picked up and set down, strung out along the thousand miles of American coast from Maine to Georgia, its development during the next two centuries would have been very different from what it actually was in the little European island: the new physical conditions would have caused a difference (§§ 1-3). But not all England, only certain selected people and selected institutions, had been transplanted, — upon the whole, too, the more democratic elements in English society and

<sup>&</sup>lt;sup>1</sup> Thus, no hereditary nobility was established in America, and neither monarch nor bishop in person appeared in American society. Moreover, the relatively democratic elements that did come were drawn rapidly further toward democracy by the presence in America of unlimited free land. This helped to maintain equality in society and in industry, and so, indirectly, in politics.

politics. Therefore, the divergence between the European English and the American English had been rapid. By the middle of the eighteenth century, this divergence had gone so far that the two peoples could no longer understand each other.

The two branches of the English race spoke the same political phrases; but on the two sides of the Atlantic these phrases no longer stood for the same ideas. "Personal liberty" had a broader significance in America than in England, as was seen in the libel trials (§ 119) and in the agitation over writs of assistance (§ 129). And while both sections of Englishmen clung to the doctrine "No taxation without representation," still these words meant one thing in England and a very different thing in America.

In England, since 1688, representative institutions, always imperfect, had been shrinking, - becoming more and more virtual.2 In America, representative institutions had been expanding, — becoming more and more real. The English system had become, in Macaulay's words, "a monstrous system of represented ruins and unrepresented cities." Originally it had been a representation of estates (classes), not of people; and, with growth of population and industrial changes, there had arisen great classes of population not represented at all. No attempt had been made (except one, soon undone, during the brief Puritan rule) to adjust representation to the population of the different parts of England; and now, with the shifting of population, many populous cities had grown up without any representation whatever, while many decayed cities, perhaps without a single inhabitant, or with only a handful of voters (pocket or rotten boroughs), kept their ancient "representa-

<sup>&</sup>lt;sup>1</sup> This fundamental truth for the study of the Revolution has been stated so admirably by Dr. Channing in his *Students' History of the United States* (140-144) that subsequent writers have no choice except to follow his presentation. The student should read the passage in full in Channing's text.

<sup>&</sup>lt;sup>2</sup> A concise five-page account of that shrinkage of representative government in England in the eighteenth century will be found in the *Modern History*, § 527.

tion." In reality, a small body of landlords appointed a majority of the House of Commons, and many of these "representatives" were utterly unknown in the places they "represented." The House of Commons had become hardly more representative than the House of Lords.

To an Englishman, accustomed to the English system and content with it, "No taxation without representation" meant no taxation by royal edict, no taxation except by the House of Commons, a "representative" body. And such an Englishman might argue (as Lord Mansfield did) that parliament represented Massachusetts as much as it did the English Manchester, which equally with Massachusetts was without votes for parliament. There are more men in England, it was urged, who are taxed and who cannot vote than there are inhabitants in all America. Parliament virtually represents the colonies, and therefore has the right to tax them.

The argument was weak, even if representation was to remain "virtual." Manchester, though without votes, was sure to influence parliament, and to be understood by parliament, far better than distant Massachusetts. But the American was not content with virtual representation: he demanded real representation. True, there were imperfections in the American system. Some colonies, notably Pennsylvania and the Carolinas, had been slow to grant a proper share in their legislatures to their own western counties (§ 137, b). But upon the whole, the system was fair and adequate to the needs of the country. The electoral districts were about equal in population; the franchise, without being universal, was extended far enough to reach most men with a little property; and each little district chose for its representative, at frequent intervals, a man resident in its midst and well known to the voters. To the American, "No taxation without representation" meant no taxation except by a representative body in his own colony, chosen under such conditions as these.

<sup>&</sup>lt;sup>1</sup> Find illustrations of this American argument in the Source Book.

In this dispute the Englishman stood upon past history and upon the old meaning of the phrase in the English constitution. The American stood for a meaning that had come to pass in America,—a higher and truer meaning, because more in accord with future liberty and progress. The victory of the American idea was to make possible its adoption in England also at a somewhat later time. 1

135. Problem of Imperial Unity. — The problem, however, was not merely one of method in taxation: it was a question also of maintaining the unity of the British Empire. To preserve the greatest free state the world had ever seen, appealed to a noble patriotism on both sides the Atlantic. But while Englishmen argued that, to preserve unity, the authority of parliament must be admitted supreme, Americans refused to recognize that authority in taxation, and so were driven soon to deny any authority in parliament.

Even then, the colonists still clung to union with England as "the source of our greatest happiness," and strove to find some other bond between the parts of the empire. In this dilemma, many of the leaders were driven to a peculiar doctrine: the colonies, they said, were subject, not to parliament, but to the crown. The union between Massachusetts and England, according to this view of Jefferson and Franklin, was only "in the person of the sovereign," like the union between England and Scotland under James I.<sup>2</sup> George III was king in England and king in Massachusetts; but parliament was the legislature of the British Isles only, as the General Court was the legislature of Massachusetts.

In the argument over taxation, the Americans had the best of it, because they placed themselves upon modern conditions, ignoring dead theories. But in this second argument, it was the Americans who clung to a dead theory. In earlier times there had been some basis for the doctrine of the crown's sovereignty in America. The colonies were founded upon "crown lands"; and the kings tried to keep them as crown

<sup>&</sup>lt;sup>1</sup> Modern History, §§ 529-536. Cf. also Lecky's treatment of the English theory in Woodburn's Lecky's American Revolution, 77-78.

<sup>2</sup> Modern History, § 281, a.

estates. In those days, the colonists had been glad to seek refuge in management by parliament. During the Commonwealth, parliament exercised extensive control, and ever since, from time to time it had legislated for the colonies, — not merely in commercial regulations, but in various beneficent matters, as in the establishment of the colonial Post Office. Meantime, the English Revolution of 1688 had made parliament supreme over the king. George III was "king in Massachusetts" only because he was king of England; and he was king of England only because of an Act of Parliament. Indeed, had the king's power been real any longer, the colonists would never have appealed to a theory of "personal union." The plea was a device to escape real control of any kind.

. Neither the extreme English nor the extreme American theory fitted, because the situation was new. Within two or three generations, England had been transformed from a little island state, with a few outlying plantations, into the center of a world empire. Within the same period, the relative power of king and parliament had shifted greatly in the government of England itself. This change necessarily involved a new relation between parliament and the colonies; but just what that relation ought to be was not clearly agreed. Plainly this colonial theory of Franklin and Jefferson would not do. It was not at all in accord with the new liberal English constitution; nor would it secure any real imperial unity. In England, meanwhile, some statesmen had evolved a new constitutional theory not satisfactory in some vital respects, but much more in accord with the new conditions of the empire. This theory is best stated in a noble passage toward the close of Burke's great oration on American Taxation : -

"I look upon the imperial rights of Great Britain and the privileges which the colonists ought to enjoy under those rights to be just the most reconcilable things in the world. The parliament of Great Britain sits at the head of her extensive empire in two capacities: one as the local legislature of this island. . . . The other, and I think her nobler, capacity is what I call her imperial character, in which, as from the throne of heaven, she superintends all the inferior legislatures, and guides and controls them all, without annihilating any. . . . It is necessary to coerce the negligent,

to restrain the violent, and to aid the weak . . . by the over-ruling plenitude of her power." Parliament, the orator continues, is not to intrude into the place of an inferior colonial legislature while that body answers to its proper functions; "but, to enable parliament to accomplish these ends of beneficent superintendence, her power must be boundless,"—including even the power to tax, Burke adds explicitly, though he regards that as a reserve power, to be used only in the last extremity, as "an instrument of empire, not a means of supply."

That is, Burke would have had parliament recognized as possessing absolute power, in order that at need it might preserve the empire; but he would have had it waive its authority in ordinary times in favor of the rights of the colonists to self-government through their local legislatures. Probably this would have been as nearly satisfactory as any solution of the problem then possible, if union was to be maintained. If it had been adopted in good faith, and worked tactfully by the British government, separation would have been at least postponed. Fortunately, no doubt, the incompetent British government of the day adopted the first half of the theory, as to the supremacy of parliament, and worked that theory (not as Burke would have had them, but, as he warned them in another oration not to do) "with too much logic and too little sense"; and the machinery collapsed.

We must remember that most Englishmen and many Americans thought this imperial control infinitely more necessary for the sake of the colonies than for the sake of England. To say nothing of a supposed deficiency in population and wealth, each colony had been guilty, time after time during the past seventy years, of sacrificing the safety of a

¹ Certainly it was better than the absurd contention to which William Pitt was driven, —that Parliament might govern the colonies in all other matters but might not tax them, because "taxation is no part of the governing or legislative power." When Pitt's great intellect could find no way but this to reconcile freedom and empire, the difficulty must have been great indeed. One solution would have been correct theoretically, —to give the colonies adequate representation in a reformed parliament. This plan was suggested by James Otis, and was approved by Franklin in America and by Adam Smith in England; but, in practice, even had both parties been willing, such a solution could not have worked in that day, while steam and electricity had not yet conquered time and space.

neighboring colony, and sometimes even that of its own frontier, to an ignorant and cruel parsimony or to mean and wicked jealousy. In such miserable history there was abundant justification for the common and heartfelt conviction of the utter incapacity of the colonies to combine in their own defense, except under the beneficent constraint of England.

But not merely do "new occasions teach new duties": new duties many and many a time call forth unsuspected energies and new capacities, in nations, as in individual men. So, almost at once, at the stirring call of Independence, the weak and divided colonies did unite efficiently enough to protect themselves not only without England, but against her. The men who in advance believed that the colonies could do so drew their conviction not from the multitude of disgraceful facts in recent history, but from a broad survey, or from a deeper faith in their countrymen and in human nature — from "the evidence of things not seen." They were radicals, rather than conservatives, in temperament.

136. Relation of the Revolution to Reform in England. — That the governments of Townshend and Lord North (§§ 139, 141) were permitted by parliament to drive the colonists to rebellion was due, in part at least, to the fact before referred to (§ 123) that parliament represented England "virtually" rather than

<sup>1</sup> Any detailed history of the intercolonial-war period abounds in illustrations. John Fiske, New France and New England, 242 ff., gives one case where Massachusetts exposed her own borders, together with those of other New England colonies, to the terrible ravages of torch and scalping knife, because the legislature most unjustifiably objected to certain capable but unpopular officers. Another striking instance has been referred to above (§ 132). Peter Kalm (cf. § 127) wrote: "Not only is the sense of one province sometimes opposed to that of another, but frequently the views of the governor and those of the Assembly of the same province are quite different. . . . It has commonly happened that while some provinces have been suffering from their enemies, the neighboring ones were quiet and inactive . . . as if it did not in the least concern them. They have frequently taken two or three years in considering whether they should give assistance to an oppressed sister colony, and sometimes they have expressly declared themselves against it. There are instances of provinces . . . who even carried on a great trade with the Power which at the very time was attacking and laying waste some other provinces." Such considerations led James Otis himself to write in 1765: "God forbid these colonies should ever prove undutiful to their mother country. . . . Were the colonies left to themselves tomorrow, America would be a mere shamble of blood and confusion, before little petty states could be settled."

"really." That situation was not satisfactory to the great Whig leaders there; and the contention between King George's government and the colonies became intermingled with a struggle for the reform of parliament at home. Extension of the franchise and reapportionment of the representation had been demanded vehemently for some time. If the demand of the Americans regarding taxation and representation was granted, then it would not be possible for the government much longer to refuse the demand for representation by English cities like Manchester, and parliament would have to be reformed.

But this was just what George III dreaded. King George 1 thought it his duty to recover the kingly power that had vanished since the English Revolution. To do this, he must be able to control parliament. The easiest way to control parliament was to secure his own appointees in that body from rotten and pocket boroughs. In a reformed parliament, this would no longer be possible. These considerations led the King to throw his influence in with his ministers at a critical time in the dispute, and so turn the constitutional wrangle with the colonies into war. For that result the King was largely responsible. Says Fiske, "He was glad to force on the issue in America rather than in England, because it would be comparatively easy to enlist British local feeling against the Americans as a remote set of 'rebels'... and thus obscure the real nature of the issue."

<sup>&</sup>lt;sup>1</sup> An American writer says well of George III (Ford, American Politics, 344): "In his private life he exactly fulfilled the popular ideal of a good ruler. In an age when society was recklessly dissolute, he was chaste in conduct, temperate in diet, and simple in manners. While irreligion abounded, he kept a virtuous home, whose days, beginning with family prayer, were passed in laborious performance of duty." King George was exceedingly conscientious, and exceedingly wrong-headed and narrow-minded. He was a good man and a bad king.

<sup>&</sup>lt;sup>2</sup> The student should read Fiske's treatment, American Revolution, I, 43-45. Just how far the policy of parliament and King in driving America into war was supported by English public opinion, it is impossible to say. There were no adequate agencies then for the expression of public opinion. After war had begun, and especially after America had been joined by France and

The American Revolution is seen imperfectly, if it is looked upon solely as a struggle between England and America. It was a strife of principles. It was part of a thousand-year-long contest between the English-speaking people and their kings for more and more political liberty. In 1776 the most advanced part of that people lived on this side of the Atlantic. The popular claims were made here, and the struggle was fought out here; but in many ways the Revolution was a true civil war. A large portion of the Americans were not in favor of fighting, and a large portion of Englishmen were glad that America did fight.

This element found expression even within parliament. The resolution of Patrick Henry declaring that the attempt to tax America, if successful, would result in the ruin of British liberty also, was echoed by the great speech of William Pitt, when he "rejoiced" that America had resisted, and declared that victory over the colonies would be of ill omen for Eng-"America, if she fell, would fall like the strong man: she would embrace the pillars of the state, and pull down the constitution along with her." When troops were sent to Boston in 1774, the Earl of Rockingham and other Whig lords presented a protest to be inscribed on the journals of parliament, and the Duke of Richmond broke out: "I hope from the bottom of my heart that the Americans may resist and get the better of the forces sent against them." Charles Fox, a Whig leader, spoke of Washington's first defeat as "the terrible news from Long Island," and, in common with many Whigs, repeatedly called the American cause "the cause of liberty." All this gave some color to the Tory claim, when the war had failed, that the failure was due

other ancient enemies of England, there is no question but that the English nation stood enthusiastically with the government. But during the preceding constitutional agitation, a large part of English society sided with the colonies. John Adams, writing in July, 1774, said: "If the sense of the whole empire could be fairly collected, it would appear, I believe, that a great majority would be against taxing us with or without our consent.... It is very certain that the sense of parliament is not the sense of the empire." Franklin, whose judicial temper and long residence in England made him an even better judge, took the like ground, as late as October, 1775: "I am persuaded the body of the British people are our friends; but they are changeable, and by your lying gazettes may soon be made our enemies." As late as 1782, only four months before peace was made, the younger William Pitt asserted in parliament that if the House of Commons had not imperfectly represented the nation, it would never have been possible to carry on that "most accursed, wicked, barbarous, cruel, unjust, and diabolical war."

to the way in which the Whigs had thwarted and vexed the government,
—"to the support and countenance given to Rebellion within this very
House."

- 137. Social Unrestinthe Colonies. There are two aspects to the Revolution. The movement for independence was intertwined with a social upheaval within American society. The rejection of external English authority receives chief attention; and so it is sometimes said that the term "revolution" is not a fit name for the movement. But that name certainly does apply to this internal change. The social unrest had three phases.
- a. In nearly all the colonies, a group of families—special pets of the crown or of the proprietor—monopolized office, influence, and special privilege. Other rival families (like the Livingstones and Schuylers in New York) felt aggrieved, and therefore were perhaps more inclined to the movement for independence.
- b. The western sections of many colonies (notably in Pennsylvania and the Carolinas, but also, in some degree, in Virginia, Massachusetts, and New Hampshire) felt themselves oppressed by the older sections. The inhabitants of the new western counties sometimes differed from their eastern brethren in religion or even in race (§ 124); and they were not given their fair representation in the colonial legislature which taxed and governed them, - but which sometimes failed to protect them against Indians. Sheriffs and other officials were often non-residents, appointed from the eastern counties. courts also were controlled by the older sections; and in these western districts they met at long intervals and at long distances from much of the population. And fees exacted for court services and by all these appointed officers seemed exorbitant, and were sometimes made so by disreputable trickery.1 The western settlers were usually more democratic than the older sections; and their unrest helped not only to support the agitation for independence, but also, when inde-

<sup>1</sup> A certain Edmund Fanning, a Yale graduate, was appointed Register for the county of Orange, in western North Carolina, in 1763. It was currently

pendence was secured, to make the new States much more democratic than the colonies had been.

In North Carolina, after several years of serious friction, the oppressed pioneers set up a revolutionary organization in 1769, known as committees of "Regulators," to prevent collection of taxes. The eastern counties, which controlled the legislature, raised an army, and, in 1772, ended the war of the "Regulation" after a bloody campaign. The Regulation was not directed in any way against England, and must not be regarded as an opening campaign of the Revolution. Indeed, the militia that restored oppression was the militia which three years later rose against England. The defeated "Regulators," refusing to join their past oppressors, became Tories, almost to a man. But if the internal conflict could have been delayed three or four years, the Westerners would no doubt have dominated the Revolution itself in their State.

That was what happened in Pennsylvania. Pennsylvania also was on the verge of civil war; but, happily, internal conflict was postponed long enough so that in the disorders of the general movement against England, the western radicals, with their sympathizers elsewhere in the colony, found opportunity to seize the upper hand. In Pennsylvania, the Revolution was a true internal revolution. Old leaders were set aside; the franchise was extended to the democratic element, at the same time that large numbers of the old conservative classes were indirectly disfranchised; and a new reapportionment brought the democratic West into power. In most of the colonies north of the Carolinas, a like influence was felt in some degree.

c. Even in the older sections new men and a more democratic portion of society came to the front. Especially in the years 1774-1775, the weight in favor of resistance to English

reported that he was impecunious when he received the appointment, and that he accumulated £10,000 in two years by extortion. The following verses were current as early as 1765.

"When Fanning first to Orange came,
He looked both pale and wan;
An old patched coat upon his back,
An old mare he rode on.
Both man and mare warn't worth five pounds,
As I've been often told;
But by his civil robberies
He's laced his coat with gold."

The Regulators at one time dragged Fanning from the courthouse by the heels and flogged him, and at a later date burned his house.

control was often cast by a "union of mechanics," as in Charleston and Philadelphia, against the more conservative tendencies of the aristocratic merchants and professional men. The debt America owes for her independence to these predecessors of the trade-unions has been scantily acknowledged. And, quite as important, it is owing to these nameless workingmen, and to the democratic frontier communities, that the accompanying internal "revolution" extended the franchise and did away with the grossest forms of White servitude.

Aristocratic patriots, like John Adams, if they were not to fail, had to accept the aid not only of the artisans, but also of classes below them, which had not even possessed the franchise, - but which in times of disorder often seized it.1 In Virginia, this democratic result was least noticeable; because in that colony the aristocratic gentry, almost to a man, took the patriot side and so maintained their leadership (although even there it was the solid support of the western counties which made it possible for Thomas Jefferson to carry his sweeping reforms and change the face of Virginian society in the midst of the foreign war).2 But in New England, the old aristocracy were largely Tories, and were driven out. England became more democratic, as a result of the war, partly because of a new assertion of democracy, but partly because of this removal of the aristocracy.

Strange as it seems to us, one of the characteristics of colonial society was laziness. Observers so unlike as Hamilton and Jefferson agree in ascribing this quality to their countrymen; and foreign visitors were at one in dwelling upon it as an American trait. Within forty years after

<sup>1</sup> In many elections to early revolutionary conventions and congresses, the disfranchised classes voted, sometimes on explicit invitation of the revolutionary committees and sometimes because it was not easy or desirable to stop them. In many cases, the new State governments found it necessary to recognize the power which had had so much to do with making them. It is said that the records of the Massachusetts towns in the early Revolution years show a marked increase of illiteracy, - token of the lower social standing of the new men who were coming into control of town government. 2 8 252.

the Revolution, this characteristic had been replaced by that restless, pushing, nervous, strenuous activity which has ever since, in the eyes of all peoples, been the distinguishing mark of American life. One great factor in that tremendous and sudden change in a people's character was the Revolution, because it opened opportunities more equally to all, and so called forth new social energies.\(^1\) This perhaps is its chief justification.

## IV. FROM COLONIES TO THE UNITED STATES

A. Constitutional Agitation

138. First Lessons in Resistance: Repeal. — The Stamp Act became law in March and was to go into effect in November. The news reached the colonies in April and May. A lull followed. Governor Hutchinson of Massachusetts wrote that the Act was "received with decency" and would "execute itself." Even Otis declared it to be the "duty of all humbly . . . to acquiesce in the decision of the supreme legislature." And Franklin wrote home, — thinking chiefly, it would seem, of the money burden, — "We might as well have hindered the sun's setting. . . . Since it is down . . . let us make as good a night

 $<sup>^{1}</sup>$  An American writer began to see this truth as early as 1789 (Source Book, No. 145).

Englishmen of that day sometimes believed sincerely that the Revolution was the work of a group of "soreheads." George Washington as a youth had been refused a coveted commission in the British Army. Sam Adams' father had been ruined by the wise British veto of a proposed Massachusetts "Land Bank." The older Otis had failed to secure an appointment on the Massachusetts Bench. Alexander Hamilton was a penniless and briefless law student, with no chance for special advancement unless by fishing in troubled waters. All this, of course, as an explanation of the part played by these men, was as absurd as was the view of many Americans that high-minded men like Chief Justice Oliver and Governor Hutchinson of Massachusetts were Loyalists simply in order to cling to office and salary. But had the British charge been true, what greater condemnation could be devised for the old colonial system than that George Washington, under it, could not get a petty lieutenant's appointment, and that a genius like Hamilton had practically no chance for advancement unless taken up by some great gentlemen? Such a system needed overthrowing in the interest, not of these individuals, but of society as a whole.

of it as we can. We may still light candles. Frugality and industry will go a great way toward indemnifying us." 1

But while the old leaders thus sought to reconcile themselves to the law, popular discontent was smoldering; and soon a new leader came forward to fan it into flame. May 29, in the Virginia House of Burgesses (sitting in committee of the whole). Patrick Henry moved a set of seven resolutions denouncing the Stamp Act. Henry had appeared in the Assembly for the first time only nine days before; and in the "most bloody debate" that followed he was ridiculed and threatened by "all the cyphers of the aristocracy." 2 Through the cordial support of the democratic western counties, however, the resolutions were approved, and the next day the first five passed the House in regular session, though only by a majority of one. One day later (the last day of the session), Henry, having started home, the fifth resolution — the most important of the five — was expunged from the record by vote of the Burgesses. But meantime the whole seven, as originally approved in committee. had been published to the world as the work of the Assembly: and these resolutions "rang the alarm bell for the continent."

The sixth and seventh resolutions (never really adopted) asserted that the colonists were "not bound to yield obedience to any law" that so imposed taxation upon them from without, and denounced any one who should defend such taxation as an "enemy to his majesty's colony." These were the clauses that sanctioned forcible resistance. The fifth declared that every attempt to vest power to tax the colonists in "any persons whatsoever" other than the colonial representative Assemblies "has a manifest tendency to destroy British as well as American freedom." It was in the debate upon this resolution that Henry startled the House by his famous warning from history. "Tarquin and Cæsar," cried his thrilling voice, "had each his Brutus; Charles the First, his Cromwell; and George the Third"—here he was interrupted by cries of Treason! Treason! from the Speaker and royalist members, but "rising to a loftier

<sup>&</sup>lt;sup>1</sup> Franklin even solicited the English government to appoint his friends as stamp distributors in the colonies.

<sup>&</sup>lt;sup>2</sup> Thomas Jefferson, a young law student, stood in the door, and has left us his later recollections of the struggle. The resolutions are in the Source Book.

attitude," with flashing eye, the orator continued his sentence, — "may profit by their example. If this be treason, make the most of it."

On the day that Henry moved his resolutions, the Massachusetts Assembly invited the legislatures of the other colonies to send "committees" to a general meeting at New York in October. At first the suggestion was ignored; but in August

The first Man that eitherdistributes or makes use of Stampt Paper, let him take Care of his House, Person, & Effects. Vox Populi; We Fare

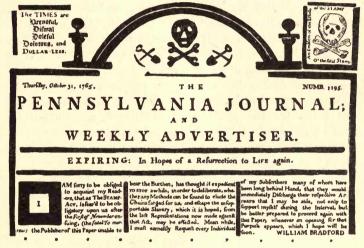
HANDBILL POSTED IN NEW YORK BY THE SONS OF LIBERTY.

(From O'Callaghan's Documents.)

and September (as public feeling mounted under the stimulus of the Virginia resolutions), colony after colony named delegates, and the Stamp Act Congress was assured. Fervently protesting loyalty to the crown, that meeting drew up a noble Declaration of Rights and a group of admirable addresses to crown and parliament. It helped, mightily, to crystallize public opinion, and to give dignity to the agitation against the law.

Meanwhile, payment of debts to British creditors was gen-

erally suspended, and local associations pledged themselves to import no British goods until the law should be repealed. More violent resistance was taken care of by secret societies known as Sons of Liberty. Soon these organizations grew bold enough to make public their membership and program. They took for their special function to compel compliance with the non-importation agreements and to terrorize the stamp distributors. In various places, the Tories were brutally handled.



A REDUCED FACSIMILE.

(From Schaef and Westcott's *History of Philadelphia*. This paper resumed publication in one week.)

A Boston mob sacked the house of Thomas Hutchinson; and Andrew Oliver, stamp distributor for Massachusetts, standing under the "Liberty Tree" (on which he had been hanged in

<sup>&</sup>lt;sup>1</sup>This method of coercing English public opinion was renewed in the later period of the struggle. In 1774 George Washington wrote to a friend in England: "As to withholding our remittances, that is a point on which I own I have my doubts on several accounts, but principally on that of justice." Writings, Ford's edition, II, 419,

effigy shortly before), was forced, in the presence of two thousand people, to read a solemn "recantation and detestation" of his office, and to swear it before a justice of the peace. The law was to go into effect November 1. When that day came, every stamp distributor on the continent had been "persuaded" into resigning, and no stamps were to be had. After a short period of hesitation, the courts opened as usual in most of the colonies, newspapers resumed publication, and all forms of business ignored the law.

In England the ministry had changed, and the new government seems to have been genuinely amazed at the uproar in the colonies. It was deluged, too, with petitions for repeal from English merchants, who already felt the loss of remittances from America; and, after one of the greatest of parliamentary debates, the Stamp Act was repealed (March 17, 1766). No serious attempt had been made to enforce it, and no demand was made for the punishment of the rioters, though the English government did ask the colonial assemblies to compensate the citizens who had suffered in the riots,—a request which was attended to very slowly and imperfectly.

139. Townshend renews the Contest.—Within a few months the English ministry was changed once more. Pitt was the head of the new government; and, excepting for Charles Townshend, all its members were "friends of America." But Pitt went into the Lords, as Earl of Chatham, and was soon incapacitated for business by disease. The ministry was demoralized; and the brilliant but unscrupulous Townshend, backed by the King, seized the leadership. "From this time," says Lecky, "the conduct of the government toward America is little more than a series of deplorable blunders." Townshend turned promptly to schemes of American taxation, and

<sup>&</sup>lt;sup>1</sup>The only use of stamps was in the case of some papers for the clearance of a few ships from the harbor of Savannah. A curious incident occurred in Maryland. When a county court decided, in defiance of the law, to open without stamped paper, the clerk of court protested, but was brought to time by threat of imprisonment for contempt of court!

in May, 1767, he secured the enactment of duties on glass, red and white lead, paper, painters' colors, and tea imported into the colonies.

In the Stamp Act discussions, some Americans had objected to the stamp duties as an internal tax. Now Townshend cynically professed his readiness to give them the external taxation they preferred. This tone would have been bad enough to a sensitive people flushed with recent victory; but two other features of the bill made it unendurable. Trials for attempted evasion of the law were to take place before admiralty courts without juries; and the revenue was appropriated to the payment of colonial governors and judges, so as to give the crown complete control over such officers. This law was a wanton attempt to demonstrate supremacy, without even the pretense of protecting America. It begins a new phase of the struggle.

Townshend died before his law went into effect; but, for three years, his successor, Lord North, maintained his policy. Meantime the American continent seethed once more with pamphlets, addresses, and non-importation agreements. Assemblies denounced the law; royal governors, under strict instructions, ordered them to rescind, received defiant answers, and replied with messages of dissolution. Then, in the absence of means for legal action, the colonists turned again to illegal violence. Mobs openly landed goods that had paid no tax, and sometimes tarred and feathered the customs officials.

To check such resistance to law, parliament, in 1769, added to its offenses by providing that a colonist accused of treason might be carried to England for trial, — in flat defiance of the ancient English principle of trial by a jury of the neighborhood. This threat roused Virginia again. That colony had not been affected directly by the Townshend commercial regulations, and the ministry had been particularly gentle toward it, hoping to draw it away from the rest of America. But now the Assembly unanimously adopted, and sent to the other colonies for their concurrence, a series of resolutions denouncing both

<sup>&</sup>lt;sup>1</sup> The Assembly had progressed since the close division on the Henry resolutions four years before,

the Townshend law and this recent enactment as unconstitutional and tyrannical.¹ The governor punished the House by instant dissolution. The ex-burgesses (influential citizens still) gathered at a private residence and signed a stringent non-importation agreement, which they recommended to their former constituents with almost the force of law.² Other Assemblies copied the Virginia resolutions or adopted similar ones; and non-importation agreements, enforced by semi-revolutionary committees, became nearly universal.

One incident in the turmoil of the period deserves special attention. Two regiments had been sent to Boston, in the fall of 1768, to overawe that turbulent community. This quartering of soldiery upon the town in time of peace, not for protection, but for intimidation, was one more infringement of fundamental English liberties. Incessant bickerings followed. Town officials quarreled with the governor, while the townspeople and the soldiers squabbled or indulged in fisticuffs in the streets. The troops were subjected to constant and bitter insult; and on the evening of March 5, 1770, came the long-delayed collision. Soldiers and people had been called into the streets by an alarm of fire. Various fracases occurred. In particular, a sentinel on duty was pelted with epithets and snowballs. Six or seven of his companions, under an officer, came to his rescue. One of them, hit by a club, shot an assailant, and immediately the rest of the squad, believing an order to fire had been given, discharged a volley into the crowd. Five persons were killed and six injured.

The next day, on the imperative demand of a crowded town meeting, and as the only way to prevent an organized attack by the citizens upon the troops (with the horrible slaughter sure to follow), Governor Hutchinson removed the regiments to the castle on the island. The troops had behaved well for many months, under intense provocation, and are not seriously to be blamed. The mob, no doubt, deserved more blame. But the chief condemnation falls upon the British ministry which had deliberately created the situation that made this "Boston Massacre" inevitable.

<sup>&</sup>lt;sup>1</sup> Nicholas, one of the Virginia leaders, declared that the new law was "fraught with worse evils than the Stamp Act, by as much as life is more precious than property"; and George Washington affirmed that this touched a matter "on which no one ought to hesitate to take up arms."

<sup>&</sup>lt;sup>2</sup> Extracts from all these Virginia proceedings are in the Source Book.

<sup>&</sup>lt;sup>3</sup> Some months later, the soldiers were tried before a Boston jury. John Adams and Josiah Quincy, leading patriots, volunteered as their counsel,

140. First Revolutionary Organization: Committees of Correspondence. — The Townshend Acts were a failure. They had driven the colonies to the verge of rebellion, while each penny collected under them had cost the English treasury a shilling, and English merchants were suffering keenly from the colonial non-importation policy. On the day of the Boston Massacre, Lord North moved the repeal, except for the insignificant tax on tea, giving notice also that the government would lay no more taxes in America. The tea tax was kept, at the King's insistence, —to mark the principle of parliamentary supremacy.

The old navigation acts (including the objectionable Sugar Act) remained in force, however; and instead of seeking real reconciliation, the British ministry took just this time to hector the various colonial Assemblies by arbitrary "orders" on many different subjects. When the Assemblies protested, the governors (under strict instructions) dissolved them; and, at other times, their usual liberties (such as the choice of speakers and place of meeting) were needlessly infringed.

During the distractions that followed, America learned to organize itself in a semi-revolutionary manner. Since her Assembly was no longer free, Massachusetts effected an extra-legal union of her towns, through Sam Adams' town committees of correspondence (1772); and Virginia inaugurated the even mightier task of binding the colonies into a permanent union by intercolonial committees of correspondence (1773).

Committees of correspondence here and there had been a familiar feature of the agitation; but now appeared standing committees to take the place of the legal organs of public

risking gallantly, not merely their personal popularity, but their public influence in the crisis which they had so much at heart. Two of the soldiers were punished lightly for manslaughter; the others were acquitted.

 $<sup>^1</sup>$ It was shown in the Commons that the total proceeds for the first year were less than £16,000, while the customs expense had eaten up all but £295 of that amount, and the extraordinary military expenses in America in the same period had been £170,000.

opinion. On the motion of Samuel Adams, in November, 1772, a Boston town meeting appointed a committee of twenty-one to maintain correspondence with the other towns of the province upon the infringements of their liberties (Source Book). The two hundred other towns responded promptly by appointing similar committees, and soon a vigorous correspondence was going on throughout this complicated network.

Adams' task was difficult because of the great number of local units in Massachusetts. It was relatively easy, when need arose, to organize a union of the few counties in Virginia or Maryland, led as they were by a few prominent families. But after all, each colony was fairly certain, sooner or later, to find a way to express itself through some revolutionary organization. It was not so certain that the indispensable task would be accomplished of uniting the thirteen colonies by an efficient revolutionary machinery. Here the first step was taken by Virginia.

The occasion was the attempt to arrest, for trial in England,

Every student should read Dr. Hosmer's delightful biography of Samuel Adams (Statesmen Series). In a much earlier essay (in the *Johns Hopkins University Studies*), Dr. Hosmer gave to his hero the title by which he is best known, "The Man of the Town Meeting."

<sup>1</sup> Sam Adams was the first American political "boss," in the better sense of the word. He played with unfailing skill upon the many strings of the town meeting, working his will through committees and faithful lieutenants. He has been called "the wedge that split England and America asunder." Dr. Howard says of him (Preliminaries of the Revolution, 253, 254): "He possessed precisely the qualities which belong to a consummate revolutionary leader. The very narrowness of view which often prevented him from seeing the merits of his adversaries only added to this power. He had unbounded faith in democratic self-government . . . and was almost fanatical in his zeal for constitutional liberty. He had indomitable will, great tenacity of purpose, and unflinching courage. . . . He was poor in worldly goods, simple in manner and dress, and able to enter sympathetically into the thoughts and feelings of plain men. Much of his power lay in his ability to persuade and lead the fishermen, rope-makers and ship-masters of Boston. . . . [He] had a rare talent for practical politics. He displayed a capacity for organization, sometimes lapsing into intrigue, and a foresight sometimes sinking into cunning."

the Rhode Islanders suspected of burning the Gaspee. 1 As in 1769, upon the same principle, the Virginia Assembly championed American rights in ringing resolutions (March 12, 1773): but this time it went further. (The Burgesses appointed a standing committee for intercolonial correspondence, and by formal letter invited all other Assemblies in America to appoint similar instruments of intercourse (Source Book). Within three months, committees had been set up in half the colonies, and ere long the machinery was complete.2 July 2, the New Hampshire Gazette said of this movement: -

"The Union of the Colonies which is now taking place is big with the most important Advantages to this Continent. . . . Let it be the study of all to make the Union firm and perpetual, as it will be the great Basis for Liberty and every public Blessing in America."

141. Coercion: Provincial Congresses and the Continental Congress. — The next step toward revolutionary government was to develop from the local committees a Provincial Congress, in colony after colony, and from the intercolonial committees of the continent a Continental Congress. This was brought about in the summer and fall of 1774, as the result of three events, -the attempt of the ministry to force taxed tea down the

<sup>1</sup> A revenue schooner off the Rhode Island coast. "Her commander," says Lecky, "had become extremely obnoxious to the colony, in which smuggling was one of the most flourishing . . . trades." One evening, in pursuit of a smuggler's boat, the Gaspee ran aground. It was then boarded by an armed mob, led by a prominent merchant. The commander was shot, the crew put on shore, and the vessel burned. The English government created a special commission to secure the offenders for trial in England; but, though the actors were well known to large numbers of people, no evidence against them could be secured. That fact prevented a possible collision; for Stephen Hopkins, Chief Justice of the colony, declared he would commit to prison any officer who should attempt to remove a citizen from the limits of the commonwealth.

Writers very commonly speak as if this creation of intercolonial committees was a mere extension of the Massachusetts intracolonial committees. This grossly obscures the facts. To use town committees to unite towns which always had had an Assembly to unite them was one thing: to find any machinery to unite colonies which had always refused to be united was a different thing. The similarity of name ought not to blind the student who can get back of words to things.

throats of the colonists, the rather animated protest of the Boston Tea Party, and the punishment of Boston by the Port Bill.

- (1) Ever since the repeal of the other Townshend duties, the animosities of the conflict had been concentrated on the one taxed article, tea.¹ For six years the colonists, for the most part, had done without that luxury except for the smuggled article. In April of 1773 Lord North tried an appeal to American avarice. Tea paid a tax of a shilling a pound on reaching England, and, under the Townshend Act, threepence more on importation into America. Parliament now arranged that a rebate of the English tax (and of some other burdens) should be given merchants who reëxported to America, so that the colonists would pay only the threepence tax, and would get their tea cheaper than Englishmen could, and cheaper than it could be smuggled.² Ships loaded with this gross bait were at once dispatched to the chief American ports.
- (2) The colonists were righteously indignant at the palpable attempt to trick them into paying a tax by appealing to their cupidity, and everywhere forcible resistance kept the tea out of the market. At Charleston the consignees were forced to resign, and it was stored, until seized by the

"' Begone, pernicious, baleful Tea,
With all Pandora's ills possessed;
Hyson, no more beguiled by thee
My noble sons shall be oppressed.'"

Tory punsters, on the other hand, were inclined to liken the whole disturbance to "a tempest in a teapot."

<sup>2</sup> The saving to the colonies from the exceedingly complex provisions of the various tea tax laws was far greater than would appear from the simplified statement in the text. The best authority upon the matter estimates that six-shilling tea in England could be sold in the colonies for three shillings (Farrand, "Taxation of Tea," in American Historical Review, III, 267).

At the close of a delightful summary which all students should read, Dr. Tyler says (Literary History of the American Revolution, I, 246-253): "The latent comedy of the situation flashes upon us now from the grotesque prominence then given, in the politics of the British empire, to this coy and peace-loving tea plant. By a sort of sarcasm of fate, it happened that between the years 1770 and 1775, this ministress of gentleness and peace,—this homelike, dainty, and consolatory herb of Cathay,—came to be regarded, both in America and England, as the one active and malignant cause of nearly all the ugly and disastrous business. . . The innocent shrub . . . seldom receives in our literature for those years any less lurid description than . . . 'pestilential herb.' Just south of the Potomac, a much-excited young woman, addicted, as she supposed, to poetry as well as to politics, sends forth to the world a number of stanzas entitled 'Virginia Banishing Tea,' wherein that valorous colony exclaims,—

Revolutionary government in 1776. At New York, Annapolis, and Philadelphia the authorities were intimidated into sending the tea ships back to England. But in Boston the "Tories" were made of sterner stuff, and the clash was more serious. Governor Hutchinson stationed warships in the channel to prevent timid owner of the three tea vessels from sending them away, refusing all demands of a series of threatening town meetings; and the customs officials prepared to land the tea by a force of marines as soon as the legal interval should expire. Boston exhausted all means but actual violence, — and then used that so skillfully as to avoid bloodshed. At the last moment, the final town meeting resolved itself into a band of Mohawks ("with whom," says Carlyle, "Sam Adams could speak without an interpreter"), and, seizing the vessels before they passed into the hands of the officials, emptied into Boston harbor some ninety thousand dollars' worth of tea (December 16, 1773).

(3) The short-sighted English government now replied with a series of "repressive acts" to punish Massachusetts. Town meetings were forbidden, except as authorized in writing by the governor, and for business specified by him. All courts, high and low, with all their officials, were made absolutely dependent upon his appointing and removing power. So far as the election of the Council was concerned, the charter of 1691 was set aside, and the appointment given to the crown. But most immediately effective in rousing American indignation was another act of this series, the Boston Port Bill, which closed the port of Boston to commerce, with provision for a blockade by ships of war. Since the entire population depended, directly or indirectly, upon commerce for their living, the town was threatened with extreme suffering. Food and fuel at once became scarce and costly, and great numbers of men were unemployed. The town authorities, however, set up various municipal enterprises to furnish work and food; and all parts of America forwarded money and supplies lavishly.

May 12, two days after the arrival of the news of the Port Bill, the committees of eight near-by Massachusetts towns met

l Classed with these acts, in the colonial mind, was the Quebec Act, which was passed at the same time. This legalized the Catholic religion, and restored part of the French law, for Canada, extending that province also to include the unsettled district west of the mountains between the Ohio and the Great Lakes. The purpose of this legislation was disinterested and amiable. The design was to conciliate the French settlers (almost the sole population), and to set up some authority to deal with the existing anarchy in the furtrade regions. No act of the series, however, caused more bitter suspicion among the English colonies, with their bigoted fear of Catholicism.

at Boston. This gathering sent letters to the correspondence committees of the thirteen colonies recommending an absolute suspension of trade with Great Britain, and putting the question whether all America should not "consider Boston as suffering in the common cause, and resent the injury inflicted upon her."

The first official response came from Virginia. May 24, the House of Burgesses set apart June 1 (when the Port Bill was to go into effect) "as a Day of Fasting, Humiliation, and Prayer, devoutly to implore the divine interposition for averting the heavy Calamity which threatens Destruction to our Civil Rights, and the Evils of civil War, and to give us one heart and one Mind firmly to oppose by all just and proper means every injury to American Rights." Two days later the governor dissolved the Assembly with sharp rebuke. On the following day, the ex-Burgesses met at the Raleigh Taverg, and recommended an annual congress of delegates from all the colonies "to deliberate on those general measures which the united interests of America may from time to time require. A second meeting, on May 31, called the Virginia deputies to meet at Williamsburg on August 1, in order to appoint Virginia delegates for the proposed continental congress and to consider a plan for non-intercourse with England. The counties generally ratified this call by expressly authorizing their ex-Burgesses to act for them at that meeting, or by choosing new representatives to do so. Here were the germs of revolutionary machinery, county, state, continental.

On receipt of the Virginia suggestion, the Rhode Island Assembly appointed delegates for the general congress (June 15). Time and place had not yet been named, but two days later the Massachusetts Assembly supplied this omission; and, before August 20, all the colonies but Georgia had chosen delegates for the First Continental Congress, to meet September 1 at Philadelphia.

<sup>&</sup>lt;sup>1</sup> The story of the Massachusetts action — behind locked doors, to keep out the governor's message of dissolution—should be a special report, with

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The "First Continental Congress" of 1774 was not in any sense a government, or a legislature. Indeed, the name "congress" was used to indicate the informal character of the gathering. No governing body had ever held that name. It was a meeting for consultation. Its function, as Albion Small has well said, "was not to express a sovereign will [as American writers have too often claimed], but to assist in the development of a common consciousness, so that there would, by and by, be a sovereign will to express." The meeting did not pretend to do more than advise and recommend; and it could not claim more authority, either from the nature of its appointment or from the credentials of its members.

In Pennsylvania, as in Rhode Island, the Assembly in regular session appointed delegates; but the appointment lacked the governor's approval and so carried only moral weight. The Massachusetts appointments lacked the sanction of either Council or governor. In Connecticut, the delegates had been appointed by the committee of correspondence with the approval of the Assembly. Of these elections, those in Rhode Island and Connecticut were the only ones that could claim to be governmental acts.

In the remaining colonies the action was still more irregular. The Delaware Assembly, then in adjournment, met at the suggestion of its speaker, in extra-legal session, to choose delegates. This meeting, legally, had no more weight than any other gathering of citizens. In South Carolina, a mass meeting of people interested, mainly from Charleston, made the election.¹ In New York, the city, or rather part of its wards, in an irregular election, chose five delegates; three other counties held some sort of meetings to ratify these appointments, and three more chose still other delegates,—in some cases by the action of small minorities; ² while six counties refused to act at all. The delegates from the remaining six

special reference to Sam Adams' delicate manipulation. Many Virginia records are given in the *Source Book*. Indeed, the story may be read there more fully than in this volume.

<sup>&</sup>lt;sup>1</sup> This appointment was afterward given greater moral weight by a curious ratification by the Assembly. That body had been summoned, but the governor had determined to dissolve it on the moment of its gathering. The delegates outwitted him, however, by assembling half an hour ahead of the appointed time. Even their confirmation carried only moral weight, since it lacked the governor's sanction.

<sup>&</sup>lt;sup>2</sup> In one county it was claimed that twenty people, out of a thousand free-holders, got together for the purpose.

colonies were chosen by *provincial conventions*. Such bodies were representative of public opinion, but claimed no governmental position.<sup>1</sup>

The credentials of the delegates to the general congress corresponded to the informal character of these bodies that appointed them. In no case were delegates given even pretended authority to bind their colony in law. The North Carolina convention did declare that the inhabitants of the province ought to be bound "in honor" by the action of their delegates. Some conventions authorized their representatives to take any "lawful" action to secure American liberties (i.e. action not in conflict with existing law). Other delegations were strictly enjoined merely "to consult and advise" with the delegates from the other colonies, and to agree upon a plan of action to be reported back to the Assemblies of their respective provinces for approval or disapproval.

We know this Congress only from letters and later recollections of its members and from some imperfect notes taken at the time by two or three delegates. It sat six weeks, and was one of the two or three most notable gatherings in our history,—although, forty years later, John Adams described

None of this first series of provincial conventions sat more than five or six days (most of them only for a day); and none of them took any action beyond appointing delegates to Philadelphia and adopting resolutions,—except that one or two provided for a second convention, to be held after the general congress.

¹ The Virginia convention (the first called, though not the first to meet) is typical. During June and July, according to the recommendation of the exburgesses, each Virginia county chose delegates for the proposed Williamsburg convention. Usually the men chosen were the same who had served in the just-dissolved Assembly, and usually, too, the same men were formally elected as the county delegates to a new Assembly which the governor had summoned for August 11. Nearly every county also adopted lengthy resolutions, deserving of place among great state papers,—the work of men like Jefferson, Henry, and Mason. As a rule, the resolutions formally approved the plan for a general congress, and instructed the county delegation to cooperate at Williamsburg for the appointment of a Virginia representation. Most of them also recommended to the Virginia convention a plan of commercial non-intercourse with Great Britain,—while several counties ominously named saltpeter as an exception to the articles not to be imported.

it as "one third Tories, one third Whigs and the rest Mongrels." The moderate party (Adams' "Tories") desired still to depend upon peaceable constitutional agitation to secure redress of grievances. This element was led by Joseph Galloway of Pennsylvania, supported by John Jay of New York and Edward Rutledge of South Carolina. The radicals (no more patriotic or conscientious, but more daring and far-seeing) insisted that, as a prelude to reconciliation with England, the ministry must remove its troops and repeal its acts. After strenuous debate, Galloway's proposals were rejected by a vote of six colonies to five. The Congress then recommended the radical plan of a huge universal boycott, in the form of a solemn Association. The signers were to bind themselves neither to import any British goods nor to export<sup>2</sup> their own products to Great Britain. To enforce this agreement, efficient machinery was recommended. Every town and county was advised to choose a committee, acting under the supervision of the central committee of its province, "to observe the conduct of all persons," and to have all violations "published in the gazette," that the foes to the rights of America might be "universally contemned."

## B. ENGLISH AUTHORITY BREAKS DOWN

142. The Association and Committees of Observation: Party Lines. — New York and Georgia refused to ratify the Association. But within six months all the other colonies, either by regular Assemblies or by a second series of conventions, had adopted the plan; and everywhere "committees of public

<sup>&</sup>lt;sup>1</sup>Letter to Jefferson (Jefferson's Works, Washington ed. VI, 249). "There was not one member except Patrick Henry," adds Adams, "who seemed to me sensible of the precipice, or rather the pinnacle, on which we stood." The Source Book gives also Adams' impressions at the time.

<sup>&</sup>lt;sup>2</sup> Previous to 1744, attempts at non-intercourse had been restricted to importation, and usually to a few taxed articles. Students may be asked to report upon the other recommendations and addresses of this congress. For its most important documents, see *Source Book*.

safety" (and sometimes irresponsible mobs, claiming the sanction of such authority) were terrorizing reluctant individuals into signing. Tar and feathers and "the birch seal" became common instruments of persuasion; and respectable Loyalists and Moderates complained bitterly that, in the name of liberty, the populace refused all liberty of speech or action. A great revolution, however righteous, is sure to have its ugly phases.

The precedent for anarchy had come from the government, even in this matter of the Association. Gage, the commander of the English forces in America and also the new governor of Massachusetts, as early as June of 1774, had ordered the arrest as traitors of all who signed or circulated a non-intercourse agreement. This was while the boycott was still a peaceful one, — months before the action of the Continental Congress. The government disregarded the rights of the people under the law before the people disregarded the law.

Party lines began to be drawn more closely. The issue, too, had changed. The question, now, was not approval or disapproval of Parliamentary taxation, but whether resistance should be forcible. The radical "Patriots" were probably a minority; but they were aggressive and organized, and eventually they whipped into line the great body of timid and indifferent people without a positive program. The revolutionary organization, too, fell largely to the democratic artisan class. June 1, 1774, the governor of New York, writing to the English government regarding the excitement about the Boston Port Bill, says: "The Men who call'd themselves the Committee [in New York] - who acted and dictated in the name of the People, were many of them of the lower Rank, and all the warmest zealots. . . . The more considerable Merchants and Citizens seldom or never appeared among them, but, I believe, were not displeased with the Clamor and opposition that was shown against internal Taxation by Parliament." And a few days later, a Loyalist gentleman exulting (too soon) over the election of a new "committee," says: "The power . . . is no longer in the hands of Sears, Lamb, and such unimportant persons, who for six years past have been the demagogues of a very turbulent faction."

The Radicals themselves did not yet think seriously of independence. They still protested enthusiastic loyalty to King George. They were ready to fight; but only, as Englishmen had often fought, to secure a change in "ministerial policy." Meantime, many earnest "Patriots" of the earlier agitation now became "Tories," rather than commit themselves to armed rebellion, and many were driven into Loyalist ranks by repugnance to anarchy.

143. Conventions and Congresses become Governments. — The Revolution was not a single movement. It was a whirl of thirteen revolutions within a revolution, with cogs catching and arcs intersecting. We can trace, however, a general trend.

In the winter and spring of 1775, regular government passed into abeyance. In colony after colony, the governors refused to let the legislature meet, and the people refused to let the governors' courts or other officials act. To prevent absolute lawlessness, in many places, county meetings or local committees set up some sort of provisional government, to last until constitutional authority should again become effective "by the restoration of harmony with Great Britain." During this turbulent disorder, second provincial conventions were held in several colonies, to act upon the recommendations of the First Continental Congress; and some of these bodies became de facto colonial governments, organizing troops, raising money, and assuming civil powers far enough to alleviate the existing

<sup>1</sup> Cf. Source Book, No. 140, a (John Adams' horse-jockey client).

<sup>&</sup>lt;sup>2</sup> Action of this kind in Mecklenburg County, North Carolina, on May 30, 1775, through distorted recollections and inaccurate statements, gave rise, years later, to the curious but groundless legend of a Mecklenburg "Declaration of Independence."

<sup>&</sup>lt;sup>3</sup> Of course the "Tories" had refused to pay any attention to the "illegal" elections of such provincial conventions. Indeed, in some cases, they were even excluded by test oaths. In this way the Radicals came to control the only governments in existence; and this fact, even in colonies where they made a minority, gave them a tremendous preponderance in action.

anarchy. In form, their acts were still recommendations, but the local committees enforced them as law.

It was these second conventions (except where the regular Assemblies could act) which appointed delegates to the Sec-



THE CONCORD MINUTE MAN. 1

ond Continental Congress. Between the election of that body and its meeting (May 10), Gage's attempt to seize Massachusetts military stores at Concord called from "embattled farmers" "the shot heard round the world" (April 19, 1775). Gage had sown dragon's teeth. From New England's soil twenty thousand volunteers sprang up to besiege him in Boston. War had come.

In consequence, the Second Continental Congress swiftly became a government, to manage the continental revolution

(§ 144). And, during the summer, a third lot of provincial conventions openly avowed themselves governments for their

Here once the embattled farmers stood And fired the shot heard round the world.

Across the stream, in a curve of the stone fence, is the grave of two British soldiers, over which have been carved the lines from Lowell:—

They came three thousand miles and died, To keep the Past upon its throne.

<sup>&</sup>lt;sup>1</sup> A statue by Daniel C. French at Concord Bridge. On one face of the base is inscribed a stanza from Emerson's "Concord Hymn":—

respective colonies,—appointing committees of safety (in place of the royal governors, who had been set aside or driven out), and themselves assuming even the *forms* of legislative bodies (§ 145).

144. Development of the Central Government. — The members of the Second Continental Congress had been elected with rather more uniformity than those of the First, and their instructions, on the whole, were somewhat less carefully limited. Still, like the First, they had been designed to formulate opinion. and to report their recommendations back to their colonies for approval. They had been appointed as a gathering of "committees," rather than as a legislature. The war changed all that. A central government was imperative; and the patriot party everywhere recognized the Congress as the fit agent to fill that place. For the first five weeks, that body continued to pass recommendations only. But June 15 it began its acts of government by adopting the irregular forces about Boston as a continental army, and appointing George Washington commander in chief. A year later it proclaimed the Declaration of Independence. Between these two events it had created a navy, opened negotiations with foreign states. issued bills of credit on the faith of the colonies, and taken over (from the old English control) the management of Indian affairs and the general post office system. Its nower continued to rest on revolutionary necessities, and on the informal acquiescence of the people, until 1781, when the ratification of the Articles of Confederation gave it constitutional sanction.

<sup>&</sup>lt;sup>1</sup> The legal New York Assembly (almost the only Assembly in session) refused by formal vote to send delegates (February 23). Previously it had rejected motions even to consider the action of the preceding Continental Congress, and to thank the New York delegates for their part therein. A motion to approve the non-importation policy also was lost. The regular government of this colony had now definitely abandoned the revolutionary movement. This was the last Assembly of New York. Its place was soon taken by revolutionary conventions.

145. The development of State governments may be followed conveniently in Massachusetts and Virginia.1 The early overthrow of constitutional government in Massachusetts made the movement peculiarly rapid there. Even before the close of the First Continental Congress. Massachusetts had a full-grown revolutionary government. The colony refused to recognize the parliamentary acts that set aside its charter. Councilors, appointed under those acts, were forced to resign, and the governor-dominated courts were not permitted to meet. Governor Gage had called the Assembly for October 5; but afterward, foreseeing hopeless clashes with it, had forbidden it to meet. The members came together. however, and declared themselves a provincial congress (according to instructions from many towns for just such a contingency). This event marks the end of civil government under the crown in Massachusetts. The resolutions and decrees of the provincial congress (sitting at Concord or Cambridge) had the force of law. That body prepared the colony for war, organizing troops and providing stores. It appointed a "receiver general," to whom, instead of to the governor's officials, the towns were instructed to pay their State taxes; and it chose a "committee of safety" to act in place of the governor.

Subsequent congresses expanded this policy. Soon the courts of justice were reëstablished under popular control; and, in accord with advice requested from the Second Continental Congress, the form of the charter government was restored—as far as might be. The Third Provincial Congress provided for the election of an Assembly, after the usual method. That body organized at Concord, July 19, 1775, and nominated the usual Council, which became both upper House and executive.<sup>2</sup> This government, renewed by annual elections, was continued until the adoption of a new constitution in 1780.

In Virginia the Assembly was prevented from meeting by successive prorogations; but county gatherings in December and January (1774-5) approved the Continental Congress and set up the Association, so that a second convention was not necessary until it came time to appoint delegates to the Second Continental Congress. Meantime, however, many

<sup>&</sup>lt;sup>1</sup> Massachusetts is selected because in the van; Virginia, because on the whole more typical, and because she was the first State to adopt a Declaration of Independence and a permanent constitution.

<sup>&</sup>lt;sup>2</sup> The charter provided that the Council should exercise executive powers in case of the absence of the governor and lieutenant governor; and the colony now determined to regard these officers as constructively absent, "until a governor of his majesty's appointment will consent to govern . . . according to the charter."

counties, on their own initiative, organized and armed a revolutionary militia.1

The First Convention (August, 1774; § 141) had authorized its chairman to call a second when desirable. On such call, the Second Convention met, March 20, 1775. It passed only "recommendations" in form; but it did adopt and unify the revolutionary militia system inaugurated by the counties, and in this important matter, at least, acted as a de facto government. It sat only eight days; but it recommended the counties at once to choose delegates to a Third Convention, to represent the colony for one year.

Governor Dunmore forbade the elections as "acts of sedition"; but they passed off with regularity. Meantime, the governor called the long-adjourned Assembly, to consider a proposal from Lord North, intended to draw Virginia away from the common cause. Instead of this program, the Assembly gave formal sanction to all the acts of the continental congresses and the Virginia conventions. In the squabbles that ensued, Dunmore took refuge on board a British man-of-war, to prevent his person being seized. The Assembly strenuously "deplored" that their governor should so "desert" the "loyal and suffering colony," and adjourned June 24. This ended the last vestige of royal government in Virginia.

Three weeks later, the Third Convention gathered at Richmond (out of range of guns from warships), and promptly assumed all powers and forms of government. It gave all bills three readings, and enacted them as *ordinances*; <sup>2</sup> and it elected an executive (consisting of a committee), and appointed all other needful officials. In the winter of 1776, it dissolved, that a new body, fresher from the people, might act on the pressing questions of independence and of a permanent government (§ 148).

## C. A Union of Independent States



146. Growth of the Idea of Independence. — The Loyalists early began to accuse the Patriots of aiming at independence, or at least to warn them that soon they would find themselves doing so. But, until some months after Lexington, the radicals vehemently and unanimously disavowed such "villainy." Otis, Dickinson, Hamilton, in their printed pamphlets, all denounced any thought of independence as a crime. Continental congresses and provincial conventions solemnly repeated such disclaimers.

<sup>&</sup>lt;sup>1</sup> Source Book, No. 132, for Washington's county.

<sup>&</sup>lt;sup>2</sup> Letter of George Mason, in Source Book, No. 133, c.

In October, 1774, Washington wrote that independence was "not desired by any thinking man in all North America," and in the following March, in London, Franklin declared that in America he had never heard a word in its favor "from any person drunk or sober." Two months later still, after Lexington, Washington soothed the apprehensions of a Lovalist friend with the assurance "that if the friend ever heard of his [Washington's ] joining in any such measures, he had leave to set him down for everything wicked"; and June 26, 1775, Washington assured the New Yorkers that he would exert himself to establish "peace and harmony between the mother country and the colonies." In September, 1775, Jefferson was still "looking with fondness towards a reconciliation," and John Jav asserts that not until after that month did he ever hear a desire for independence from "an American of any description." Indeed, in February, 1776, when Gadsden in the South Carolina convention expressed himself in favor of independence, he roused merely a storm of dismayed protest and condemnation, and no support. For months after Bunker Hill, American chaplains, in public services before the troops, prayed for King George; and, for long, Washington continued to refer to the British army merely as the "ministerial troops." As late as March, 1776, Maryland instructed her delegates not to consent to any proposal for independence.1

All this was honestly meant; but the years of debate over grievances had sapped the ties of loyalty more than men really knew, and a few months of war hurried the process. In the fall of 1775, the King refused contemptuously even to receive a petition for reconciliation from Congress; and soon afterward, the ministry arranged to send to America an army of "Hessians" hired out, for slaughter, by petty German princelings. Moreover, it became apparent, that, to resist England, the colonies must have foreign aid; and no foreign power could be expected to give us open aid while we remained English colonies.

Thus, unconsciously, American society was ready to change front on the matter of independence. Then came *Thomas Paine's* daring and trenchant *Common Sense*. This fifty-page publication, in terse phrase and clarion tone, spoke out what the community hailed at once as its own unspoken thought. One hundred and twenty thousand copies sold in three months, — one for every three families in America; and both sides ascribed to it an influence almost magical.

Common Sense appeared in January, 1776. It was the first public argument for independence. At first the author's name was not given, and it was commonly attributed to one of the Adamses or to Franklin. Paine was a poor English emigrant whom Franklin had befriended for the "genius in his eyes." It is impossible to take space here to give any idea of the convincing argument of the booklet, but a few lines may represent the incisive style.

"The period of debate is closed. Arms... must decide.... By referring the matter from argument to arms, a new era in politics is struck.... All plans... prior to the nineteenth of April are like the almanacs of last year.... All talk of filial affection for England has become archaic....

"Where, say some, is the king of America? I'll tell you, friend. He reigns above, and doth not make havor of mankind, like the royal brute of Britain... A government of our own is our natural right.... Ye who oppose independence now, ye know not what ye do: ye are opening a door to eternal tyranny....

"O ye that love mankind! Ye that dare oppose not only tyranny, but the tyrant, stand forth! Every spot of the Old World is overrun with oppression. Freedom has been hunted round the globe. Asia and Africahave long expelled her. Europe regards her like a stranger; and England has given her warning to depart. O, receive the fugitive and prepare in time an asylum for mankind."

147. Excursus: the Loyalists. — The Revolution, in important aspects, was more like a civil war than even the great "Civil War" of 1861. In that sectional struggle, each section was essentially united within itself; but in 1776, every community was divided, neighbor warring upon neighbor. In New York, Pennsylvania, and Georgia, it seems certain that the

<sup>&</sup>lt;sup>1</sup> He had been in America only thirteen months.

Loyalists were a majority; and on the whole they made at least every third man in the colonies. To this million of Americans, independence meant disloyalty. The decision for independence gave inspiration and energy to the Patriots, but it cost them some good men. Many dropped from the patriot cause, rather than reverse long-professed convictions on this matter. Society moved rapidly, and not all could keep the same pace. In July, 1776, the lines were drawn irretrievably. Men whom that month found standing where Washington or Jefferson had stood seven or eight months before, were "Tories."

The Tories represented respectability and refinement. They came from (1) the old official classes, who naturally had the viewpoint of the government; (2) commercial and capitalistic classes, always timid regarding change; (3) the professional classes, especially the clergy outside the Puritan ranks; and (4) that vast well-content part of the population which is always conservative in temper, but which (as Dr. Tyler points out in this connection) has its full share of "moral scrupulousness, personal purity, and honor."

Prominent in the Tory ranks were great numbers of college graduates. In 1778 Massachusetts banished 310 leading Tories, — more than sixty of them Harvard graduates. Says Moses Coit Tyler (*Literary History of the Revolution*, I, 303): "To any one familiar with the history of colonial New England, that list of men denounced to exile and loss of property on account of their opinions, will read almost like the beadroll of the oldest and noblest families concerned in the founding and upbuilding of New England civilization," and, says Lecky (*England in the Eighteenth Century*, III, 418): "There were brave and honest men in America who were proud of the great free empire to which they belonged, and who had no desire to shrink from the burden of maintaining it . . .

¹ The way in which prominent South Carolina families divided is illustrated by the following extract from a much longer list in McCrady's South Carolina. "William Bull (Lieutenant Governor) stood for the king; but his nephews, Stephen and William Bull, and William Henry Drayton, joined the Revolutionists. Rawlins Lowndes . . . went with the Revolutionary party; but his brother remained loyal to the Crown. Four Pinckneys . . . were prominent in the Revolutionary cause; but [a fifth] is enrolled as a loyal subject. William . . and Alexander Moultrie served . . . in the continental army; but their brother John remained Lieutenant Governor of Florida under the Kiug. . . ."

and who, with nothing to hope for from the crown, were prepared to face the most brutal mob-violence and the invectives of a scurrilous press, to risk their fortunes, their reputations, and sometimes their lives, in order to avert civil war and ultimate separation. Most of them ended their days in poverty and exile; and, as the supporters of a beaten cause, history has paid but a scanty tribute to their memory, but they comprised some of the best and ablest men America has ever produced."

148. Making a Constitution for an Independent State. — The access of disorder that followed Lexington led several colonies to apply to Congress for counsel. In reply, Congress "recommended" the provincial convention of New Hampshire

"to call a full and free representation of the people . . . [to] establish such a form of government as in their judgment will best produce the happiness of the people and most effectually secure peace and good order in that province, during the continuance of the present dispute between Great Britain and the colonies."

Under such advice, early in 1776, New Hampshire and South Carolina set up *provisional* written constitutions. These documents, however, did not imply independence. They proclaimed their temporary character, and referred always to the commonwealths not as States, but as "colonies."

May 15, 1776, Congress took more advanced action. It recommended the "assemblies and conventions" of all colonies, "where no government sufficient to the exigencies of their affairs hath been hitherto established, to adopt such a government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and of America in general." Two days later, in a letter to his wife, John Adams hailed this action (for which he had been the foremost champion) as "a total, absolute independence . . . for such is the amount of the resolve of the 15th." <sup>1</sup>

One colony at least had not waited for this counsel. The Fourth Virginia convention met May 6, 1776, and turned at once to the question of independence and a constitution. The only

<sup>1</sup> See Source Book for this significant letter, and for the resolution.

difference of opinion was as to method of procedure.¹ Should Virginia, standing alone, declare herself an independent State and frame a constitution for herself? Or should she try to get the Continental Congress to make a declaration and to suggest a general model of government for all the Colonies? Formal plans were presented, representing each of these views. On the fifteenth, after much debate, the convention determined upon a plan between the two extremes. Unanimously it instructed its representatives in Congress to move immediately for a general Declaration of Independence there; and it appointed committees to proceed at once to draw up a constitution for Virginia herself as an independent State.

This convention, like the Second and Third (§ 145), was a governing body, not purely a "constitutional convention" in the modern sense. Indeed, as a whole, it had no direct authorization from the people to form a constitution, although it seems to have been generally expected to take up the matter. The call for election had not mentioned this great purpose, but some counties had instructed their delegates to work for independence and for the adoption of a new "frame of government"; and the leaders had been in correspondence regarding a constitution. A plan from Patrick Henry appeared in print while the elections were in progress.

The decisive vote was taken on the same day that the Continental Congress made its recommendation at Philadelphia for new State governments. A common doctrine that the States adopted constitutions only on the recommendation of Congress is plainly false.

The bill of rights (the first part of the constitution) was reported by the committee May 27, and adopted by the convention June 12. The "frame of government" was adopted June 29. To it at the last moment was prefixed a third part of the constitution, a declaration of independence for Virginia, earlier than the Continental Declaration (Source Book).

149. The Virginia Bill of Rights 2 was the first document of the kind in our history, and it remains one of our greatest state papers. Three

<sup>&</sup>lt;sup>1</sup> On May 10, Charles Lee wrote to Washington, "A noble spirit possesses the Convention. They are almost unanimous for independence, but differ as to the mode. Two days will decide."

<sup>&</sup>lt;sup>2</sup> Source Book, No. 136. The class should study it, and compare the opening passages with corresponding parts of Jefferson's Declaration of Independence. See also comment there on the common neglect of the debt owed by American political theory to the document.

or four States at once copied its characteristic parts almost verbatim, and all the bills of rights of the revolutionary period were profoundly influenced by it. Several provisions, such as those against excessive bail, cruel or unusual punishments, arbitrary imprisonment, and the like, go back to ancient English charters, even for their wording. Recent grievances suggested certain other clauses, — the prohibition of "general warrants," the insistence upon freedom of the press, and the emphasis upon the idea that a jury must be "of the vicinage." Patrick Henry contributed a noble assertion of the principle of religious freedom.

But the peculiar significance of this brief but immortal document is found in a few paragraphs not yet referred to. English bills of rights had insisted upon the historic rights of Englishmen, but had said nothing of any rights of man; they had protested against specific grievances, but had asserted no general principles. Such principles, however, had found frequent expression in English literature; and the writings of Locke and of less famous but more democratic English pamphleteers of the seventeenth century had made them household phrases with American political thinkers. Now, these fundamental principles, upon which American government rests, were incorporated by George Mason in this Virginia bill of rights, - a fact which distinguishes that document from all previous governmental documents of the English-speaking race. Two or three weeks later, Jefferson incorporated similar principles, clothed in phrase both more eloquent and more judicious, in the opening paragraphs of the Continental Declaration of Independence, - whence mainly, in later years, they have reached American thought.

Among the principles of the Virginia document are the statements:—
"That all men are by nature equally free<sup>2</sup> and independent, and have certain inherent rights. . . ."

<sup>&</sup>lt;sup>1</sup> As to French influence, cf. Modern History, § 303, note.

<sup>&</sup>lt;sup>2</sup> According to Edmund Randolph, the phrase equally free was objected to as inconsistent with slavery and likely to involve civil tumult. The objectors were quieted with the amazing assurance "that slaves, not being constituent members of our society, could never pretend to any benefit from such a

"That all power is vested in, and consequently derived from, the people.

"That government is, or ought to be, instituted for the common benefit of the people . . . and that when any government shall be found inadequate . . . to these ends, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it. . . .

"That no free government, or the blessings of liberty, can be preserved . . . but . . . by frequent recurrence to fundamental principles."

150. The Declaration of Independence. — Soon after the Virginia instructions of May 15 reached Philadelphia, Richard Henry Lee, one of the Virginia delegation in the Continental Congress, moved that the united colonies be declared "free and independent States" (June 7). After brief debate, action was postponed until July 1, to permit uninstructed delegates to consult their colonial Assemblies.

North Carolina had already authorized its delegates "to join in" such a vote, if the matter came up; while Massachusetts, Rhode Island, and Georgia had passed vague resolutions which might be construed as authorization (the last State, however, by a very irregular convention). Eight colonies had expressed no approval, and at least three of them had in most emphatic terms forbidden their delegates to participate in any such action. During the month of June, however, the Maryland, New Jersey, and Pennsylvania Assemblies rescinded these prohibitions, and Assemblies or Congresses in the other colonies gave the necessary authorization, - except in New York and South Carolina. The delegates from New York wrote home (June 10) for instructions; but the Third New York Convention replied (on motion of John Jay) that the existing convention, having no mandate from the people of the colony on the question, could not presume to give authority. A new provincial congress was called at once, to act upon the matter; but it did not assemble until July 9, and so the New York delegates at Philadelphia

maxim." After all, the Fathers enunciated their splendid principles with mental reservations: or rather, let us say, their great declarations were history only in part, and in part prophecy. In Massachusetts, similar words in her bill of rights of 1780 were held by her courts, four years later, to have abolished slavery within her limits, although that result had not been thought of when the clause was adopted. In Virginia the matter never got into the courts; and if it had, the decision would surely have been in accordance with the understanding in the convention.

took no part in the votes. The South Carolina delegates fell back upon a clause in their instructions authorizing any action for the common good,—though the provincial congress that gave those instructions had not thought of independence.

Meantime the Continental Congress appointed a committee to prepare a fitting and formal Declaration for use if Lee's motion should prevail. Happily, it fell to Thomas Jefferson actually to pen the document; and his splendid faith in democracy and his devotion to human rights gave it a convincing eloquence which has made it ever since a mighty power in directing the destiny of the western world.<sup>1</sup>

On July 1, Lee's motion was again taken up. The first vote was divided; but on the following day, the motion was approved by twelve States. The formal Declaration, as reported from the committee, was then considered in detail, and adopted on July 4. On the 9th, the Fourth New York Congress gave the assent of that State. August 2, the official copy of the Declaration, engrossed on parchment, was signed by the members of Congress then present.

D. THE THIRTEEN STATE CONSTITUTIONS

(The following sections (151–155) may well be discussed with books open. Students should not be held responsible for details, but they should get strong general impressions.)

¹This does not mean that Jefferson coined new thought or new phrases. Most of the document was already common property, as to both ideas and expression. Jefferson's fervor and literary skill added just the touch needed to perfect the form. Both the committee and Congress made slight changes; but the Declaration as we have it is essentially Jefferson's original draft, written without reference "to book or pamphlet."

<sup>&</sup>lt;sup>2</sup>Conservative Patriots, like Dickinson, still opposed the motion. On the first, nine States voted yes; New York did not vote; Delaware was evenly divided; and Pennsylvania and South Carolina voted no.

<sup>&</sup>lt;sup>3</sup> John Adams regarded this vote, with its affirmative gains, as the decisive step. On the 3d of July he wrote to his wife: "The second day of July, 1776, will be the most memorable epocha in the history of America. I am apt to believe that it will be celebrated by succeeding generations as the great aniversary festival. It ought to be commemorated as the day of deliverance, by solemn acts of devotion to God Almighty. It ought to solemnized with

151. Conditions: the War in '76.—Military events in '76 were indecisive. In the spring, after nearly a year's siege, Washington forced the English out of Boston; but he was unable to prevent their occupying New York. After the defeats of Long Island and White Plains, his sadly lessened troops fled through New Jersey into Pennsylvania; but a few weeks later he cheered the Patriots by the dashing winter victories of Trenton and Princeton.¹

Meantime the revolution in governments went on. In the six months between the Declaration of Independence and the Battle of Trenton, seven 2 States followed Virginia in adopting written constitutions. Georgia was hindered for a time by the predominance of her Tories; and New York, because she was held by the enemy. These States followed in '77.3 The remaining three States had already set up provisional governments (§§ 145, 148) which, in Massachusetts and New Hampshire, remained in force for some years. South Carolina, however, substituted a regular constitution in '78.

pomp and parade, with shows, games, sports, guns, bells, bonfires, and illuminations, from one end of this continent to the other, from this time forward forevermore."

<sup>1</sup> In the darkest of these days, Thomas Paine again thrilled the people with his pamphlet, *The Crisis*, which was a mighty factor in filling the levies and dispelling despondency. Pages of it were on men's tongues, and one passage has passed into a byword,—"These are the times that try men's souls."

<sup>2</sup> Connecticut and Rhode Island, it is true, each merely reënacted its colonial charter as a "constitution" of a "State"; and New Jersey, in like fashion, converted a provisional constitution, adopted as late as July 2, into a permanent one, by the change of a few words.

<sup>8</sup> Thanks to the political instinct of the people, the institution of these new governments, even in the midst of war and invasion, was quietly accomplished, and civil order was soon on a far sounder basis than at any preceding time since the Boston Port Bill.

Regarding the transition from colony to commonwealth in Virginia, Jefferson wrote (August 13, '77),—"The people seem to have laid aside the monarchic, and taken up republican government, with as much ease as would have attended the throwing off an old and putting on a new suit of clothes." Cf. Source Book, No. 138, for John Adams' account of the proceedings in South Carolina.

152. "Constitutional Conventions" and "Ratification." — Until we come to Massachusetts and New Hampshire in the '80's, no one of these constitutions was adopted and ratified in a modern manner. The conventions or congresses had to carry on the revolutionary government, as well as make constitutions. In some cases they had no authorization for constitution making, and in others, only a vague one, as in Virginia (§ 148). Some of the constitution-making bodies, indeed, had been elected months before there was any thought of independence.

For the most part, too, the constitutions were adopted just as ordinary statutes were enacted, and, to our thought, would have been no more binding. None of the first eleven constitutions were submitted to a referendum. Jefferson urged such action in Virginia, arguing that otherwise the constitution would not really be fundamental, but could be modified, like any other statute, by subsequent legislatures, but this doctrine was too advanced to command sympathy.1 When the New York provincial congress of June, '76, published its call for a new congress to act upon independence and the adoption of a form of government, the statement aroused apprehensions in the "union of mechanics" in New York City. "We do not believe," said their address of remonstrance, "that it was intended for future delegates or yourselves to be vested with the power of framing a new constitution for this colony, and that its inhabitants at large should not exercise the right God has given them. . . . Many believe that we will not be allowed to approve or reject the new constitution, [and] they are terrified at the consequences. . . . " This remonstrance was not regarded; and the mechanics refrained from pressing it further in the face of war. It is the only popular demand, however, for a constitutional referendum, outside of New England; and, significantly enough, these mechanics in New York City were largely of New England birth or descent.2

Here, better possibly than anywhere else in our history, is seen the supreme educational value of the New England town meeting in politics. The sovereignty of the people, and practical devices for exercising that sovereignty, were understood in New England by the ordinary artisan and farmer, as elsewhere only by lonely thinkers like Jefferson.

<sup>&</sup>lt;sup>1</sup> The highest Virginia court afterward upheld the constitution of '76 as amendable only by a duly called convention for that express purpose. But the highest court of South Carolina in '80 declared the constitutions of '76 and '78 in that State to be ordinary laws, so far as authority and power of alteration were concerned. This logical decision compelled that State to adopt a third constitution, by a true convention, in 1783.

<sup>&</sup>lt;sup>2</sup> Cf. §§ 137, c, 142, on the democratic influence of the artisan class.

No reference to the people, it is true, was taken in the case of continuing the old governments of Rhode Island and Connecticut, because it was held that the people had already sanctioned them by long acquiescence. But in New Hampshire and Massachusetts, where new constitutions were to be adopted, there was no serious thought of acting without popular referendum. Indeed, that was not enough. The people of these States demanded a popular *initiative*, also, in the matter, and a true constitutional convention, — as will appear in the following paragraphs.

Throughout the summer of '76, Massachusetts papers and pamphlets teemed with projects for a new government. 1 September 17 the Assembly recommended to the towns of the State that they authorize the existing Assembly to prepare a constitution, "to be made public for the inspection and perusal of the inhabitants, before the ratification thereof by the Assembly." This would have permitted popular suggestion only; Massachusetts would not tolerate such a plan, and a general opposition appeared to any action whatever by the ordinary legislature. A Worcester County convention voted. "That a State congress chosen for the sole purpose of forming a constitution is . . . more eligible than the House of Representatives." May 5, 1777, the expiring Assembly recommended that its successor should be empowered, at the elections, to make a constitution. Many towns refused assent. Thus, a Boston town meeting instructed its delegates to resist the movement until the people at large should delegate "a select number for that purpose and that alone." But there was sufficient approval so that the new Assembly felt justified in attempting the work. In February, 1778, a constitution was submitted to a popular vote, with the provision that an affirmative vote of two thirds of the towns should suffice to establish it.

This first use of the referendum gave a rejection. Less than a tenth of the towns approved the document! Many of them drew up lists of objections; and Boston improved the opportunity to point its moral as to the need of a true constitutional convention: "This Specimen we now have . . . has confirmed us fully, even to demonstration, [that] we were right in our conjectures that the Honorable body was improper for this business." Then the resolution insists again that the matter must be

¹ Some of these were fantastic. Democracy, of course, will show its weak points. One "farmer" published a constitution of sixty articles, which, he boasted modestly, he had prepared for the commonwealth "between the hours of 10 A.M. and 2 P.M." Opposition to any executive was common. At a slightly later date, one town voted "that it is Our Opinniun that we do not want any Goviner but the Guviner of the univarse and under him a States Gineral to Consult with the wrest of the united stats for the good of the whole."

committed to "a convention for this purpose and this alone, whose existence is known no longer than the constitution is forming."

This method, joined with the referendum, was now adopted, and a constitution was secured in the most democratic and enlightened method yet known to man. At the elections to the next Assembly, the towns were asked to vote, (1) whether they desired a constitution to be framed, and, (2) if so, whether they would empower their delegates in the coming Assembly to call a Convention for the sole purpose of forming a constitution. The responses were favorable, and a Convention was called for September 1, to be chosen as regular Assemblies were. That body drew up a constitution which (March 2) was submitted to the towns. More than two thirds the towns expressed their ratification, at their regular spring elections, and in June, 1780, the Convention declared the constitution in effect.

In New Hampshire a like method was followed, and four popular votes were necessary before a constitution was ratified in 1783. It was many years before this method became general, outside New England.

153. Characteristics. — The thirteen constitutions were strikingly alike.¹ All were "republican," without a trace of hereditary political privilege. Nearly all safeguarded the rights of the individual by a distinct bill of rights, and the rest had many provisions of a like character scattered through the body of the document. Most of them formally adopted the English Common Law as part of the law of the land; and where the constitution did not make that statement, the courts none the less acted upon that principle. Except in Pennsylvania and Georgia, the legislature had two Houses (§ 70). Pennsylvania kept a plural

¹ This was due mainly to the similarity between the preceding colonial governments, but in part to a remarkably active interchange of ideas among the leaders during the spring and summer of '76. Before the Virginia convention, Patrick Henry corresponded freely with the two Adamses. Members of Congress at Philadelphia constantly discussed forms of government at informal gatherings; and, on several occasions, delegates from distant colonies returned home to take part in constitution-making. John Adams, whose early advocacy of independent State governments had brought him many inquiries as to what kind of government he had in mind, wrote much on the subject in his private correspondence, and finally published a pamphlet, Thoughts on Government, which was studied widely. Of this period Adams said, "The manufacture of governments is as much talked of as was the manufacture of saltpeter before."

executive,—a council with one member designated as "president"; but elsewhere the revolutionary committees of safety gave way to a single "governor" or "president." 1

In all these constitutions the executive was shorn of much of the power of colonial times, mainly because the people did not yet clearly see the difference between trusting an officer chosen by themselves and one appointed by a distant king. New York and Massachusetts, however (the eleventh and twelfth States to act), had had time to learn the need of a firm executive. Accordingly, they strengthened that branch of government somewhat, though they left it weaker than is customary today. These two States also placed the election of the governor in the hands of the people directly. That was already the case in Connecticut and Rhode Island under the colonial charters. Everywhere else the dependence of the executive upon the legislature was increased by making him the appointee of the legislature.<sup>2</sup> Appointment was usually for one year, with prohibition upon more than three terms out of seven years.

Everywhere the legislature overshadowed the two other branches of government. The judiciary, even more uniformly than the executive, was chosen by the legislature, and in many cases was removable by executive and legislature without formal trial. No one yet foresaw, in anything like its modern extent, the later power of the judiciary to declare legislative acts void when, in its opinion, contrary to the constitution. The old executive check upon the legislature, the absolute veto, nowhere appeared and only two States devised the new qualified veto

<sup>1&</sup>quot;President" was the less imposing title; but the president of South Carolina after all was a State executive, while the president of the council in Pennsylvania was merely a presiding member in an executive council. The tendency to divide the executive between separate officers,—governor, treasurer, and so on,—continued (§ 119).

<sup>&</sup>lt;sup>2</sup> In the Virginia constituent convention a separate electoral college was suggested, such as was adopted later in the Federal Constitution for the President. Maryland did choose her senators by such a college.

<sup>&</sup>lt;sup>3</sup> In the conventions an absolute veto was advocated, as indispensable to stable government, by men so unlike as Patrick Henry and John Adams.

(to be overridden by two thirds of each House), which has since become so common. New York gave this veto to governor and judiciary acting together, in a "revisionary council"; Massachusetts gave it to the governor alone,—in other respects copying all the details, and even the words, of the New York plan. From the Massachusetts constitution this form of veto, with one important addition (§ 156, c) was to pass, words and all, into the Federal Constitution.

One of the most common provisions was some religious discrimination. "Freedom of worship," it is true, was generally asserted in the bills of rights; but this did not imply our modern separation of church and state. Office holding in several States was restricted to Protestant Christians, and some States kept a specially favored ("established") church. The Massachusetts bill of rights provided that all citizens should be taxed for church support, but that each man should have the right to say to which church in his town or village his payment should go. Most places in Massachusetts had only a Congregational church, however, which, therefore, was maintained at public expense. Connecticut had a similar plan.

Local government remained more nearly upon the pre-Revolutionary basis. There was, however, a distinct tendency toward decentralization. Some officers, formerly appointive, became elective in the local units; and others were chosen now not by the governor, but by the legislature, usually on local nomination.

Two remaining matters, the suffrage and the method of amendment, are so fundamental that they deserve distinct sections to themselves (§§ 154, 155).

154. The Franchise. — Democracy was more praised than practiced. Each of the thirteen States excluded a large part of even the free White males from voting. Some gave the franchise only to those who held land, and most of the others demanded the ownership of considerable taxable property of some kind as a qualification. Even the four most democratic States — Pennsylvania, New Hampshire, Georgia, North Carolina — per-

mitted only taxpayers to vote. 1 The country over, probably not one White man in five held even the lowest degree of the suffrage. 2

The common requirement of more property to vote for the upper than for the lower House of the legislature was one of the devices to make the senates special protectors of property interests. Commonly, too, there was a still higher qualification for sitting in the legislature, — often more for the upper House than for the lower, — and yet more for a governor. In several States, the upper House was chosen by the lower; and in Massachusetts, while all men who could vote for one House could vote for the other also, still in choosing the senate, the votes were so apportioned that a rich man counted for several poor men.<sup>3</sup>

Here were four distinct ingenious devices against a dangerously encroaching democracy: (1) an upper House (§ 70); (2) indirect election of that House, and of the executive and judiciary; (3) property qualifications, sometimes graded, for voting; and (4) higher qualifications for holding office. All these had been developed in the colonial period. On the whole, the new States weakened the checks (and no State increased them); but every State retained some of them.

North Carolina pretty well lost her democracy in these gradations. To vote for a representative, a man had only to be a taxpayer; but to vote for senator, he must own 50 acres of land; to sit as representative, he must have 100 acres; as senator, 300 acres; and as governor, £1000 of real estate. Massachusetts, beginning higher, graded her voters only indirectly (note, above); but a member of her lower House had to have

<sup>&</sup>lt;sup>1</sup>Curiously, these four States all put into their constitutions a provision for encouraging public education. It should be added that Pennsylvania and Georgia were a trifle more liberal with the franchise than the compact statement in the text would indicate. The first gave the suffrage to the grown-up sons of freeholders, and the second to certain classes of skilled artisans, whether taxpayers or not.

<sup>&</sup>lt;sup>2</sup> Even Jefferson's draft for a Virginia constitution (*Works*, Ford ed., II, 7 ff.) calls for a landed qualification, "½ acre in a town or 25 acres in the country." But see George Mason's more democratic proposal, *Source Book*, No. 136, and comment.

<sup>&</sup>lt;sup>3</sup> That is, the richer any part of the State, the smaller the senatorial districts, and the more of them. A man who paid taxes on \$3000 had ten times the voting power of a man who paid on only \$300.

£100 in real estate or £200 in other property; a senator, three times as much; and a governor, £1000 in "real" property.¹ South Carolina required her governor to hold £5000 in land, and so left only her great planters eligible.²

155. Provision for Amendment. — To-day it is customary to say that the most important clause in any constitution — "the constitutional clause"—is the one that determines how the document may be changed. But half these first constitutions had no provision whatever in the matter. The omission was due partly to the political inexperience of that day; partly to the vague expectation that, on occasion, by a sort of peaceful revolution, the people would "recur to fundamental principles" in much the same way as in creating the original instruments. A definite method for amendment was prescribed in only six of the thirteen constitutions; and in some of these the method was very imperfect.

In South Carolina the legislature gave ninety days' notice (that public opinion might be known), and then acted as in passing any law. In Maryland, an amendment became part of the constitution if passed by two successive legislatures. In Delaware five sevenths of one house and seven ninths of the other were required to carry an amendment, — which amounted to complete prohibition upon constitutional amendment. In Pennsylvania, amendments could be proposed only at intervals of seven

<sup>&</sup>lt;sup>1</sup>This qualification for governor was preserved in later Massachusetts constitutions. More than a century afterward (1890), when William E. Russell, a brilliant young reformer, was elected governor, it was found necessary, during the campaign, to put enough real estate to his name so that he could qualify.

<sup>&</sup>lt;sup>2</sup> Vermont, it is true, was a real democracy; but Vermont was not one of the thirteen colonies, nor did she become a State of the Union until 1791. Her territory had belonged to New York and New Hampshire; but neither government was satisfactory to the inhabitants, and, during the early Revolutionary disorders, the Green Mountain districts set up a government of their own. Neither Congress nor any other State government "recognized" Vermont; but, in 1777, it adopted a constitution with manhood suffrage. This was due to the fact that Vermont, as a whole, was a frontier community, corresponding to the "back counties" of other States. Indeed, its "constitution" was regarded much as were the provisional and equally democratic governments set up about the same time by little frontier communities west of the mountains (§§ 167, 272).

years, and only in a peculiar fashion. As a result, in these two States, amendment was finally accomplished by new conventions with disregard of the constitutional provisions. Georgia and Massachusetts provided for the calling of constitutional conventions in a modern fashion; and Georgia went so far as to require a popular initiative. A majority of voters in a majority of counties had to petition for an amendment, — which would then be submitted to a convention called by the legislature.

Exercise. — Review (from §§ 140, 141, 145, 148, 149) the constitutional revolution in Virginia, from colony to commonwealth.

(The following study may well be taken up, a paragraph at a time, while the class goes on with the advance work. It is to be continued after § 297. Every institution should have several copies of recent Legislative "Blue Books" accessible to a class in American History and Government. Any information called for below, and not found readily in such volumes, can be easily found in State Histories or State "Civics," or, for recent years, from resident members of the State legislature, who, perhaps, will address the class on some of the topics. Recent editions of the World Almanac will, of course, be at hand.)

- 156. Excursus: Suggestions for Study of State Governments Then and Now.—a. Distinguish clearly between a "constitutional convention" and an ordinary legislature. Which represents the supreme power of the State the more completely? (What is that supreme power?) How was the present constitution of your State adopted? (If the State has had more than one constitution, outline the history of each.) How can it be amended? Are amendments frequent?
- b. What classes of adults cannot vote in your State? Would you prefer to enlarge or decrease the restrictions?
- c. Compare the bill of rights in your State constitution with the original Virginia bill of rights and with the Declaration of Independence. Do you know of any reported attempts in recent times by any branch of a State government to violate its

<sup>&</sup>lt;sup>1</sup> Women have the full suffrage in nine Western States (1913). In nearly all others, they can vote on school affairs and hold school offices. This theme is suitable for school debates; or a series of topics on the history of the woman suffrage movement and its present status may be assigned for special reports.

bill of rights? In such a case, what branch of the government would have the final say?

- d. Read the veto clauses in the original New York and Massachusetts constitutions and in the Federal Constitution (in Appendix I), noting comment there on the pocket veto. What important acts of your last legislature were vetoed? Have any important acts of your legislature in recent years been declared unconstitutional by the courts, State or Federal?
- e. Make a table showing the system of courts for your State, with jurisdiction of each grade, method of appointing or electing judges, term of office, and salary. (The early tendency to make the courts appointive has mostly disappeared.) The term of office is from twenty-one years to two, with an average perhaps of eight or nine. Do you find any State where the judges still hold for life? What do you think of a twenty-year term?

(For State executive, and the relations of executive and legislature, see close of § 297.)

THE CONGRESS AND THE WAR

157. Resources and their Utilization. — The population of Great Britain was about three times that of the colonies, and its wealth much greater in proportion. But (as we know now better than any one did then) for eight million people to subdue and hold two and a half million, at a distance of three thousand miles, is well-nigh impossible, — especially when the people to be conquered inhabit a large and scattered territory with no vital centers. The danger lay, not in England's strength, but in American disunion and in the government's inefficiency. Had the Americans been united in sentiment (as was our South in 1861, or the South African Boers in 1900), England would have had no chance at all; and even with every third man sympathizing with England, if we had possessed a strong

<sup>&</sup>lt;sup>1</sup> Omitting Ireland's 3,000,000, which at this period was a source of anxiety rather than of strength to the empire. Ireland was part of the British state, but not part of "Great Britain" proper.

central government able to gather and wield our resources, the British armies could have been driven into the sea in six months.

From the 500,000 able-bodied, White males of the thirteen colonies, the Americans should have put in the field an army of 100,000 men. In 1864 their great-grandsons went forth in that proportion to preserve the Union, and in much higher proportion, to escape from it (§ 375). But, if we leave out the militia, which now and again swarmed out for a few days to repel a local raid, the continental forces hardly reached a third that number at any time; and, for the greater part of the war, the strength was nearer ten than thirty thousand. Even these few were ill-paid, ill-fed, and worse clothed. And this not so much from the poverty of the country, as from lack of organization, and, to some degree, from an amazing repugnance felt by Congress and State legislatures toward the army that fought for them.

Said Washington: "In other countries, the prejudice against standing armies exists only in time of peace, and this because the troops are a distinct body from its citizens... it is our policy to be prejudiced against them in time of war, though they are citizens." And, as John Fiske well says, in referring to the dreadful sufferings of Washington's army at Valley Forge which "have called forth the pity and admiration of historians": "The point of the story is lost unless we realize that this misery resulted from gross mismanagement rather than from the poverty of the country. As the soldiers marched on the seventeenth of December to their winter quarters, their route could be traced on the snow by the blood that oozed from bare, frost-bitten feet. Yet, at the same moment, ... hogsheads of shoes, stockings, and clothing were lying at different places on the route and in the woods, perishing for want of teams."

Fortunately, the English commanders were of second or third rate ability. Among the Americans, the war developed some excellent generals of the second rank, — Greene, Arnold,

<sup>&</sup>lt;sup>1</sup> French Canada and Spanish Florida, both then recently conquered by England, were repeatedly invited to join in the War for Independence. These colonies, however, had never known a less oppressive government, and they had little liking for their New England neighbors. So, in spite of race hatred for their English governors, they could not be induced to rise, even when an American army appeared in Canada.

Marion, etc, but too many officers were marked mainly by incompetency, or self-seeking, or treacherous intrigue. After a real army had grown out of the vicious system of short-term levies that characterized the first two years, the faithful endurance of the common soldier was splendid. Said one observer, "Barefoot, he labors through Mud and Cold with a Song in his Mouth, extolling War and Washington." Yet at times even this soldiery was driven to conspiracy or open mutiny by the jealous unwillingness of Congress to make provision for their needs in the field or for their families at home.

Out of all this murkiness, towers one bright and glorious figure. Pleading with Congress for justice to his soldiers, shaming or sternly compelling those justly dissatisfied soldiers to their duty, quietly ignoring repeated slights of Congress to himself, facing outnumbering forces of perfectly equipped veterans when his own army was a mere shell, Washington, holding well in hand that fiery temper which still, on occasion, could make him swear "like an angel from heaven," was always great-minded, dignified, indefatigable, steadfastly indomitable; a devoted patriot; a sagacious statesman; a consummate soldier, patient to wait his chance and daring to seize it; the one indispensable man of the Revolution.

158. The Critical Years, '77 and '78. — In 1777, Howe invaded Pennsylvania. Washington maneuvered his inferior forces admirably. He retreated when he had to; was robbed of a splendidly deserved, decisive victory at Germantown only by a mixture of chance and of lack of veteran discipline in his soldiers; and, after spinning out the campaign for months, went into winter quarters at Valley Forge—then to grow famous for heroic suffering. Howe had won the empty glory of capturing "the Rebel Capital," and he settled down there to a winter of feasting and dancing; but he had been decoyed from his chance to crush the American cause by making safe Burgoyne's invasion from Canada. Lacking this expected coöperation from the south, Burgoyne proved unable to secure the line of the Hudson, and was forced to surrender to the incompetent, fortune-swollen Gates.

<sup>&</sup>lt;sup>1</sup> The inexcusable way in which Congress failed to ratify the terms of surrender may be the subject of a special report.

This capitulation of an entire English army turned the wavering policy of France into firm alliance with America against her ancient rival. From the first, the French government had furnished the Americans with muchneeded money and supplies, secretly and indirectly; and many adventurous young noblemen like Lafayette, imbued with the new liberal philosophy of Rousseau, had volunteered for service under Washington. Franklin had been acting as the American agent in Paris for some months without formal recognition. Now he quickly secured two treaties, - one of commerce, one of political and military alliance. The independence of the United States was recognized; the possessions of the two powers in America were mutually guaranteed; and it was agreed that peace with England should be made only after consultation and approval by bothallies.1 France drew Spain in her train; and, soon after, England quarreled with Holland. Without an ally, England found herself facing not merely her own colonies, but the three greatest naval powers of the world (next to herself), while most of the rest of Europe held toward her an attitude of "armed neutrality" - which meant instant readiness for hostility at the slightest opening.

In America, however, the darkest months of the war were those intervening between the victory over Burgoyne and the news of the French alliance. The first flush of enthusiasm was spent. The infamous Conway Cabal (among officers and Congressmen) threatened to deprive the country of Washington's services. Nearly a fifth of the starving army deserted to the well-fed enemy in Philadelphia, and another fifth could not leave their winter huts for want of clothing. The paper money, issued by Congress in constantly increasing volume—the chief means of paying the soldiers and securing supplies—was nearly valueless. Foreign trade was impossible because England commanded the sea; and domestic industry of all sorts was at a standstill because of the demoralization of the currency. To large numbers of patriots, even the news of the new ally was of doubtful cheer. Many began to fear that they had only exchanged the petty annoyances of English rule for the slavery of French despotism and of the Spanish Inquisition. (Source Book, No. 144.)

Two results of the French treaty followed close upon its announcement. (1) The English general was ordered to evacuate Philadelphia and concentrate forces at New York. The watchful Washington was

<sup>&</sup>lt;sup>1</sup> Large sections of the French people felt a genuine enthusiasm for America, but to the despotic French government the alliance was purely a "League of Hatred." Spain and Holland were never our allies: they were the allies of France. The treaty with France is the only alliance America has ever formed.

close upon the rear of the retreating army, and at Monmouth his strategy and dash were again robbed of the fruit of victory,—this time by the misconduct or treason of General Charles Lee. (2) Lord North sent commissioners to America with an "clive branch" proposition: all the contentions of the Americans, previous to July 4, 1776, should be granted, together with a universal anmesty, if they would return to their allegiance. By a unanimous vote, Congress refused to consider propositions "so derogatory to the honor of an independent nation."

159. A "War of Desolation." - In the northern states no British army of consequence again appeared in the field, and Washington's forces were too insufficient to undertake extensive projects. Except for minor operations, the war was transferred to the South, with swift alternations of success and failure through 1779 and 1780. In both North and South, after the summer of '78, the struggle took on a new character. It became a "war of desolation," — a succession of sudden raids to harry and distress a countryside or to burn a town or port, 1 varied by occasional bloody and vindictive combats like those at Cowpens and King's Mountain. The Lovalists who had been driven from their homes in Boston and Philadelphia with the retirement of the British forces, together with those living in the vicinity of New York, enrolled themselves in large numbers 2 under the English flag; and, because of their knowledge of the country, these troops were used freely in these harrying expeditions. consequence, the attitude of the Whig governments, State and local, toward even the passive sympathizers with England, became ferocious, Those unhappy men who had long since been deprived of their votes were now excluded from professions and many other employments, for-

A terrible feature of some of these raids was the use of Indian allies by the English. But it must be remembered that the Americans had first tried to secure such allies. Both Washington and John Adams had favored their enlistment. Montgomery had some Indians in the army with which he invaded Canada, and there were a few in the American army besieging Boston in 1775. It had been intended to use the friendship of the natives for the French in order to draw them into a force under Lafayette. The simple fact is that Indians had been used by both sides in America in all the intercolonial wars, and both parties in this new contest continued their use so far as possible; but the natives saw truly that the real enemy of their race was the American settler, and therefore turned against him. Cf. Parkman's Montcalm and Wolfe, II, 421; Roosevelt's Winning of the West, II, 87; Ferguson's Historical Essays, 204.

<sup>&</sup>lt;sup>2</sup> New York alone furnished 15,000 recruits to the English army, besides 8000 more Loyalist militia. It has been said that at important periods, more Americans were under arms against independence than for it.

bidden to move from place to place, ruined by manifold fines, drafted into the army, imprisoned on suspicion, sometimes deported with their families in herds to distant provinces, and constantly exposed to the most horrible forms of mob violence. If they succeeded in escaping to the British lines, their property was confiscated (oftentimes to enrich grafting speculators at corruptly managed sales), and they themselves, by hundreds at a time, were condemned to death in case of return or recapture,—not by judicial trials, but, without a hearing, by bills of attainder.<sup>1</sup>

Seemingly, the war had settled down to a test of endurance. Campaigns in Europe and the West Indies drained England's resources, glorious though the results were to her arms against those tremendous odds.<sup>2</sup> Meantime, in America, Congress kept its sinking finances afloat by generous gifts and huge loans from France. The army, however, was dangerously discontented. Desertions to the enemy rose to a hundred or two hundred a month. Suddenly an unexpected chance offered. Washington, ever ready, grasped at it, and this time no evil fate intervened. With the indispensable coöperation of the French army and fleet, Cornwallis and his army were cooped up in Yorktown. With his surrender (October 19, 1781) war virtually closed, though peace was not signed, nor British troops withdrawn from the American coast, for many months.

<sup>1</sup> A "bill of attainder" is a legislative act imposing penalties upon one or more individuals. The legislature condemns, not the courts; and of course the accused lose all the ordinary securities against injustice. Such bills had been used occasionally in English history at the dictation of a despotic king, and sometimes by the party of liberty to strike down a powerful minister of a despot, whom the courts or ordinary impeachment could not convict. In the early months of the Long Parliament, when it became apparent that technicalities would prevent the conviction of the traitor Wentworth in the impeachment proceedings. Pym and the other radicals secured the punishment of the great criminal by a bill of attainder. (Cf. Modern History, § 244.) Such condemnation for treason or other high crimes, in the cruel law of the time, carried with it "attaint of blood." That is, the family of the condemned were made to suffer also, at least by the loss of property, and commonly by inability to hold office. By our constitution of 1787, it is provided that treason shall "not work attaint of blood," and bills of attainder are wholly forbidden. Until the adoption of that instrument, however, many States did pass such bills against prominent Tories, - sometimes against great numbers of them. An attempt was made in the Virginia bill of rights to prohibit such bills; but Patrick Henry urged that they might be indispensable in that time of war. Some States incorporated the prohibition in their first bill of rights. <sup>2</sup> Cf. West's Modern History, § 284.

There was

160. Congress and the Paper Money. — The best excuse for the misrule of Congress was its real weakness and its consequent feeling of irresponsibility. In all internal matters, its power was limited almost wholly to recommendations, which the States grew to regard more and more lightly. It asked men to enlist, offering bounties to those who did so, but often found its offers outbid by the State governments to increase their own troops. It had no power to draft men into the ranks: only the State governments could do that. So, too, in the matter of finances. Congress could not tax: it only called on the States for contributions in a ratio agreed upon.

Such contributions, even when reinforced by the loans from France, were not more than half of the amount necessary to carry on the war. At the very beginning, Congress was forced to issue paper money. Each scrap of such money was merely an indefinite promissory note from Congress to "bearer." In five years, printing presses supplied Congress with \$241,000,000 of such "continental currency"; and, with this, perhaps \$50,000,000 worth of services and supplies were bought.2 Congress itself had no power to compel people to take this currency; but, at the request of Congress, the States made it "legal tender." If the Americans failed in the war, of course the money would be wholly worthless; and even if they succeeded, the redemption of the notes, it was clear, would be very uncertain. In 1776 (when only twenty millions had been issued), depreciation set in. In 1778, a dollar would buy only twelve cents' worth of goods. In 1780, Congress "redeemed" outstanding and worthless notes by new notes, at two and a half cents on a dollar; but the new issue naturally lost value even more swiftly than the old. A cheap suit of clothes cost from one to two thousand dollars; and the Tories

<sup>&</sup>lt;sup>1</sup> So called to distinguish this currency put forth by the central government from similar issues by the States. The State currency amounted to \$200,000,000 more; but most of it had more value than the continental paper.

<sup>&</sup>lt;sup>2</sup> After depreciation began, even with a new issue Congress could not get nearly a dollar's worth of supplies for a paper dollar.

laughed at men who had gone to war, they said, rather than pay threepence tax on tea and who now paid one hundred dollars a pound for that article. In 1781, Thomas Paine paid \$300 for a pair of woolen stockings, and Jefferson records a fee of \$3000 to a physician for two visits. "Not worth a continental" became a byword. Before the close of 1781, this currency ceased to circulate except as speculators bought it up, at perhaps a thousand dollars for one in coin. A mob used it to "tar and feather" a dog; and McLaughlin tells of an enterprising barber who papered his shop with continental notes.

All this meant a reign of terror in business. Men who, in 1775, had loaned a neighbor \$1000 in good money were compelled, three or four years later, to take in payment a pile of paper almost without value, but named \$1000. Prices varied fantastically from one day to another, and in neighboring localities on the same day. Wages and salaries rose more slowly than prices (as is always the case), and large classes of the people suffered exceedingly in consequence.

But it must be remembered that this "cheap money" was the only money Congress could get. If a "note" had ever been repaid, it would have been in reality a "forced loan." Since it never was repaid, it amounted to a tax, or a confiscation of private property for public uses,—the tax being paid, not by one man, but by all the people through whose hands it passed. Such taxation was horribly wasteful and demoralizing; but it was the only kind of tax to which the people would have submitted in the amount required. Without the paper money, the Revolution could not have been won.

161. Washington and the Newburg Addresses. — One famous episode occurred while the treaty negotiations dragged along. The pay of the soldiers and officers was several years in arrears, and Congress showed no desire to make any satisfactory arrangement. Soon the army would be no longer needed.

<sup>&</sup>lt;sup>1</sup> A sold a horse to the government for one hundred dollars in paper currency; when he passed the paper on to B, he received perhaps only ninety dollars in value for it. Ten dollars had been taken from him by tax, or confiscation. B perhaps got only seventy dollars' worth for the money; so he had been "taxed" twenty dollars. The government had secured the horse for a piece of paper, and eventually the horse was paid for by the various people in whose hands the paper depreciated.

When disbanded, its members would be even less likely to secure justice. In this situation, a definite plan appeared in the camp at Newburg to secure better government by making Washington king. When Washington repulsed the proposition with grieved anger, an anonymous address summoned a meeting of officers to adopt some method to redress their grievances, suggesting at least that the army should not disband until Congress had been forced to proper action. This incipient conflict between the civil and military powers, which would have so sullied the beginning of the new nation's career, was averted by the tact and unrivaled influence of Washington. He anticipated the meeting of the officers by calling an earlier one himself, at which he prevailed upon their patriotism to abandon all forms of armed compulsion; and then he finally prevailed upon Congress to pay a five years' salary in government certificates, worth perhaps twenty cents on the dollar, - a meager return, but perhaps all that the demoralized government at that date was equal to.

162. Treaty of 1783.—The negotiations for peace were carried on from Paris, with Franklin, John Jay, and John Adams to represent the United States. Spite of King George, the fall of Yorktown overthrew Lord North's ministry; and the new English government contained statesmen friendly to America, such as Fox, Rockingham, and Shelburne <sup>2</sup> (§ 136). From this fact and from the remarkable ability of the American negotiators, it resulted that the treaty was marvelously advantageous.

Just before the war (1769), but contrary to orders of the English government, a few Virginians had crossed the western

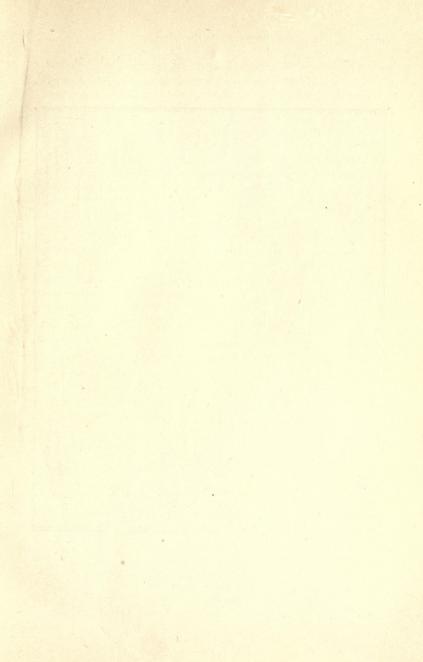
<sup>&</sup>lt;sup>1</sup> Conservative patriots like Gouverneur Morris would perhaps have welcomed the success of the plan. Cf. Source Book, No. 150.

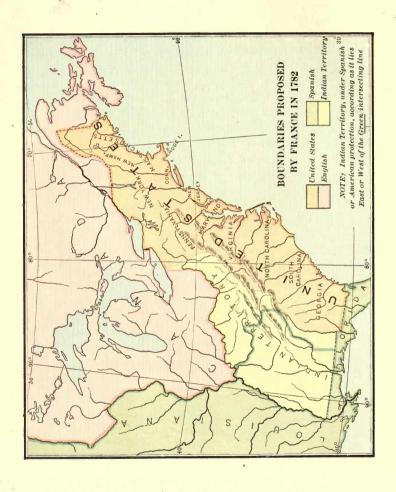
<sup>&</sup>lt;sup>2</sup> England could not well avoid conceding American independence, but Shelburne meant to do it in generous fashion. He intended not merely peace, he said, but "reconciliation with America, on the noblest terms and by the noblest means." The well-disposed ministry lasted only long enough to make peace.

mountains to settle in fertile lands between the Ohio and Cumberland rivers, in what we now call Kentucky and Tennessee (§ 163 ff.); and, during the war itself, many thousands had established homes in that region. From the Kentucky settlements, George Rogers Clark, a Virginia officer, in incredibly daring campaigns (1778-1779), had captured from England the old French posts Kaskaskia and Cahokia, on the Mississippi, and Vincennes on the Wabash; and this district, though it contained still only old French settlers, had been organized. like Kentucky, as a Virginia county. The Americans, therefore, had ground for claiming territory to the Mississippi, and such extension of territory was essential to our future development. England, however, was expected to demand our surrender of this thinly settled western region, in return for the evacuation of New York, Charleston, and other cities still held by her armies. Moreover, France and Spain secretly intended that the treaty should shut up our new nation between the Atlantic and the Appalachians, leaving to England the northwest territory (which had been legally a part of Canada, § 141, note), and to Spain and the Indians the southwest, adjoining the Floridas, which Spain had now recovered from England. By the treaty of 1778, we were bound to make no peace without the consent of France, and our commissioners were now strictly instructed by Congress to act only with the advice of Vergennes, the French minister. Jay and Adams suspected Vergennes of bad faith, and finally persuaded Franklin to disregard the instructions.

The peculiar and rather disgraceful instructions from Congress to the American negotiators ran, that they were "to make the most candid and confidential communications upon all subjects to the ministers of our generous ally . . . [and] to undertake nothing in the negotiations

<sup>&</sup>lt;sup>1</sup> In 1777, Clark received a letter of encouragement from Jefferson, who, even so early, felt keenly the importance of the West. "Much solicitude," he wrote, "will be felt for the outcome of your expedition . . . If successful, it will have an important bearing in ultimately establishing our northwestern boundary."





... without their knowledge and concurrence." We were bound in honor and by treaty not to make peace without the consent of France, but we were under no obligation to depend in so humiliating a manner as this, in all preliminary negotiations, upon a power with interests necessarily different from ours. France perhaps had no desire to injure America, but she had no objection to leaving it helpless and dependent upon her favor, and she did wish to satisfy her ally Spain, whom she had dragged into the war. The story goes that, while Franklin and Jay were discussing the situation, Franklin asked in surprise, "What! would you break your instructions?" "As I break this pipe," said Jay, throwing his pipe into the fireplace. Franklin had rendered incalculable diplomatic service to his country, but his long and intimate relations with the French government had unfitted him for an independent course in this crisis. Jay probably overestimated the hostile designs of France, but modern investigations prove that in general his suspicions were well founded.

With patriotic daring, the American commissioners entered into secret negotiations with England and secured terms which Vergennes could not well refuse to approve when the draft of the treaty was placed before him. England acknowledged the independence of the United States, with territory reaching to the Mississippi and from the Great Lakes to the Floridas, surrendering, without consideration, not only the seacoast cities she held, but also the Northwest posts, which had never been seen by an American army. She also granted to the Americans the right to share in the Newfoundland fisheries, from which most foreign nations were shut out. In return, the American Congress recommended to the various states a reasonable treatment of the Loyalists, and promised

<sup>&</sup>lt;sup>1</sup> See map. East Florida corresponded pretty well with the modern State. West Florida reached to the Island of New Orleans. The northern boundary of the Floridas was declared to be the thirty-first parallel, but a secret article of the treaty (not made known to France) provided that if *England* should recover the Floridas from Spain, then Florida should extend north to the mouth of the Yazoo. Spain learned of this afterward and tried to secure that boundary for herself.

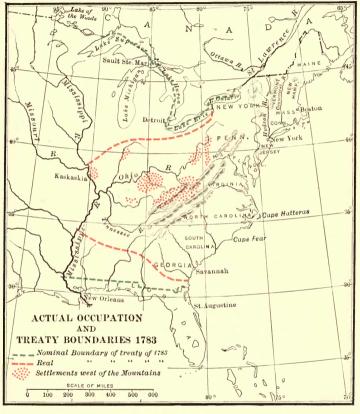
<sup>&</sup>lt;sup>2</sup> The American negotiators had told the English commissioners frankly that the "recommendation" regarding the Loyalists would carry no weight; and England herself afterwards appropriated large sums of money to compensate partially that unfortunate class of exiles.

solemnly (a matter which should have gone without saying) that no State should interpose to prevent Englishmen from recovering in American courts the debts due from Americans before the war. No wonder that the chagrined Vergennes wrote: "The English buy the peace, rather than make it. . . . Their concessions regarding boundaries, fisheries, and the Loyalists exceed anything I had thought possible."

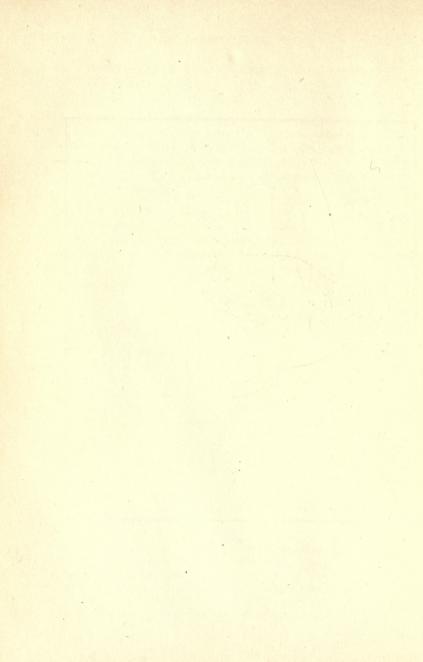
The territorial advantages of the treaty were not fully enjoyed by the United States for some twelve years. When the English forces evacuated the American seaports, they carried away a few hundred Negroes, who, they claimed, had become free by aiding them during the war, and whom they would not now surrender to their old masters. The American State governments made this a pretext for deliberately breaking one of the most reasonable articles of the treaty, - that regarding British debts. Despite the pledged faith of the central government, State after State passed laws to prevent the collection of such debts in their courts. Meantime, the Americans had not at first been ready to take over the posts on the Great Lakes; and when they desired to do so, England refused to surrender them, because of these infractions of the treaty. Spain, too, angered by news of the secret article with England regarding the boundary of the Floridas, did her best to keep hostile the Indians of the southwest, and declined to recognize our claims in that direction. Our actual territory north and south of the Ohio reached only to the watersheds. These difficulties were to be adjusted finally by the treaties of 1794 and 1795 (§§ 231, 233).

The following summary of the Revolution is from Theodore Roosevelt's Gouverneur Morris (4-6):—

"England's treatment of her American subjects was thoroughly selfish; but that her conduct towards them was a wonder of tyranny will not now be seriously asserted. On the contrary, she stood decidedly above the general European standard in such matters, and certainly treated her colonies far better than France and Spain did theirs; and she herself had undoubted grounds for complaint in, for example, the readiness of the Americans to claim military help in time of danger, together



Marion A. Boydon.
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with their frank reluctance to pay for it. It was impossible that she should be so far in advance of the age as to treat her colonies as equals. ... Yet, granting all this, the fact remains, that in the Revolutionary War the Americans stood towards the British as the Protestant peoples stood towards the Catholic powers in the sixteenth century, as the Parliamentarians stood towards the Stuarts in the seventeenth, or as the upholders of the American Union stood towards the confederate slaveholders in the nineteenth. That is, they warred victoriously for the right in a struggle whose outcome vitally affected the welfare of the whole human race. They settled, once for all, that thereafter the people of English stock should spread at will over the world's waste spaces. keeping all their old liberties and winning new ones; and they took the first and longest step in establishing the great principle that thenceforth those Europeans who by their strength and daring founded new states abroad should be deemed to have done so for their own profit as freemen, and not for the benefit of their more timid, lazy, or contented brethren who staved behind."

For Further Reading.—Howard's Preliminaries of the Revolution and Van Tyne's American Revolution ("American Nation" series) make together an admirable treatment. Woodburn's Lecky's American Revolution should be accessible, as a scholarly treatment by a great English historian. Fiske's two volumes on the Revolution are delightful reading. Trevellyan's American Revolution is probably the best history of the period, but it is rather bulky for high school students. Though written by an Englishman, it is sympathetically American in tone, and it is brilliant in treatment. The treaty of peace may be studied at length in the opening chapters of Fiske's Critical Period or of McLaughlin's Confederation and Constitution. The Source Book continues to have abundant material through the early years of the Revolution.

1 293 Chap. 5 + 6.

CHAPTER VII

#### THE WEST

"The West is the most American part of America.... What Europe is to Asia, what England is to the rest of Europe, what America is to England,—that the western States and Territories are to the eastern States.— James Bryce.

163. Birth in the Revolution.—It is natural for us to think of the years 1775–1783 as given wholly to patriotic war for political independence. But during just those years thousands of earnest Americans turned away from that contest to win industrial independence for themselves and their children beyond the mountains. While the old Atlantic sections were fighting England, a new section sprang into being, fighting Indians and the wilderness. How the Scotch-Irish, with German and Huguenot companions, moved into the long valleys of the Appalachians early in the eighteenth century has been told (§ 112). There they made the first "West." Now, a generation later, their Americanized sons were to make a greater and truer West in the basin of the Mississippi.

During the Revolution, settlement penetrated only into the "dark and bloody ground" between the Ohio and its southern branches. This district had long been a famous hunting ground, where Indians of the north and south slew the bison and one another. But, though frequent war parties flitted along its trails, no tribe claimed it for actual occupation. So here lay the "line of least resistance" to the on-pushing wave of settlement.

164. England's Futile Opposition to Western Settlement. — The first European mistress of the land between the Appalachians and the Mississippi was France. England claimed it from the first, however, and in-

## WATAUGA

cluded it all in royal grants to her seaboard colonies. But when control actually passed to England, in 1763, no English colony was allowed to enter into possession.¹ England wished to avoid Indian wars, which were likely to follow the influx of the rude frontiersman; and possibly the government was unduly influenced by commercial interests, which hoped fatuously to keep the vast river valley as a hunting preserve for the fur trader. Accordingly, the Royal Proclamation of 1763 forbade settlers to trespass in the Indian country, ordering the royal governors to make no land grants west of the mountains; and in 1774, parliament annexed the western territory, as far south as the Ohio, to the Province of Quebec (§ 141, note). A like policy led, in 1767, to enlarging "Florida" at the expense of the West (Map, facing p. 246).

Even had England remained mistress, this policy of exclusion was doomed to certain failure. The restless border farmers already felt crowded in the old colonies, and were dissatisfied with their rugged and sterile soil. For some years stray hunters, who wandered sometimes as far as the Mississippi, had stirred the frontier with romantic tales of the wonders and riches of the great western basin; and just before the Revolution, hardy and adventurous families pushed the line of American settlement across the mountains (§§ 165–170).

## I. THE SOUTHWEST: A SELF-DEVELOPED SECTION

# A. WATAUGA

165. Causes. — In 1769 a few Virginia frontiersmen established their families in the valley of the Watauga, one of the headwaters of the Tennessee. At first the new settlement was thought to lie still within Virginia, and in the spring of 1771 it was reinforced by fugitive Regulators from North Carolina, where attempted reforms had gone down in bloody defeat (§ 137, b). The same summer, however, a surveyor ran

<sup>2</sup> All boys will read with delight Theodore Roosevelt's stirring story of "Boone and the Long Hunters, and their Hunting in No-man's Land" (Win-

ning of the West, I, ch. vi).

<sup>1</sup> Six thousand French settlers remained in the district under English rule until, some fifteen years later, Clark's campaigns brought them under American authority (§ 162). They were distributed for the most part in three groups in the Northwest,—near Detroit, about Vincennes, and at the Mississippi towns, Kaskaskia and Cahokia. (Map, facing p. 246.)

out the southern boundary of Virginia and found that Watauga lay in the territory claimed by North Carolina. That distracted colony was in no condition to care for so distant and inaccessible a section, nor were the inhabitants at Watauga disposed to submit to further Carolina injustice. Accordingly, in 1772 they adopted a written constitution and became an independent, self-governing community—the first one west of the mountains.

166. Frontier Conditions. — Immigrants came in little groups of families, those from Carolina by a long detour through Virginia. No wagon roads pointed west; and it was a generation more before the white, canvas-covered wagon (afterward so familiar as the "prairie schooner") became the token of the immigrant. At best, the early Southwest had dim and rugged trails ("traces"), along which men, rifle always in hand, led pack horses loaded with young children and with a few necessary supplies, while the women and older children drove the few lean cattle.

Two men stand forth in this western movement into Tennessee, — James Robertson and John Sevier, playing parts similar to those taken at almost the same time in Kentucky by their friends, Daniel Boone and George Rogers Clark (§§ 168–171). Robertson was a mighty hunter who had spied out the land to find a better home for his family. A backwoodsman born, he had learned "letters and to spell" after marriage, from his wife; but he was a natural leader, with splendid qualities of heart and head. Sevier was a "gentleman" of old Huguenot family and of some culture. He was the most dashing figure of the early frontier, —a daring Indian

<sup>&</sup>lt;sup>1</sup> Communication with Virginia, though difficult enough, was possible, because the long valleys trending to the northeast ran near together as they entered that State. But a hundred miles of forest-clad mountains, without a trail fit even for a pack horse, divided Watauga from the nearest settlements in North Carolina. Watauga itself lay with mountains to the west, as well as to the east; but its water communication with the Mississippi justifies us in regarding it as part of the land "west of the mountains."

fighter and an idolized statesman among his rough companions.

The essential thing about Watauga, however, was not its leadership, but the remarkable individuality and democracy of its whole population. By 1774 the settlers were grouped in

thirteen "stations." A "station" was a stockaded fort of considerable One side was formed usually by a close row of log huts, facing in. The remaining sides, with a log "blockhouse" at each corner, were a close fence of hewn "pickets," considerably higher than a man's head, driven firmly into the ground and bound together. Within were supply sheds for a short siege. and sometimes a central and larger blockhouse,



FORT STEUBEN, 1787. (From a recent restoration.)

—a sort of inner "keep." Stockade and blockhouses were loopholed at convenient intervals for rifles, and, except for surprise or fire, such a fort was impregnable, even when defended by a relatively small force, against any attack without cannon.

The fort, however, was only for times of extraordinary danger. Ordinarily, the families lived apart, each in its log cabin upon its own farm. These holdings were usually of from four hundred to a thousand acres; but for many years they remained forest-covered, except for a small stump-dotted "clearing," about each cabin. The clearings nearest one another were often separated by miles of primitive forest, with

communication only by trails blazed with a hatchet on tree trunks; and, at an alarm of Indians, all families of a "station" abandoned these scattered homes and sought refuge within the stockade.

In contrast with the early New England "village" and with the southern "plantation," it is plain that this western type of settlement excelled, whether for combination against an outside foe or for individuality and equality. The two qualities that especially characterized this new West, says Theodore Roosevelt, were "capacity for self-help and capacity for combination." The latter was typified, not merely by the common stockade for war and by the gathering of "neighbors" from many miles for a "house raising," but, even more fundamentally, in the early political association to maintain social order(§ 167).

167. The Watauga "Articles."—In the spring of 1772 the men of the thirteen forts gathered at Robertson's station in mass meeting, to organize a government. This meeting adopted Articles of Association,—"a written constitution, the first ever adopted west of the mountains, or by a community of American-born freemen." 1 The document declared for absolute religious freedom, and based all action, without thought of other procedure, upon manhood suffrage. 2 A representative court of thirteen, one from each station, chose a smaller court of five members in whom were vested the immediate powers of government. 3 This body of commissioners held regular meetings, and managed affairs with sound sense, if with little regard for legal technicalities. In general they claimed to take the

<sup>&</sup>lt;sup>1</sup> The phrase is Roosevelt's, based upon an earlier but clumsier expression of Justin Winsor's. The Fundamental Orders of Connecticut (§ 88) had been formed, of course, by *English*-nurtured men.

<sup>&</sup>lt;sup>2</sup> To give due credit to the men of Watauga, the student must remember how far short of such democracy fell the Revolutionary constitutions of the eastern states four or five years later (§§ 152-155).

This was "representative" democracy, not "direct democracy." The large farms in the Southwest inclined its people to the county type, rather had the town-meeting type, of government.

law of Virginia as a guide; but, to all intents, Watauga was for six years an absolutely independent political community. Then, in 1778, when the Revolution had reformed North Carolina, Watauga recognized the authority of that State and became Washington County.

### B. KENTUCKY

168. The First of the Prairies. — Among the many daring hunters and Indian fighters, who, preceding settlement, had ventured from time to time into the bloody hunting grounds south of the Ohio, one man was more than hunter and explorer. As early as 1760, Daniel Boone hunted west of the mountains; and in 1769 (the year Watauga was founded) he went on a "long hunt" there with six companions. After five weeks' progress through the hitherto interminable forest stretching continuously from the shore of the Atlantic, this little party broke through its western fringe and stood upon the verge of the vast prairies of America. They had come to the now famous "bluegrass" district of Kentucky.

Hitherto, except for petty Indian clearings, American colonists had had to win homes slowly with the axe from the stubborn forest. Now before the eyes of these explorers there spread away a lovely land, where stately groves and running waters intermingled with rich open prairies and grassy meadows, inviting the husbandman to easy possession and teeming with game for the hunter,—herds of bison, elk, and deer, as well as bear and wolves, in abundance unguessed before by English-speaking men.

In the following months, hard on the trails of the hunters, followed various small expeditions of backwoods surveyors and would-be settlers, spite of frequent death by the scalping

<sup>&</sup>lt;sup>1</sup>The prairies proper, even when reached, did not at first attract settlers. The lack of fuel and often of water more than made up for difficulty of clearing forest land. But Kentucky offered a happy mixture.

knife and at the stake.¹ In particular, Boone returned again and again, and, in 1773, he sold his Carolina home, to settle in the new land of promise. His expedition was repulsed, however, by a savage Indian attack, and the next year the opening of a great Indian War along the Virginian and Pennsylvanian border drove every settler out of Kentucky.

169. Lord Dunmore's War.-Without provocation, a dastard White trader had murdered the helpless family of Logan, a friendly Iroquois chieftain dwelling on a branch of the upper Ohio. In horrible retaliation for this infamous deed, a mighty Indian confederacy was soon busied with torch and tomahawk on the western frontiers. Pennsylvania was the worst sufferer: but the dilatory government there failed to protect its citizens. Virginia, however, acted promptly. To crush the confederacy she sent an army far beyond her line of settlement, into the distant Northwest, where, indeed, she had always claimed jurisdiction, though parliament had just annexed the territory to Quebec (§ 164). This force was composed chiefly of hardy frontier riflemen, uniformed in their customary deerskin hunting shirts; but, by a curious contrast, it was led by an English earl, the royal governor, Lord Dunmore. The rear division of the army, when about to cross the Ohio at the mouth of the Kanawha, was surprised, through the splendid generalship of the Indian leader Cornstalk, by the whole force of the natives; but, after a stubborn pitched battle, the frontiersmen won a decisive victory.

This Battle of the Great Kanawha, with the war which it brought to a close, is as important in its consequences as any conflict ever waged between Whites and Redmen. Says Theodore Roosevelt: "It so cowed the northern Indians that for two or three years they made no organized attempt to check the White advance. . . . [It] gave opportunity for Boone to settle in Kentucky [§ 170] and therefore for Robertson to settle Middle Tennessee [§ 171], and for Clark to conquer Illinois and the Northwest. It was the first link in the chain of causes that gave us for our western boundary in 1783 the Mississippi, and not the Alleghenies."

170. Permanent settlement in central Kentucky began the next spring (1775). For a few months it had the form of a proprietary colony. Between 1740 and 1776, several attempts



<sup>&</sup>lt;sup>1</sup> Very soon, indeed, the colonists learned that the Woods Indian of the West—armed now almost as well as the Whites—was a far more formidable foe than the weak tribes of the coast had been to the original European settlers.

had been made to colonize western territory by this method (so seful a century before on the Atlantic coast¹); but none of the other projects had proceeded as far as this one did. A certain Henderson, a citizen of North Carolina, bought from the southern Indians their rights to a great tract in central Kentucky and Tennessee. He named the proposed colony Transylvania, and secured Boone as his agent. In March and April, Boone and a strong company marked out the Wilderness Road² and began to build "Boone's Fort," where Henderson soon arrived with a considerable colony. Many small "forts" sprang up at almost the same time, without connection at first with Henderson's colony; but it was the strength of Boonesboro that sheltered the others.

171. A Virginia County: Basis for the Conquest of the Northwest. — Henderson made many land grants to settlers, and assembled a legislative body which passed various laws and which applied to the Continental Congress (1775) for admission as a separate colony into the colonial confederacy. But the Revolution ruined all prospect of English sanction for Henderson's proprietary claims; and in any case the frontiersmen had little notion for paying quit-rents, however small, for the lands they subdued. Virginia, too, firmly asserted her claim to the territory. In 1776, Henderson passed from the scene; and, the next year, Kentucky, with its present bounds, was organized as a county of Virginia.

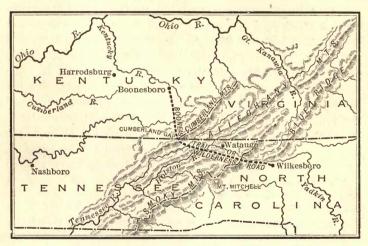
<sup>&</sup>lt;sup>1</sup>This method has been revived in the nineteenth century in the colonization of Africa, — as in the British South African and the German West African Company.

<sup>&</sup>lt;sup>2</sup> This was merely a narrow bridle path, through the more passable parts of the forest and across the easiest fords, leading two hundred miles from the Holston River (near Watauga) into central Kentucky. In the worst places, the thick underbrush was cut out; but much of the time only the direction was blazed on trees. The Wilderness Road (with a later branch into Virginia through the Cumberland Gap) long remained the chief means of communication with the Atlantic regions. Immigrants soon began, it is true, to float down the Ohio; but that route was much more exposed to Indian attack, and return up the river in that day was impossible.

In spite of savage Indian raids, and of a new Indian War in 1777, Kentucky was now definitely won for English-speaking America. With it, much more was won. Kentucky already contained several hundred fighting men, and it became the base from which George Rogers Clark conquered the Northwest (§ 162). Before the close of the Revolution, Kentucky's population exceeded 25,000; and when peace made Indian hostility less likely, a still larger immigration began to crowd the Wilderness Road and the Ohio. Meanwhile, there had been established west of the mountains a third center of settlement (C below).

#### C. CENTRAL TENNESSEE

172. The Cumberland Settlements. — Watauga was now ready to become the mother of a still more western colony. Population had grown rapidly, and an occasional straggling village



WESTERN SETTLEMENT, 1769-1784.

had succeeded an earlier "fort." At the end of ten years, it was no longer a place for the real frontiersmen; and, in 1779, Robertson, with some of his more restless neighbors, migrated once more to a new wilderness home in west-central Ten-

<sup>&</sup>lt;sup>1</sup> Special Report.

nessee, on the bend of the Cumberland. Romantic as is the history of this new island of civilization, we can stop only for its new illustration of a democracy founded on the *unanimous* consent of the governed.

As in Kentucky, so in this fertile district, population thronged in, with, no doubt, the usual proportion of undesirable frontier characters; and the settlers found it needful at once to provide a government. May 1, 1780, a convention of representatives at Nashboro adopted a "constitution," which, however, was styled by the makers merely "a temporary method of restraining the licentious." A few days later, this "social compact" was signed by every adult male settler, 256 in number. It provided for a court of twelve "judges," chosen by manhood suffrage and apportioned among the eight stations in proportion to their population. If dissatisfied with its representative, a station might at any time hold a new election (the modern "recall"). Like the early Watauga commissioners, the "judges" exercised all powers of government.

This extreme democracy, however, expressly recognized the right of North Carolina to rule the district when she should be ready; and in 1783 that State organized the Cumberland settlements into Davidson County.

### D. MOVEMENTS FOR STATEHOOD AND FOR "SEPARATION"

173. Twofold Character of Separatist Movements.—For some years, only feeble ties held the Western settlements to the Atlantic States. The men of the West made continuous efforts for Statehood, contrary to the will of Virginia and North Carolina and of Congress; and, at one time or another, in each of the three groups of settlements, these legitimate attempts merged obscurely in plots for complete separation from the eastern confederacy.¹ For even this extreme phase of the movement, there was great provocation in the gross neglect shown by the East toward pressing needs in the West (§§ 174, 175).

<sup>&</sup>lt;sup>1</sup> This twofold character is illustrated in the exceedingly interesting history of the *State of Frankland* (which should be made a subject for special report; cf. also *Source Book*, No. 148). The contrast between the political spirit of the French and English-speaking peoples in America is shown forcibly

174. "Colonial Policy" of the East. — The older States had just rebelled against the colonial policy of Great Britain, but they showed a strong inclination to retain a like selfish policy toward their own "colonies" in the West. Even in the imperative matter of protection against Indians, they hampered the frontier without giving aid. Repeated petitions were made by the Westerners (1) to control directly their own militia; (2) to be divided into smaller counties—with courts more accessible; and (3) to have a "court of appeal" established on their side the mountains.¹ These reasonable requests were refused contemptuously by North Carolina, and granted only grudgingly by Virginia. More distant Eastern communities, too, notably New England, manifested a harsh jealousy (§ 205).

175. The West and Spain. — For nearly all its course, one bank of the Mississippi was American; but, by the treaties of 1783, toward the mouth both banks were Spain's. According to the commercial policy of past ages, Spain could close against us this sole commercial outlet. The surplus farm produce of the West could not be carried to the East over bridlepaths. Without some route to the outside world, it was valueless; and the only possible route in that day was the huge arterial system of natural waterways to the Gulf.

Early in the progress of Western settlement, the backwoodsmen began to float their grain and stock in flatboats down the smaller streams to the Ohio, and so on down the great central river to New Orleans. They encountered shifting shoals, hidden snags, treacherous currents, savage ambuscades, and the hardships and dangers of wearisome return on foot through the

by comparing with such efforts at self-government in the Southwest the contemporary complaints of the French settlers north of the Ohio. These settlements (§ 164, note) were subject to troubles like those of their southern neighbors; but they seem not to have thought of asking, to say nothing of taking, enlarged powers of self-government. Instead, they sent to Congress a pitiful petition that "governors" might be appointed over them. Cf. Roosevelt, Winning of the West, II, 184.

<sup>&</sup>lt;sup>1</sup> Many a poor man found legal redress for wrong impossible because a richer opponent could appeal to a seaboard supreme court.

Indian-haunted forests. These natural perils the frontier trader accepted light-heartedly; but he was moved to bitter wrath, when — his journey accomplished — fatal harm befell him at his port. He had to have "right of deposit" at New Orleans, to reship to ocean vessels. Spanish governors granted or withheld that privilege at pleasure — until 1795, when a treaty secured it, nominally, for a brief and uncertain period (§ 233). Even then, ruinous bribes were still necessary to prevent confiscation by Spanish officials on some pretense.

For many years our government had shown little eagerness in this life-or-death matter; and the West seethed with furious demands for possession of the mouth of the Mississippi. How to get it mattered little. The Westerners would help Congress win it from Spain; or they were ready to try to win it by themselves, setting up, if need be, as a separate nation; or some of them were ready even to buy the essential privilege by putting their settlements under the Spanish flag.

The last measure was never discussed widely; but nearly every one of the great leaders was at some time concerned in such dubious negotiations with Spanish agents, — notably Sevier, Robertson, and Clark. American nationality and American patriotism were just in the making. It was natural for even good men to look almost exclusively to the welfare of their own section; and the action of these really great leaders does not expose them to charges of lack of patriotism in any shameful sense, — as would be the case in a later day. Still we should see that they struggled in this matter on the wrong side. It was well that, about 1790, they were pushed aside by a new generation of immigrants, who were able to "think continentally."

176. Spain's Attitude. — On her side, Spain felt her possessions in America threatened by the new Republic, — especially by any advance of its rude strength beyond the Appalachians. She tried to check the peril (1) by arousing the Southwestern Indians against Kentucky and Tennessee; (2) by fostering movements for independence in those communities, so that they might become buffer states between her and the

<sup>&</sup>lt;sup>1</sup>Cf. Roosevelt's Winning of the West, III. These men must not be confounded with a fellow like General Wilkinson, who, while an American officer, took a pension from Spain for assisting her interests in the West.

United States; and (3) by inducing the Westerners to place themselves under her protection.

How dangerous this last would have proved is suggested by later events in West Florida and Texas (§§ 261, 339). Indeed (if this is any excuse), it is possible that, under pretense of accepting Spanish sovereignty, Sevier and Clark expected to play the part of splendid free-booters, and rob that decaying power of vast realms for English-speaking civilization.

#### II. THE NORTHWEST A NATIONAL DOMAIN

177. A significant contrast is indicated in the headings for Divisions I and II. Except for Henderson's futile project, there was no paternalism in the Southwest. Settlement there was predominantly individualistic. No statesman planned it; no general directed the conquest of territory; no older government, State or Federal, fostered development. The Southwest was won from savage man and savage nature by little bands of self-associated backwoodsmen, piece by piece, from the Watauga to the Rio Grande, in countless bloody but isolated skirmishes and through self-determined action, generation after generation. Settlement preceded governmental organization.

In the Northwest, government preceded settlement. The first colonists found (1) territorial divisions marked off for governments, and the form of government largely determined; (2) land surveys ready for the farmer; and (3) some military protection. All this was afforded in advance by the national government. This child of the nation, therefore, escaped the tendencies to separatism which we have noted in the Southwest.

### A. CREATION OF THE NATIONAL DOMAIN

178. State Claims. — Six States could make no claim to any part of the West, — Maryland, Pennsylvania, Delaware, New Jersey, New Hampshire, and Rhode Island; while the title of South Carolina applied only to a strip of land some twenty miles wide. But, immediately after the Revolution, the other six States reasserted loudly old claims to all the vast region between the mountains and the Mississippi.

<sup>&</sup>lt;sup>1</sup> The map facing page 265 should be studied as part of the text, for purposes of this topic. Cf. also Source Book, § 146.

Kentucky and Tennessee, it has been noted, were claimed by Virginia and North Carolina, and Georgia long insisted upon a flimsy title to a wide reach of land extending to the Mississippi. So far, there were at least no conflicts of title between the States. North of the Ohio, the case was more complex. Virginia claimed all the Northwest, under her old charter (§§ 25, a, 33, 37, note); and she had done much to give real life to this weak title by taking steps toward actual possession in Dunmore's War and Clark's conquest of Illinois, and, even more, in the organization and administration of the district from Vincennes to Kaskaskia as the County of Illinois (1779–1784). New York also claimed all the Northwest, but by the slightest of all titles. The middle third of the Northwest was claimed also by Massachusetts and Connecticut on the basis of ancient charters.

179. Maryland insists upon a Common Domain and a New Colonial Policy. — New Jersey, Delaware, and Maryland, already hemmed in by larger neighbors, looked with rising alarm upon the probability of greater expansion for those neighbors through these amazing claims. Moreover, the States with western lands at once arranged to use them in paying Revolutionary expenses, while the small States taxed themselves in hard cash for the war which really won this territory from England.

These conditions gave rise to intense dissatisfaction, and four States refused to ratify the Articles of Confederation (§ 186). In a year or so, however, all but Maryland submitted to the pressure from Congress. Indeed, they had been willing all along to leave jurisdiction over the western territory to the claimant States, if only they themselves might share in the money proceeds from the sale of lands. Maryland, no doubt, was roused to action by a like selfish motive; but enlightened selfishness in her case led to the broadest patriotism. She devised, and, after a stubborn four-years' contest, she established for all America a wholly new and glorious colonial policy, — perhaps the most original American contribution to politics.

<sup>&</sup>lt;sup>1</sup>By the terms of the Articles, that constitution could not go into effect until ratified by every State.

As early as November, 1776, the Maryland Convention that framed a State constitution set forth also this resolution: "That the back lands, claimed by the British crown, if secured by the blood and treasure of all, ought, in reason, justice, and policy, to be considered a common stock, to be parcelled out by Congress into free, convenient, and independent Governments, as the wisdom of that body shall hereafter direct." Nearly a year later (October 15, 1777), the Maryland delegates in Congress sought to have that body proclaim that it should have power to fix the western bounds of the States claiming to the Mississippi, and, at proper times, to lay out the lands west of such boundaries into new "States." The Articles of Confederation were then being considered by Congress; and the only immediate result of Maryland's proposal was the addition to the Articles (at Virginia's insistence) of a provision that no State should ever be deprived of territory by Congress. The Articles were submitted to the States for ratification in November, 1777; and by February, 1779, every State except Maryland had ratified. Further delay was in many ways perilous to the new Union; and other States charged Maryland bitterly with lack of patriotism. Virginia, in particular, insinuated repeatedly that the western lands were only an "ostensible cause" for Maryland's delay. With clear-eyed purpose, however, that little State held out, throwing the blame for delay where it belonged, - on Virginia and the other States claiming the West; and in May, 1779, she renewed her instructions to her delegates in Congress against signing the Articles, - repeating in precise words her resolution of 1776.

180. The Cessions. — Even in the landed States, public opinion gradually shifted to the support of the view so gallantly championed by Maryland; and a year later (October 10, 1780), the Continental Congress formally pledged the Union to the new policy. A Congressional resolution solemnly urged the States to cede the western lands to the central government, to be disposed of "for the common good of the United States," guaranteeing also that all lands so ceded would be "formed"

names of Statis. by whom each w. claim was made. to. land claims of each stale Brut. + Fran. possessions. name principai Pinno stat from houndaines. fond disputed with tour.



THE UNITED STATES IN 1783 - STATE CLAIMS AND CESSIONS

into separate republican States, which shall become members of the federal union and have the same rights of freedom, sovereignty, and independence as the other States." <sup>1</sup>

New York had already promised to relinquish her western claims, and now Connecticut promised to do likewise. In January, 1781, Virginia's promise followed, for the lands north of the Ohio. The formal deeds of cession were delayed by long negotiations over precise terms, but the general result was now certain. Maryland had won. Accordingly (March 1,1781), she ratified the Articles. That constitution at last went into operation,—and the new confederacy possessed a "national domain."

Kentucky remained part of Virginia until admitted into the Union as a State in 1792; and Virginia did not actually cede the Northwest until 1784,—retaining then the "Military Reserve" (a triangular tract of several million acres just north of the Ohio) wherewith to pay her soldiers. Connecticut completed her cession in 1785, and Massachusetts made hers in 1786. Connecticut retained 3,250,000 acres south of Lake Erie. This district was soon settled largely by New Englanders, and was long known as "The Western Reserve"; but in 1800, when Connecticut had sold her property in the lands (to build up her school fund), she granted jurisdiction over the settlers to the United States. North Carolina ceded Tennessee in 1790, and South Carolina had given up her little tract three years earlier; but Georgia clung to her claims until the year 1802.

¹This completed the suggestion for what has come to be the American plan of colonization. Previously, the world has known only two plans. Greek and Phœnician colonies became free by separating at once from the mother cities: the seventeenth and eighteenth century colonies of European countries had remained united to the mother countries, but in a condition of humiliating dependence. For the United States Maryland had devised a new plan combining permanent union with freedom. The student will perceive that this great political invention was peculiarly adapted to a federal union, such as America was then forming.

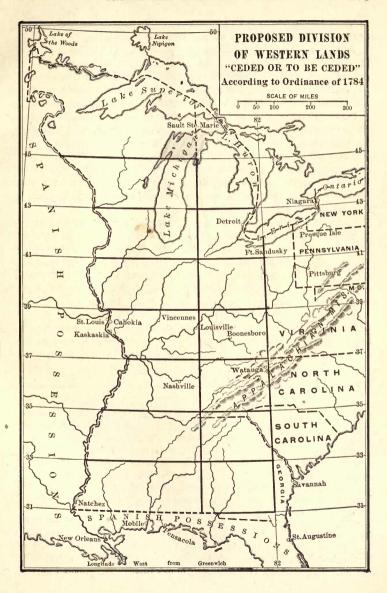
<sup>&</sup>lt;sup>2</sup> Massachusetts had claimed also what is now western New York; but in 1786 the two States agreed that New York should have the *jurisdiction* and Massachusetts the *property*. This dispute had delayed Massachusetts' surrender of the lands farther to the West. Connecticut, too, had waged a long quarrel, rising almost to a war, with Pennsylvania, over her claims to land within that State. This matter was finally submitted to arbitration by Congress, which decided in favor of Pennsylvania. Resentment in Connecticut delayed for a time the cession of her other lands.

#### B. NATIONAL ORGANIZATION

181. The Ordinance of 1784. — It was now for Congress to make good its promise in the resolution of October, 1780. Accordingly, when Thomas Jefferson, as a Virginia delegate in Congress, presented to that body Virginia's final cession, he also proposed a plan of government for all territory "ceded or to be ceded." This plan was soon enacted into law and is commonly known as the Ordinance of 1784. It deserves study, as the first American legislation 1 for the political organization of "Territories" (or colonies), and for its influence upon its yet more important successor, the Ordinance of 1787 (§ 182).

Jefferson assumed that the States would promptly complete their cessions. Accordingly, the Ordinance of 1784 cut up all the western territory into proposed States. The old States were to be bounded on the west by the meridian passing through the mouth of the Kanawha. West of that line there were to be two tiers of new States, each one bounded by geographical parallels and meridians. Each State was to be two degrees

<sup>&</sup>lt;sup>1</sup> Some months before, in 1783, Jefferson had been made chairman of a committee to prepare a plan for government for the West; and now the committee reported. Although this was the first legislative action upon the matter, it should not be forgotten that several individuals had proposed plans previously. Apparently, the earliest such plan was that suggested by Thomas Paine, in 1779, in The Public Good (written mainly to advocate the Maryland idea, against the policy of his adopted State, Virginia). Congress was to lay off the boundaries for a new State; and, "as it must be supposed, not to be peopled when laid off," the central government was also to supply the new political unit in advance with a constitution "for a certain term of years (perhaps ten), or until the State becomes peopled to a certain number of inhabitants; after which the sole right of modeling their government to rest with themselves." As to the relation of the new State to the Union, -"It ought to be incorporated into the Union, on the ground of a family right, such a State standing in the line of a younger child of the same stock; but ... a new State requiring aid, rather than [being] capable of giving it, it might be most convenient to admit its immediate representative into Congress to sit, hear, and debate . . . but not to vote till after the expiration of seven years." Thus once more, in a constitutional crisis, Paine's fertile brain gave forth the path-breaking thought. His paragraph contains the essential details of our later legislation for Territories.



in width from north to south; and the meridian passing through the Falls of the Ohio was to divide the eastern from the western tier.

As to government, three stages were provided. (1) When any one of the districts should have sufficient population (the provision lacking in definiteness), either the inhabitants or Congress might call a representative convention (to be elected by manhood suffrage) with power to adopt the constitution of any one of the original thirteen States; according to the constitution so chosen, the inhabitants were to govern themselves during what we may call the provisional territorial stage. (2) Whenever the population reached twenty thousand, a second convention was to establish a "permanent constitution," and the "Territory" was to send a delegate to Congress, — who, however, should not hold a vote there. This stage may be called the regular territorial organization. (3) Full statehood, within the Union, was to be granted when the population equaled that of the smallest of the older States.

As in all our later organization of Territories, certain provisions were to be made a matter of compact between the new State and the United States, not alterable therefore in future by the State alone. Thus, the State was forever to remain part of the United States, and to preserve a republican form of government; it was to take over its share of the public debt, and not to tax United States lands within its borders, nor to tax non-residents more heavily than its own citizens. Strangely enough, this document from Jefferson's hand contained no real bill of rights (perhaps because that was thought a matter for the future State constitutions); but a remarkable attempt was made in it to exclude slavery from all the western territory after the year 1800. This provision, however, received the votes of only six States, and so failed of adoption.<sup>2</sup>

¹ Counting from the thirty-first parallel (our southern boundary) to the forty-fifth, this arrangement would give fourteen States; and, in rather vague fashion, another seems to have been designed for the space between the western boundary of Pennsylvania and the first tier of new States. It is possible, however, that South Carolina and Georgia were expected to extend to the second tier,—in which case there would have been only twelve or thirteen States. To ten of them the original plan gave peculiar names,—Michigania, Metropotamia, Polypotamia, Assenisipia, etc. (The Ordinance expressly provided that any fragments north of the forty-fifth parallel should be included in the States just south of them.)

<sup>&</sup>lt;sup>2</sup> Virginia (spite of Jefferson) and South Carolina voted No; North Carolina was "divided" and so not counted; New Jersey, Delaware, and Georgia were absent. Jefferson stated later that, but for the sickness of a delegate from New Jersey, that State would have been present and in the affirmative; so that the proposition "failed for want of one vote." The proposal applied

Thor 182. The Ordinance of 1787 ("The Northwest Ordinance"). -These political provisions in the Ordinance of '84 were liberal and democratic; but they were vague in places, and they left to the central government no convenient means of control, even in the earliest stage of settlement. In 1787, the law was replaced by the great Northwest Ordinance. This was a slightly more conservative law, drawn in more precise terms, with more machinery for central control and with some noble additional features, but on the same general plan.

During the three years which had passed since the passage of the first ordinance, there had been no district in the ceded territory populous enough to organize under the law. Indeed, in the Northwest there were no English-speaking inhabitants. Meantime, some parts of the East had begun to look jealously at the prospect of so many new States, with weight in Congress to outvote the Atlantic section. Moreover, Monroe, after a hasty trip through the West, reported that much of the territory was "miserably poor," so that some of the proposed States would never contain a sufficient number of inhabitants to entitle them to membership in the confederacy. Congress, therefore, appointed a committee to prepare a new plan of organization, with view particularly to reducing the number of future States.

In 1786 a number of New England Revolutionary soldiers organized a "company of associates," to establish themselves in new homes on the Ohio. Early in 1787 this Ohio Company sent the shrewd Manasseh Cutler (one of their directors) to buy a large tract of western land from Congress. Cutler found the proposed Territorial ordinance under discussion. Congress was slowly dying (§ 188), and its dilatory habits might have prevented any new legislation, but it was stirred to action by the attractive prospect of paying part of its debts with wild lands. Negotiations for the land deal and for the new Territorial law (under which the settlers would have to place themselves) became intermingled. Cutler proved an adroit lobbyist. On one occasion he had to frighten the hesitating Congress into action by pretending to take leave; but finally both measures were passed. The ordinance, with a number of new provisions satisfactory to the New Englanders, became law on July 13; and a few days later the land sale was completed.1

to the domain south of the Ohio, as well as to that north of the river. For the Ordinance as adopted, cf. Source Book, § 149, a.

<sup>&</sup>lt;sup>1</sup> The Ohio Company bought for itself 1,500,000 acres, at a nominal price of two thirds of a dollar an acre. Payment was made, however, in depreciated

The "Northwest Ordinance" (so-called because, unlike its predecessor, it applied only to the territory north of the Ohio) has been styled second in importance only to the Declaration of Independence and the Constitution. Under it, the new type of American colony was first actually established.

Not less than three, nor more than five states were to be formed from the territory, but, until further Congressional action, the whole district was to be one unit. As in the older law, three stages of government were provided.

- (1) Until the district should contain five thousand free male inhabitants, there was no self-government. Congress <sup>2</sup> appointed a "governor" and three "judges." The governor created and filled all local offices; and governor and judges together composed a sort of legislature to select laws suitable for Territorial needs from the codes of older states, —subject, however, to the veto of Congress.
- (2) In the second stage Congress still appointed the governor; but there was now to be a two-House legislature,—a House of Representatives elected by the people, and a Legislative Council of five men selected by Congress from ten nomi-

soldiers' "certificates" (§ 189, b), so that the real cost was only eight or nine cents. Unhappily, the purchase was carried through by connecting it with a "job." Influential members of Congress, as the price of their support, induced Cutler to take, at this rate, not merely the million and a half acres which he wanted, but also three and a half million more, which were afterward privately transferred to another "company" composed of these congressmen and their friends. The matter came out; but, in that day, moral standards for public life did not condemn such use of a position of public trust as severely as it would be reprobated to-day.

<sup>1</sup> Cf. Source Book, No. 149, b. The class should study the document at least far enough to verify the statements made in the text regarding it. The principles of this law became so fixed during the next century that students are in danger of thinking of the Ordinance as no more open to change than the Constitution. Of course, in law, it was an ordinary statute, subject at any time to revision or abolition by Congress, and many details were modified or added afterward, even for Territories in the Northwest.

<sup>2</sup> This law was passed, of course, by the Continental Congress. After the adoption of the Constitution, the next year, many powers here given to Congress were transferred to the President of the United States.

nated by the Territorial lower House. This legislature was to send a Territorial delegate to Congress, with right to debate but not to vote. The appointed governor had an absolute veto upon all acts of the legislature and controlled its sittings, calling and dissolving sessions at will. Thus, in this stage, the inhabitants had about the same amount of self-government as in a royal province before the Revolution.¹ Political rights, too, were based upon a graded ownership of land: to vote for a Representative, one must have a freehold of fifty acres; to be eligible for the lower House, two hundred acres; for the upper House, five hundred; and for the governorship, a thousand.

(3) The third stage was provided for in the following words: "Whenever any of the said States shall have sixty thousand? free inhabitants, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government."

A true "bill of rights" was incorporated in the most solemn fashion: "And, for extending the fundamental principles of civil and religious liberty . . . [and] to . . . establish those principles as the basis of all . . . governments which forever hereafter shall be formed in the said territory," six lengthy articles were declared to be "articles of compact between the original States and the people . . . in the said Territory . . . forever [to] remain unalterable, unless by common consent." To similar provisions in the previous ordinance there was now added the right of individuals to freedom of religion, to habeas corpus privileges, to bail (except upon capital charges), to exemption from cruel or unusual

<sup>&</sup>lt;sup>1</sup> Cf. especially the government of Massachusetts under her second charter.

<sup>2</sup> This was intended to have the same effect as the corresponding requirement in the Ordinance of '84. Sixty thousand was supposed to be about the population of the smallest States. The first census, three years later, gave Delaware fifty-nine thousand and Rhode Island sixty-nine thousand.

punishments, and to jury trial. Guarantees were given for proportionate representation, for the Common Law procedure, for the inviolability of contracts, and for the equal division of estates (even of landed property) among the heirs of intestates. The Third Article declared that "schools and the means of education shall forever be encouraged"; and the great Sixth Article prohibited slavery, with a provision, however, for the return of fugitive slaves escaping into the Northwest from other States.

The Northwest Ordinance did not make specific provision for public support of education, as many people suppose. That was done by two other ordinances of the Continental Congress,—one earlier, one just later,—which made smooth the way for western settlement and profoundly influenced its character (§ 183).

183. Survey Ordinance (1785), and Land Grants to "State Universities" (1787). — In 1785, Congress had passed an ordinance (originating with Jefferson) (1) providing for a rectangular land survey by the government, in advance of settlement; (2) establishing land offices for sale of public lands at low prices and in small lots; <sup>2</sup> and (3) giving one thirty-sixth of the national domain (in properly distributed tracts) to the new States, for the support of public schools. These three principles have ever since remained fundamental in Western development.

For a rectangular survey, it was necessary first to fix a north-and-south and an east-and-west line ("Prime Meridian" and "Base Line"). The ordinance named two such lines; and as the survey proceeded, others

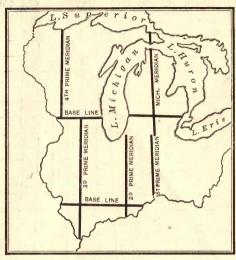
<sup>&</sup>lt;sup>1</sup>In the older States, primogeniture was still the rule, or had been so until just before. Even in New England, the oldest son still inherited a double share. The principle of equal division of landed property had a special democratic value, because of the connection between land and political power.

<sup>&</sup>lt;sup>2</sup> So that settlers could buy directly from the government. Previously, the public domain had been obtainable, in practice, only in immense tracts, and therefore, in the first instance, only by wealthy speculators. This law made the unit for land sales the "section" (640 acres). This proved too large, and in 1800 it was reduced to 160 acres. In 1820 it was made 80, and later, 40 acres.

were located. Diagram A indicates those actually used for the Northwest Territory. Oregon lands are surveyed from the Twenty-fourth

Prime Meridian, which runs through that State.

Beginning at the intersection of any Prime Meridian and Base, the surveyors run out perpendiculars to each line at sixmile intervals intersections of the two sets of lines mark off the domain into squares,1 called townships, each containing thirty-six square miles. The first row of squares west of the Prime Meridian is called Range One: the second row, Range Two; etc. Any square in the row just north



UNITED STATES SURVEY: DIAGRAM A. BASES AND MERIDIANS FOR THE OLD NORTHWEST.

of the Base is called *Town* One; any one in the second row, Town Two. Thus to name both Town and Range is to locate any township beyond dispute.<sup>2</sup>

Each township is subdivided into thirty-six smaller squares, called *sections*, each one mile square, numbered from one to thirty-six, beginning in the northeast corner of the township (Diagram C). Subsequent legislation provided for more minute divisions, cutting the sections into halves (320 acres), quarters

<sup>&</sup>lt;sup>1</sup>The north-and-south lines gradually approach one another toward the north; and, to keep the "squares" more nearly square, it is necessary at frequent intervals to take a new parallel as a Correction Line, as shown in Diagram B.

<sup>&</sup>lt;sup>2</sup> EXERCISE.—In Diagram B, G is Town Three South, Range Four West. To reach it from X, one must go south twelve miles, and west eighteen. This would leave one at the northeast corner. Locate H, O, and other townships.

(160 acres), and even quarters of quarter sections ("forties"). Each such subdivision is indicated by its geographical location (Diagrams C and D). Having found the corner of a section

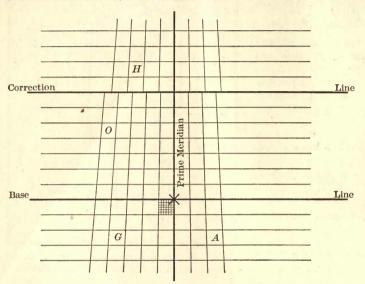


DIAGRAM B. TOWNS AND RANGES.

(as above), a stranger knows just how many rods to go, and in what direction, to reach the Northwest quarter of the Southwest quarter. The surveyors mark each corner of each "section" in some permanent fashion; and the court house for each county contains a map of the survey within its limits and a record of the "marks." Location of land and settlement became possible without the costly and dubious aid of private surveyors.<sup>2</sup>

 $<sup>^1</sup>$  EXERCISE. — Draw D with other distribution of subdivisions, naming each one. Name x in Diagram D.

<sup>&</sup>lt;sup>2</sup> Previous to this law of 1785, surveys in America had been irregular, overlapping one another in places, and in other places leaving large fractions unincorporated in any "description." The points of beginning, too, had been

In other indirect ways, this method of survey has affected Western life. County Boards run roads on the section lines, and, when necessary, on the geometric subdividing lines. The counties, made up of square townships, take on a more rectangular form, as compared with those in older States; and the more Western States themselves tend to a similar form. (Cf. Map, after page 652.)

An attempt to insert a provision in the Ordinance of 1785 to set aside section 15 of each township for the maintenance of

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

DIAGRAM C. A TOWNSHIP SUBDIVIDED INTO SECTIONS.

DIAGRAM D. A SECTION SUBDIVIDED.

religion was voted down; but each section 16 was granted to the future communities for the support of common schools. This provision preceded the vague phrase in the Ordinance of '87 re-

arbitrarily chosen, and, if once lost, they were hard to determine again. At almost the date of this ordinance, the records of Jefferson County in Kentucky describe the land of Abraham Lincoln's grandfather as located on a fork of the Long Run, beginning about two miles up from the mouth of the fork, "at a Sugar Tree standing in the side of the same marked S D B and extending thence East 300 poles to a Poplar and Sugar Tree North 213\frac{1}{3} poles to a Beech and Dogwood West 300 poles to a White Oak and Hickory South 213\frac{1}{3} poles to the Beginning." The older portions of the country still keep these cumbersome and imperfect descriptions.

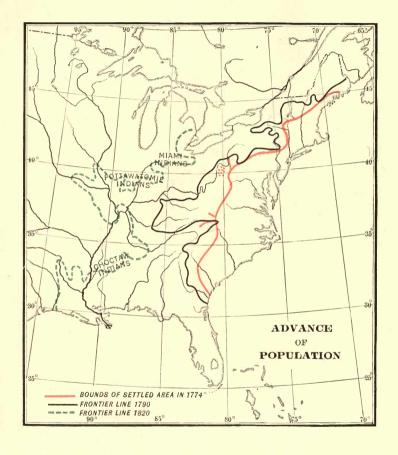
garding encouragement to education; and it ranks in importance with the exclusion of slavery by that document.

The intention was to have each township use the proceeds from its section 16 for its own schools. Happily, it was soon decided to give the sale of school lands to *State* officials, rather than to local officers, and to turn all proceeds into a *permanent* State fund, of which only the interest is divided each year among various localities of the State, usually in proportion to their school attendance. The States admitted since 1842 have received also section 36 of each township for school purposes, or one eighteenth of the land within their limits, besides lavish grants for internal improvements (§§ 312, 314).

The other great act of the dying Continental Congress which deserves grateful remembrance was passed a few days after the Northwest Ordinance. Cutler was not content even with the generous terms he had secured for the Ohio Company (§ 182); and he obtained a further grant of forty-six thousand acres "of good land" in the proposed Territory "for the support of an institution of higher learning,"—the land to be located, and funds used, "as the future legislature of the proposed settlement may direct." Here begins the policy of national land grants to "State universities." When the Territory of Indiana was set off on the West, a like grant was made for it; and so on, for each new Territory since. After 1873, such grants were doubled in amount.

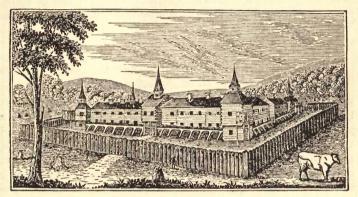
waging a hot political campaign over the adoption of a Federal Constitution (§ 210), the settlement of the Northwest began. The Ohio Company pressed its preparations eagerly, and advertised the riches of the West extravagantly, to sell its lands; and in the winter of 1787–1788, fifty New Englanders under General Putnam made the western journey as far as Fort Pitt (Pittsburg). Here they built a huge boat, with sides protected by bullet-proof bulwarks, naming it the Mayflower in memory of their forefathers' migration to a new world. As soon as the ice broke up, they floated down the Ohio to the mouth of the Muskingum, and there founded Marietta. Various

disappeared the of Eng. aristoiracios Ruce - Town meetings democracies Democracy Represented Depublican Bill of Fights July Frist .. Press Right of artition English Common Law. 1 Rody & G & precedents unwitten



hamlets soon clustered about this first settlement, — each, as a rule, centered about a mill, — and within two years the colony contained a thousand people. Indeed, ten thousand are reported to have floated past Marietta during its first season, most of them bound for Kentucky, but many to establish themselves at different points in the Northwest.

In 1799 the second stage of Territorial government began, with a representative legislature. The next year Congress



CAMPUS MARTIUS, MARIETTA, 1791. (As reconstructed in *The American Pioneer*, in 1841.)

divided the district into two "Territories,"—the eastern still going by the old name of the Northwest Territory; the western receiving the name Indiana. In 1802, the eastern district was admitted to the Union as the State of Ohio.

For many years, migration continued to be by wagon to Pittsburg or Wheeling, and thence by water on hundred-foot rafts carrying cattle and small houses, or on somewhat more manageable flatboats seventy feet long perhaps. Such vehicles were steered from rocks and sand bars by long "sweeps." They floated lazily with the current by day, and tied up at the bank at night. Occasionally, long narrow keel boats were used; and these were especially convenient, because, by the brawny arms of

 $<sup>^1\,\</sup>mathrm{Cf.}$  § 124 for a suggestion as to the like importance of mills in early New England.

seven or eight men, they could be poled up tributary streams, to choice points for settlement.

For a time, settlement was hampered by frequent Indian forays. The wars that followed, however, were managed by the Federal government, and the most important forces were "regulars." In 1790 and 1791, expeditions against the Indians were repulsed disastrously—the second costing more than half the American force. But in 1794 General Wayne inflicted a crushing defeat upon the natives; and, the same year, a new treaty with England secured to the United States actual possession of the Northwest posts (§ 231). This deprived the Indians of all hope of English support, and they ceased to molest settlement seriously until just before the War of 1812.

#### III. SUMMARY

185. "The Meaning of the West." — The early western communities, it will be noted, reproduced the simplicity of the first communities on the Atlantic coast a century and a half before. Like the early Virginia Assembly or the Massachusetts General Court, the governing bodies on the Watauga and the Cumberland made little distinction between legislative, judicial, and executive functions. One organ of government sufficed for all purposes. Differentiation came later, as it had already come in the East with the complex needs of denser populations. As that evolution in the new communities progressed, its course was determined largely by the experience of the older communities; and at the same time those eastern communities felt a wholesome reaction from the simplicity and democracy of the West.

But the western societies did not merely copy Eastern development. They did not begin just where the Atlantic seaboard settlements did. They started on a different plane and with greater momentum. The At-

American writers used to assume that the Indian forays were directly fomented by the English officials in the Northwest posts. No doubt the presence of English troops there did have some effect upon Indian hopes. But after a careful examination of recently opened sources of information, Professor Andrew McLaughlin writes:—"I am glad to be able to state . . . that England and her ministers can be absolutely acquitted of the charge that they desired to foment war in the West. . . . There was never a time when the orders of the home government did not explicitly direct that war was to be deprecated, and that the Indians were to be encouraged to keep the peace."—Report of American Historical Association for 1894, 435 ff.

lantic frontier had to work upon European germs. Moving westward, each new frontier has been more and more American, at the start.

These considerations give the key to the meaning of the frontier in American history for the next century and a quarter (until there ceased to be a true frontier). Says Frederick J. Turner, in words nobly chosen: "The peculiarity of American institutions is that they have been comnelled to adapt themselves to the changes of an expanding people, — to the changes involved in crossing a continent, in winning a wilderness, and in developing at each new area of this progress out of the primitive economic and political conditions of the frontier into the complexity of city life." Other countries show development, continues Dr. Turner, but not the interaction of so many planes of development. Thus in the colonial period. "we have the familiar phenomenon of the evolution of institutions in a limited area: such as representative government; the differentiation of simple governments into complex organs: the progress from primitive industrial society, without division of labor, up to manufacturing civilization." But we have also (as other nations have not) "a recurrence of this process in each new western area reached in the process of expansion. . . . American social development has been continually beginning over again on the frontier. This perennial rebirth, this fluidity of American life, this expansion westward with its new opportunities, this continuous touch with the simplicity of primitive society, furnish the forces dominating American character. The true point of view in the history of this nation is not the Atlantic coast: it is the Great West. . . . The frontier is the line of most rapid and effective Americanization." (American Historical Association Report for 1893.)1

<sup>&</sup>lt;sup>1</sup> Dr. Turner is the first true interpreter of the frontier in our history. But every student should read also Woodrow Wilson's "Course of American History" in his volume *Mere Literature*, and Samuel Crothers' "Land of the Large and Charitable Air" in *The Pardoner's Wallet*.

## CHAPTER VIII

#### FROM LEAGUE TO UNION

#### I. THE CONFEDERATION OF STATES

A. THE REVOLUTIONARY GOVERNMENTS, 1776-1781

186. Formation of the "Articles."—Richard Henry Lee's motion for Independence on June 7, 1776 (§ 150), contained also a resolution that a "plan of confederation" be prepared and submitted to the States. A committee was appointed at once to draw up a plan. Not till November, 1777, however, did Congress adopt the "Articles of Confederation"; and ratification by the States was not secured until 1781 (§ 179), when the war was virtually over.

187. The States and the Declaration of Independence. - During the five years from 1776 to 1781, the central Congress rested such authority as it had upon revolutionary necessities and upon the informal and undefined acquiescence of the State governments. Men did not clearly determine for themselves in those troubled days whether the States were one nation or thirteen. Certainly, no one at the time thought the Declaration of Independence binding upon any State merely because of the action at Philadelphia, but, mainly if not wholly, because of the instructions or ratification by the State itself (§ 150). In this matter Congress did not even advise the States. It waited for the States to instruct their respective delegations. Then the vote was taken by States, and the delegates of no State 1 voted for the Declaration until expressly authorized by their own State Assembly. The action at Philadelphia amounted to a joint announcement, in order, in Franklin's phrase, that they might all "hang together," so as not to "hang separately."

<sup>&</sup>lt;sup>1</sup> Unless South Carolina is possibly an exception. Cf. § 150.

True, the final paragraph of the Declaration has a reference to "the authority of the good people of these colonies"; and, in later times, that one phrase has been tortured into proof that the Declaration was the act of a consolidated people,—a single nation. Such reasoning ignores the fact that three longer phrases in the same paragraph teach more emphatically the opposite doctrine,—of thirteen peoples; and that the signed copy was headed "The unanimous Declaration of the thirteen United States."

It would be unwise, however, to draw positive conclusions from the wording of the document alone, even were that wording in agreement throughout. The men of '76 had not yet learned, many of them, to use the common terms of political science, — such as independence, sovereign, state, nation, — with the nice precision that belongs to later days. Moreover, they were thinking mainly of the relations of the States to England, not to each other or to Congress. These questions arose later, and cannot be answered from the language of the earlier day, except as that language agrees with action.

Exercise.—The following questions are suggestive. Keep them, and the comment, in mind, as the study progresses, without answering them too definitely. Some material may be found in the *Source Book*.

- a. In 1776 was "United States" a singular noun? Was it even a collective, in all cases? Was "united," or even "United," always a part of the noun, or was it sometimes merely a descriptive adjective? (See note below for one example.) Do you find the term "United States" in that period ever taking a singular verb or pronoun?
- b. Would any one in Maryland, or out of it, have thought that State independent on July 4, 1776, if she had not previously rescinded her instructions against independence? (Cf. § 150.) The same question for New Jersey and Pennsylvania. Did men think New York bound by that day's act? Did Virginians think their independence due to the vote at

<sup>&</sup>lt;sup>1</sup> Even Hamilton wrote, in 1784: "By the Declaration of Independence of July 4, 1776, acceded to by our Convention on the ninth, the late colony of New York became an independent State." (Works, Lodge ed., III, 470.) And it was John Jay who, in the Third New York Provincial Congress, moved the resolution of June 11, 1776 (§ 150), "That the good people of this colony have not, in the opinion of this Congress, authorized this Congress or the delegates of this colony in the Continental Congress, to declare this

Philadelphia, or to their own instructions to their delegates on May 15, and to their State declaration of June 29? (Cf. § 148.)

c. June 3, 1776, John Adams wrote to Patrick Henry: "It has ever appeared to me that the natural order of things was this: for every colony to institute a government; for all the colonies to confederate, and define the limits of the continental constitution; then to declare the colonies a sovereign State, or a number of confederated sovereign States... But I fear we cannot proceed systematically, and that we shall be obliged to declare ourselves independent states before we confederate..." Would not Adams have said on July 4 (four weeks later), that this last anticipation had been realized? Would he have thought the States (in his language above) "an independent state," or "a number of confederated states," or merely a number of states not yet confederated?

In the middle third of the nineteenth century there dawned a great struggle, finally to be settled by the sword, between union and disunion. Unfortunately for historical truth, the progressive side, standing on what had come to be true in our national life, tried to date back that truth further than it really belonged, in their desire to claim for it all possible sanction of age. The splendid names of Story and Lincoln became connected with the dubious historical doctrine that the Union

colony to be and continue independent of the Crown of Great Britain." Did Jay think that the Continental Congress spoke for New York on July 4? The opinion of the Pennsylvania Convention of the time appears in their resolution approving the "cogent reasons" given "by the honorable Continental Congress for declaring this, as well as the other United States of America free and independent," and asserting that "we will . . maintain the freedom and independency of this and the other United States." (Is "United" in that last phrase part of a noun, or is it merely an adjective?) So, too, Connecticut (October, 1776), when adopting her old charter for a constitution, declared, "This Republic (viz., Connecticut) is . . . a free, sovereign, and independent State."

<sup>1</sup> Another indication for the answer to the last question is found in a sentence by Adams several months later still, in the debates upon the proposed Articles of Confederation: "The confederacy is to make us one individual only; it is to fuse us, like separate parcels of metal, into one common mass." (Source Book, No. 146, and comment.)

Adams, Hamilton, and Jay have been specially quoted in the passages above, because they were all strong advocates of national union, and because they used words with more than average precision for their day.

was older than the States and that it created the States.¹ Indeed, to the thought of most of our people, this error became identified with patriotism, and for two generations it was taught in text-books and many-volumed histories. The real basis for the position of those patriots, it is easy to see now, lay not in any theory about the past, but in the throbbing life of their own day, —in the need and the will of a living people.

Now that the terrible practical danger of disunion has passed, men can look more calmly at the theories. In this new generation, critical scholars reject the patriotic fiction of the antiquity of the Union in its extreme form. And here is great gain for the truth of history. We not only cease to misread the years just before 1776, but we are also able better to see the real significance of many years that followed, —with their growth toward nationality.

Still, we must not be too dogmatic as to which created the other, — States or Union. That delicate question is not to be answered in a word. States and Union grew up together. The States grew into form fastest and first; but, from the beginning, there was a general expectation that they would be combined in some sort of union. Without union, indeed, they could not have lasted long. The Union did not formally create the States; but it did preserve them. The Declaration of July 4 was the act of States, through duly accredited agents. Immediately afterward, there was probably nothing but common sense to prevent any State from acting as a fully independent nation.<sup>2</sup> Some of them did so act, even in foreign relations.

<sup>&</sup>lt;sup>1</sup>Reformers of the English-speaking race have ever tried to persuade themselves that they were only trying to get back to the "good old days of King Edward." Progress, with us, tries to cloak itself in some legal fiction to the effect that it is not innovation, but merely restoration. The student of English history will be familiar with many illustrations.

<sup>&</sup>lt;sup>2</sup>Twenty years later, in 1796, this extreme view was asserted by Justice Chase in a decision of the Supreme Court of the United States: "I regard this [the Declaration of July 4, 1776] a declaration not that the united colonies in a collective capacity were independent States, but that each of them was a sovereign and independent State." (3 Dallas, 224.)

Virginia negotiated with Spain about the protection of their common trading interests in the West; and she even thought it necessary that her legislature should confirm the treaty made by Congress with France in 1778. But, on the whole, with great good sense, the States allowed any such possible independence to lapse by disuse. As a rule, Congress exercised supreme power in foreign relations, managing the war and sending ministers to European powers; and this practice was soon made the constitutional theory by the Articles of Confederation.

For Further Reading.—Many discussions of this topic are made obscure by metaphysical doctrines of sovereignty. There is an admirably clear statement in Van Tyne's American Revolution, 175–202.

# B. Under the Articles of Confederation, 1781-1789

(The "League of Friendship.")

188. Evils Intensified. — The adoption of the Articles, in 1781, merely gave formal sanction to the authority Congress had been trying to exercise without a constitution. In practice, that authority was less after 1781 than before. The war was really over, and the States no longer felt it necessary to regard the claims of Congress. More and more, the feeling for nationality was lost in a narrow State patriotism. In the generous glow of the first years of revolution, Patrick Henry had once exclaimed: "I am no longer a Virginian: I am an American." But now the language of State sovereignty had become almost universal; and in the Virginia Assembly, Richard Henry Lee spoke of Congress as "a foreign power."

Such language threatened to end in action that would dissolve the faint union which still lived. Even in internal affairs Congress had never held real power (§ 160), and now its weakness became notorious and shameful. In 1785 and 1786, for more than half its sessions, not enough members to do business could be got together. Men of ability and ambition

 $<sup>^1</sup>$  The treaty of 1783 had to be ratified within six months of its signing at Paris; but three months expired before the necessary nine States were repre-

deserted it for more influential positions in the State legislatures. Worse still, the new-born States themselves were drifting rapidly toward not merely disunion, but internal anarchy.

The manifold evils of the critical years 1783-1788 may be classified under three heads: (1) the weakness of the Central government; (2) conflicts between the States; and (3) anarchy within individual States. (§§ 189-192.)

- 189. The weakness of Congress was manifested most conspicuously in (1) inability to negotiate with foreign powers to advantage, and (2) inability to raise funds for the bare necessities of government at home.
  - a. Congress had proven unable to compel the States to respect even the treaty of peace with England (§ 162 close). When we wished to negotiate a further commercial treaty, the irritated English ministry asked whether they were to deal with one State or with thirteen; and other countries cared little to spend effort on negotiations that promised to be waste paper.
  - b. Congress was bankrupt. For a time it paid interest on the \$6,000,000 it had borrowed from France, but only by borrowing \$2,000,000 more from Holland; and there came a period when it was impossible for Yankee ingenuity to wheedle more money from friendly Frenchman or Dutchman. At home, Congress had made no pretense of paying even interest. The \$240,000,000 of paper currency was practically repudiated; and interest-bearing "certificates" issued by Congress to pay off the army (§ 161) passed, by 1788, at twelve cents on the dollar. Congress could get money only by calling upon the States for contributions. In 1781, while the war was still in

sented in Congress. Twenty delegates, representing seven States, were present when Washington resigned command of the army. Rarely afterward were eleven States represented; and more often three men (of the twenty or twenty-five present) could defeat any important measure, — requiring, as such measures did, the assent of nine States (§ 193).

progress, Congress called for \$5,000,000. Less than a tenth was paid. Some States ignored the call, and New Jersey answered it defiantly. During the six years 1783–1788 (after the war), Congress made requisitions amounting to \$6,000,000; but less than \$1,000,000 was ever paid, — not enough to care for the interest on the continental debt.

This shame cannot be excused on any plea of poverty. The war had demoralized industry, and the first of our periodic financial panics seems to have come on in the later eighties; but after all, the main difficulty was the desire of each State to shift its burden upon a neighbor, or its fear that it itself was being so served. Says Francis A. Walker (Making of the Nation, 9):—

"Our fathers at the close of the Revolution were not an impoverished people. They were able to give all that was demanded of them. It chiefly was a bad political mechanism which set every man and every State to evading obligations. . . . Under a thoroughly false system, such as this was, it is amazing how much meanness and selfishness will come out." 1

And says Professor McLaughlin: "The fact is, however, that the people were not in destitution. There is abundance of contemporary evidence to show that at the end of the Revolution the people were living with more ease and circumstance than before the war. . . . The trouble was not poverty, but commercial confusion, vicious politics, and a native disinclination to pay taxes" (Confederation and Constitution, 69, 70).

190. Strife between the States.—A wise provision of the Articles tried to establish Congress as the arbiter in disputes between the States; but bitter jealousies made this provision a dead letter. Inconceivable rivalries animated the closest neighbors. Each State had its line of custom houses against all the others, with all sorts of varying discriminations, fruitful of discord. Connecticut taxed goods from Massachu-

<sup>&</sup>lt;sup>1</sup> The correctness of this judgment is proven by the fact that with a change of political machinery these evils vanished as by magic. Men sometimes oppose reform in political machinery by saying that machinery is of no consequence: that what we need is better men. This is silly, because it is the business of government to make it easier for the better qualities of men to come out, and harder for the meanness and selfishness. The change in American society that followed the exchange of the Articles for the Constitution is a splendid object lesson in the value of political machinery.

STATE ANARCHY

ony live States

mouds by disterent parties or states. setts more than the same articles from England, - in hope of drawing away British trade from the older colony; and, on another frontier, she waged a small war with Pennsylvania over the ownership of the Wyoming valley (§ 180), while she seemed on the verge of war, for similar territorial reasons, with New York and New Hampshire. New York taxed ruinously the garden produce of the New Jersey farmers, who supplied her and who had no other market; and New Jersey retaliated with a confiscatory tax of a thousand dollars upon a spot of sandy coast which New York had bought from her for the site of a lighthouse. South Carolina and Georgia were coming to blows over the navigation of the Savannah. Kentucky, Tennessee, Vermont, and Maine were all demanding independence of the older States of which they were still legally a part. In all ages the two fruitful causes of war between neighboring nations have been disputes over trade and over boundaries; and just such disputes were now threatening to turn the Atlantic coast into a stage for petty bloody wars.

191. Anarchy inside the States. - The long struggle against England's control over the colonies led even some intelligent patriots, like Samuel Adams and Richard Henry Lee, to object to any real control by Congress over the new States. It is not strange, therefore, that more ignorant men should have fallen into an attitude of opposition to any government, Central They had for years, even before open war, associated service of liberty with anti-social acts, - boycotts, breaking up courts, terrorizing officers of the law. And, having won easy reputation as patriots by refusing to pay honest debts due in England, they now felt it a hardship to pay debts to their Demagogues openly declaimed, to applauding crowds, that all debts ought to be wiped out. (Source Book, No. 151, b, (2).) Large portions of society had been slow in settling down to regular industry. Wild theories as to common ownership of property were in the air.

A rude awakening all this proved to the patriots who had expected a golden age. "Good God!" exclaimed Washing-

ton, of such disorders; "Who but a Tory could have foreseen, or a Briton predicted, them?" And again, in momentary despair, he declared that such commotions "exhibit a melancholy proof . . . that mankind, when left to themselves, are unfit for their own government." (Source Book, No. 151, b.) The worst of it was, too, that these semi-criminal forces of lawlessness and confiscation were made formidable because reinforced by the bitter discontent of multitudes of well-meaning men. not very clear-headed perhaps, who were suffering real hardships in the readjustments of the times. Many an old soldier who had lost his home by mortgage foreclosure, or who was in danger of doing so, felt that the loss was due to his having received insufficient pay in worthless paper money; while the law of the time drained his slender resources by extortionate court fees, and threatened to condemn him to hopeless imprisonment for such undeserved debt.1

The most widespread manifestation of this wild spirit was the fiat money craze that swept over half the States and threatened all the others, despite the recent grievous experience with such currency. In New Hampshire an armed mob besieged the legislature for such relief.<sup>2</sup>

Rhode Island furnished at once the worst extravagance and a suggestion of a remedy. Paper money was the issue in the election of the legislature in 1785. The "cheap money" party won. Creditors fled, to escape accepting the new "legal tender" for old loans of good money; but a law provided that in such case the debtor might secure a discharge of his debt by paying into court the face value in paper. Merchants closed their shops rather than sell goods for the worthless stuff; then it was made a penal offense, punishable without jury trial, to refuse the paper in trade. Finally a certain Weeden, a butcher, who

<sup>&</sup>lt;sup>1</sup>Cf. Source Book, No. 151, a, for a statement of grievances.

<sup>&</sup>lt;sup>2</sup> All this has no application to an issue of paper money properly secured upon some adequate real value for which it can be exchanged; but most of the money of the period we are considering lacked this character altogether. Moreover, the paper money of the Revolution, however bad economically, had been a political necessity. But now, when no such necessity existed, the man who lacked funds clamored to have the State make him rich by running white paper through a printing press.

had refused to sell meat for paper to one Trevett, was brought to trial (1786). Weeden's lawyer pleaded that the law, refusing jury trial, was in conflict with the "constitution" and was therefore void. The court took this view and dismissed the case. The legislature summoned the judges to defend themselves; and, after hearing their defense, voted that it was unsatisfactory. At the next election, three of the four judges were defeated; but their action had helped to lay the foundation for the tremendous power of the later American courts.

192. Shavs' Rebellion. - Most important of all these anarchic movements was Shays' Rebellion in Massachusetts. For six months in 1786-1787, parts of the State were in armed insurrection against the regular State government. The courts in three large districts were broken up, to stop proceedings against debtors. And Daniel Shays, a Revolutionary captain, with nearly two thousand men, was barely repulsed from the Federal arsenal at Springfield. Says Francis A. Walker. "The insurgents were largely, at least in the first instance, sober, decent, industrious men, wrought to madness by what they deemed their wrongs; but they were, of course, joined by the idle, the dissipated, the discontented, the destructive classes, as the insurrection grew."2 Congress prepared to raise troops to aid Massachusetts, but, fearing to avow that purpose, pretended to be preparing for an Indian outbreak. In any case, Congress was too slow to help. The legislature of Massachusetts, too, proved timid and inefficient. But Governor Bowdoin, left to his own resources. acted with courageous decision. The State militia were called out (supported by free-will contributions from wealthy merchants of Boston). and the rebels were dispersed in a sharp midwinter campaign. A few months later, however, Bowdoin was defeated for reëlection by John Hancock, who posed as a popular sympathizer; and Shavs and other rebel leaders were pardoned.

This rebellion is one of the chief events leading to the new Federal Constitution. Men could look calmly at Rhode Island vagaries, and even at New Hampshire anarchy; but riot and rebellion in the staid, conservative, powerful Bay State was another matter. It seemed to prelude the dissolution of all society, unless there could be formed at once

<sup>1 &</sup>quot;Constitution" was used here, as by Otis in 1761, in the English sense, since the Rhode Island Charter made no specific reference to trial by jury. This makes the decision the more daring and remarkable.

<sup>&</sup>lt;sup>2</sup> Making of the Nation, 17.

a central government strong enough "to ensure domestic tranquillity." When Henry Lee in Congress spoke of using influence to abate the Rebellion, Washington wrote him in sharp rebuke, "You talk, my good Sir, of using influence... Influence is no government. Let us have one [a government] by which our lives, liberties, and properties may be secured, or let us know the worst."

At the same time, this reaction against the earlier fervor of Revolutionary days gave to the Constitutional Convention, which met a few months later, an unfortunately undemocratic bias (§ 200).

## C. THE EVILS AND THE ARTICLES

193. The Confederation called itself a "firm league of friendship," but avowedly it fell far short of a national union. The central authority was vested in a Congress of delegates (not less than two nor more than seven from each State). These delegates were appointed annually by the State legislatures; and they were subject to recall by those legislatures, and were paid by them. Each State had one vote in Congress, and nine States had to agree for important measures. Each State promised to the citizens of the other States all the privileges enjoyed by its own citizens (the greatest step toward real unity in the Articles); and the States were forbidden to enter into any treaty with foreign powers or with each other, or to make any law or impose any tariff that should contravene any treaty made by Congress with a foreign power. Congress was to have sole control over all foreign relations, including the making of war and peace, and the regulation of Indian affairs; and, for internal matters, it was to manage the postal service and regulate weights and measures and the coinage.

The final article read: "Every State shall abide by the determination of the United States, in Congress assembled, on all questions which

<sup>&</sup>lt;sup>1</sup> For this rule in 1774, cf. Source Book, No. 130, a. For the contest over the matter in forming the Articles of Confederation, cf. ib., No. 146.

by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual. . . ." But a previous article provided, "Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled."

The Articles of Confederation have been reviled with much contempt, mostly unmerited. The evils we have discussed did flow mainly from the nature of that constitution; but not because the document was crude or clumsy of its kind. Probably it was the best constitution for a confederacy of states that the world had ever seen. Certainly it had many improvements over the ancient Greek confederations, and over the Swiss and Dutch unions of that day. The real trouble was, no mere confederacy could answer the needs of the new American people. That people needed a national government, such as a confederation did not pretend to supply.

The inadequacies of the Articles may be treated conveniently under four heads: (1) poor machinery of government; (2) insufficient enumeration of powers; (3) impossibility of amendment; and (4) provision for action only upon States, not upon individual citizens (§§ 171-174).

- 194. Machinery. Three considerations call for mention under this head: (1) The requirement that nine States in Congress must agree for important business hindered action unduly, especially when for long periods not more than nine or ten States were represented. (2) The Achæan League and the contemporary Dutch Confederacy each had a true executive; but the American union had none. (3) On the other hand, the Confederation had a more promising beginning for a federal judiciary, faint as the germ was, than any preceding federation had known.
- 195. Enumeration of Powers. No federal government had ever had a longer list of important matters committed to its control, but the list should have been lengthened by at least two particulars: power to regulate interstate commerce would have

prevented much civil strife; and authority to levy a low tariff for revenue would have obviated the chief financial difficulties.

196. Impossibility of Amendment. — After all, the two classes of defects discussed in §§ 194–195 were matters of detail. They might have been remedied without departing from the fundamental principles of the union (as a league of sovereign States). And the States would have corrected them, in part at least, had it not been for the third and more important evil. The amending clause¹ demanded the unanimous consent of the thirteen State legislatures for any change in the Articles. In practice, this proved equivalent to a prohibition upon any amendment whatever.

In February, 1781, even before the Articles had gone into effect, Congress submitted to the States an amendment which would have added to its powers the authority to impose a five per cent tariff on imports,—the proceeds to be used in paying principal and interest on the national debt. The modest request for this absolutely indispensable power roused intense opposition. "If taxes can thus be levied by any power outside the States," cried misguided but ardent patriots, "why did we oppose the tea duties?" After a year's discussion, twelve States consented; but Rhode Island voted that to give financial independence to Congress would "endanger the liberties of the States," and the amendment failed.<sup>2</sup> Another attempt was made at once (1783), similar to the former except that now the authority was to be granted Congress for only twenty-five years. Four States voted No. Congress made them a solemn appeal not to ruin the only means of redeeming the sacred faith of the Union.<sup>3</sup> Three of them

<sup>&</sup>lt;sup>1</sup> The close of the thirteenth Article; see in Source Book. Cf. § 155 on importance of amending clauses in any constitution.

<sup>&</sup>lt;sup>2</sup> In Massachusetts the amendment passed by a majority of only two in one House and of one in the other House; and then it was "vetoed" by Governor Hancock. But he had waited a day too long-in sending his message, and his veto was void. Virginia, which had once voted Yes, afterward repealed her vote. Thus Rhode Island does not bear the whole blame.

<sup>&</sup>lt;sup>8</sup> Virginia was one of the four States that at first refused. "This State," said Arthur Lee, "is resolved not to suffer the exercise of any foreign power or influence within it." And Richard Henry Lee affirmed that if such an amendment prevailed, Liberty would "become an empty name." Over against such nonsense, stood the moderate but unanswerable statement of the appeal of Congress (February 15, 1786), "The requisitions of Congress for

yielded, but New York (jealous now of her rapidly growing commerce) maintained her refusal; and the amendment again failed,—after three years of negotiation. Far-seeing men then gave up hope of efficient amendment by constitutional means. Revolution (peaceable or violent) or anarchy,—these were the alternatives.

197. Failure to act upon Individuals. — The fourth evil was fundamental. It could not be corrected except by changing the whole scheme of confederation of sovereign States into some kind of a national union. For three millions of weak subjects Congress might have passed laws. On thirteen powerful subjects it could merely make requisitions. John Smith or Henry Jones would hardly think of refusing obedience to a command from a central government; but New York or Virginia felt fully as strong as Congress itself, and would do as they pleased. If they refused, they could not be coerced without war, and probably some other States would then side with them rather than with Congress. A confederation of states is necessarily "government by supplication."

True, the States were bound by the most solemn pledges to obey the demands of Congress; and Madison, Hamilton, Jefferson, and Washington all favored an amendment to authorize Congress in express words to use force against a delinquent State. But it was just as well that such an amendment was not adopted. Expressed or implied, the power could not have been exercised to advantage.

In the final outcome, it was fortunate that constitutional amendment was impossible. Otherwise, reasonable amendment might have patched up the Articles for a time, improving machinery and extending powers far enough to keep the defective union alive. But no ordinary amendment (certainly none through State legislatures) could have reached this fundamental evil. The Constitutional Convention of 1787, when it came, perceived the need clearly and met it courageously. For several years, from

eight years past have been so irregular in their operation, so uncertain in collection, and so unproductive, that a reliance on them in future would be no less dishonorable to the understandings of those who entertain such confidence than dangerous to the welfare and peace of the Union."

1781 to 1787, essayists and pamphleteers had been groping towards the thought that we must have a new kind of federation, such that the central government could act directly upon individual citizens, and in that final year ideas had grown clear enough for Hamilton to write:—

"The evils we experience do not proceed from minute or partial imperfections, but from fundamental errors in the structure, which cannot be amended otherwise than by an alteration in the first principles and main pillars of the fabric. The great radical vice of the existing confederacy is the principle of Legislation for States in their corporate or collective capacity, as contradistinguished from the Individuals of which they consist."—Federalist, XI.<sup>1</sup>

198. Excursus: Two Kinds of Federal Union. — In its fundamental defect, just discussed, the American Confederation of 1781 resembled every federal union in earlier history. All had been confederations of states. The American Constitution of 1787 was to give to the world a new type of government, — a federal state. In the old type the constituent units remained sovereign states confederated. In the new type they had been fused, for certain purposes at least, into one sovereign unit.

Of this feature in our Constitution Tocqueville 2 has said: "This Constitution, which may at first be confounded with federal constitutions which have preceded it, rests in truth upon a wholly novel theory,—a great discovery in modern political science. In all the confederations which preceded the American Constitution of 1787, the allied States, for a common object, agreed to obey the injunctions of a federal government; but they reserved to themselves the right of ordaining and enforcing the laws of the Union. . . [Then, after describing the way in which the American government claims directly the allegiance of every citizen, and acts upon each directly through its own courts and officers] this difference has produced the most momentous consequences."

<sup>&</sup>lt;sup>1</sup> The variety of type, for emphasis, is found in Hamilton's writing.

<sup>&</sup>lt;sup>2</sup>Tocqueville's Democracy in America (1835) was the first careful and sympathetic study of our institutions by a foreigner. For sixty years it remained the best text-book upon our government, until superseded in great measure by the work of an English statesman (Bryce's American Commonwealth). Both these works may be used with advantage by high school students. On Tocqueville, see Modern History, § 415, note.

The new federal state was a kind of government intermediate between a consolidated state, like England or France, and the old style "league" of several states. It made the word "United" in the name United States no longer an adjective, but part of a noun. As will be seen in the following paragraphs, the men of 1787 did not aim consciously at just the result attained. One set of reformers wanted a consolidated state; another wanted to preserve essentially the confederation of states. The compromise between the two produced what Tocqueville called a "discovery in political science."

## II. MAKING A NEW CONSTITUTION

199. The Philadelphia Convention called.—When the second revenue amendment failed in 1786 (§ 196), an interstate convention had already been called to consider more radical changes. The steps leading to this remarkable convention are worthy of memory.

Suggestions for a continental convention to form a stronger government had been made from time to time by *individuals* <sup>2</sup> for several years; and twice Hamilton had secured from the New York legislature a resolution favoring such a measure. No concrete result followed, however, until these proposals attached themselves to a commercial undertaking.

Washington had long been interested financially in Western lands, and at the close of the Revolution he owned some thirty thousand acres in the Virginia Military Reserve (§ 180). A visit to the West impressed him powerfully with the need of better communication with that region, both for business prosperity and as a bond of political union; and he urged Virginia to take up the construction of roadways to her Western posses-

<sup>&</sup>lt;sup>1</sup> The advantages of the new form of government led to its being imitated by Switzerland in 1848, by the Dominion of Canada in 1867, by the German Empire in 1871, and by Australia in 1900.

<sup>&</sup>lt;sup>2</sup> As early as 1776 Thomas Paine, whose recent arrival in America left him untroubled by the narrow patriotism of a New Englander or Virginian, had urged: "Nothing but a continental form of government can keep the peace of the continent. . . . Let a continental conference be held to frame a continental charter. . . . Our strength and happiness are continental, not provincial. We have every opportunity and every encouragement to form the noblest and purest constitution on the face of the earth."

<sup>&</sup>lt;sup>3</sup> Referring to the danger that the Westerners might join Spain, he wrote: "They . . . stand, as it were, upon a pivot. The touch of a feather would turn them either way."

sions. It was in pursuance of the same idea that he became president of a company for the improvement of the navigation of the Potomac. This matter required assent from both Virginia and Maryland. These two States were also in dispute over the tariffs at the mouth of Chesapeake Bay. At Washington's invitation, commissioners from the two States met at Mt. Vernon, to discuss these matters; and it was decided to hold another meeting to which Pennsylvania also should be invited, as she was interested in the improvement of Chesapeake Bay. Washington had suggested that the proposed meeting, since it concerned improvement in the means of commerce, should consider also the possibility of uniform duties on that commerce, — in place of the varying policies then in effect in the different States. Maryland expressed approval, and added a query whether it might not be well to invite other States to the proposed informal conference; and Virginia finally issued an invitation to all the States to send representatives to Annapolis, September 1, 1786.

Only five States appeared. Even Maryland failed to choose delegates. But New Jersey had instructed her representatives to try to secure, not only uniform duties, but also the recommendation of other measures which might seem necessary to render the Confederation adequate to the needs of the times. This thought was made the basis of a new call. delegates at Annapolis adopted an address (drawn by Hamilton) urging all the States to send commissioners to Philadelphia the following May. "to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union," and to report to Congress such an act "as when agreed to by them [Congress], and confirmed by the legislatures of every State, will effectually provide for" those exigencies (cf. Source Book, No. 153). At first this call attracted little attention. But the sudden increase of anarchy in the fall of 1786 brought men to recognize the need for immediate action. Here was the opportunity. Madison persuaded the Virginia legislature to appoint delegates, heading the list with the name of Washington. Other States followed promptly; and the Philadelphia Convention became a fact.2

<sup>&</sup>lt;sup>1</sup> A keen French observer believed the failure part of a "plot" by the advocates of a "strong" government to wait for more favorable conditions. Cf. Source Book, No. 152.

<sup>&</sup>lt;sup>2</sup> Even in Virginia there was warm opposition to a convention. Patrick Henry refused to attend, and the young Monroe thought the meeting unwise and unnecessary. Washington thought of declining his appointment, not because the meeting was not needed, but because he expected it to turn out a fizzle. Not until late in March did he agree to go, after three months of hesitation.

200. Composition: Distrust of Democracy. — Fifty-five men, at one time or another, sat in the famous Philadelphia Convention.¹ Twenty-nine of these had benefited by college life; but among those who had missed that training were Franklin and Washington. With few exceptions the members were young men, several of the most active being under thirty. The entire body was English by descent and traditions. Three notable members — Alexander Hamilton of New York, and James Wilson and Robert Morris of Pennsylvania — had been born English subjects outside the United States; and the great South Carolina delegates, Rutledge and the Pinckneys, had been educated in England.

Virginia and New Jersey were to give their names to the two schemes that contended for mastery in the Convention; and their delegations, therefore, are of special interest. Virginia sent seven members, — among them, Washington; George Mason, who eleven years before had drawn the first "State constitution; Edmund Randolph, her brilliant young governor; and Madison, who was to earn the title "Father of the Constitution." New Jersey sent four delegates, all tried statesmen: Livingstone, eleven times her Governor; Patterson, ten times her Attorney-General; Brearly, her great Chief Justice, who had taken the greatest step in America so far toward magnifying the function of the courts (§ 207, b, note); and Houston, many times her Congressman. These delegations were typical. "Hardly a man in the Convention," says McMaster, "but had sat in some famous assembly, had filled some high place, or had made himself conspicuous for learning, for scholarship, or for signal service rendered in the cause of liberty."  $^2$ 

But, it must be added, this illustrious company of patriots did not believe in a "government of the people and by the people." In their political thought, they were much closer to John Winthrop than to Abraham Lincoln. They wished a government for the people, but by what they were fond of calling "the wealth and intelligence of the country." At best, they

Other names of note occur in §§ 200, 202, 203. For a description of most

of them by an associate, cf. Source Book, No. 160.

<sup>&</sup>lt;sup>1</sup> Seventy-three delegates were appointed, but eighteen failed to appear. For other absenteeism, cf. the following paragraphs.

were willing only so far to divide power between "the few" and "the many" as to keep each class from oppressing the other,—and they felt particular tenderness for "the few." Pure democracy they abhorred as (in Gerry's 1 words) "the worst of all political evils."

Necessarily the men of the Convention belonged to the eighteenth century, not the twentieth; but, beyond that, they represented the crest of a reactionary movement of their own day. The same causes that made them desire a stronger government made them wish also a more aristocratic government. It seemed axiomatic to them that the unhappy conditions of their country were due (as Gerry again phrased it) to "an excess of democracy." In the early Revolutionary years, the leaders had been forced to throw themselves into the arms of democracy for protection against England (§ 137). Among the patriots, conservative utterance had been reduced to cautious whispers; and, in America at large, those years had been marked by a burst of noble enthusiasm for humanity and of faith in popular government. But, when the struggle was over, the "leaders of society" began to look coldly upon further partnership with distasteful allies no longer needed; and this inevitable tendency was magnified by the unhappy turbulence of the times. By 1785, especially among the professional and commercial classes, a conservative reaction had set in, to express itself emphatically in the Philadelphia Convention. Indeed this select body was far more aristocratic than the average of American society even in those reactionary years.2

<sup>&</sup>lt;sup>1</sup>Elbridge Gerry was one of the four delegates from Massachusetts, perhaps the most democratic of them, and, some years later, a real democratic leader.

<sup>&</sup>lt;sup>2</sup> The debates took place under the most solemn pledges of secrecy, and no complete record of them was made public until more than fifty years later, after the last survivor had passed away. Cf. § 201, note. The quotations that follow in the text are all taken from those debates unless otherwise stated. When the leaders came before the public to advocate the ratification of the Constitution their speeches and writings took a distinctly different tone; though even then their arguments would be regarded to-day as decidedly undemocratic.

Says Woodrow Wilson (Division and Reunion, 12): "The Federal government was not by intention a democratic government. In plan and in structure it had been meant to check the sweep and power of popular majorities. . . . [It] had in fact been originated and organized upon the initiative, and pri-

The hostile expressions of Gerry regarding democracy (quoted above) were spoken May 31, the second day of debate. The same day, Roger Sherman of Connecticut objected to the popular election of the members even of the lower House of Congress, because "the people, immediately, should have as little to do as may be about the government"; and Randolph explained that the Senate, in the Virginia plan, was designed as "a check against this tendency" [democracy]. In tracing to their origin the evils under which the country labored, "every man," he affirmed, "had found [that origin] in the turbulence and follies of democracu." Two days later, Dickinson declared "a limited monarchy . . . one of the best governments in the world. It was not certain that equal blessings were derivable from any other form. . . . A limited monarchy, however, was out of the question. The spirit of the times forbade the experiment. . . . But though a form the most perfect perhaps in itself be unattainable, we must not despair;" and he proceeded to suggest ways to give weight to property in the new government. June 6, he returned to this theme, urging that the Senate should be "carried through such a refining process [viz., indirect elections and property qualifications] as will assimilate it, as nearly as may be, to the House of Lords in England "; and the next day, he moved that Senators be elected by the State legislatures, "because he wished the Senate to consist of the most distinguished characters, - distinguished for their rank in life and for their weight of property, and bearing as strong a likeness to the British House of Lords as possible"; and he thought such characters "more likely to be selected by the State legislatures than in any other mode." 1

Gouverneur Morris of Pennsylvania, one of the most brilliant and effective men in the Convention, also believed it essential that the Senate should be "an aristocratic body," composed of rich men holding office for life. Said he, "It must have great personal property; it must have the aristocratic spirit; it must love to lord it through pride." Morris, Rufus King of Massachusetts, and Rutledge strove strenuously to have wealth especially represented in the lower House also, affirming, each of them, that "property is the main object of government" (§ 205); nor

marily in the interest of the mercantile and wealthy classes." The Source Book, No. 152, presents a like opinion by a shrewd foreign observer.

<sup>&</sup>lt;sup>1</sup> It would be impossible to-day to hear that method of election (which we still keep) advocated upon these grounds of the original proposer. This fact shows somewhat of our progress toward democracy. Like Gerry (note on page 296), Dickinson was a good deal of a democrat, temporarily swept away by the aristocratic reaction.

did this claim, so un-American to our ears, call forth one protest that government should concern itself as much with human rights as with property rights. Hamilton held, perhaps, the most extreme ground against democracy. He "acknowledged himself not to think favorably of republican government [i.e. not of any form but monarchic]... He was sensible at the same time that it would be unwise [for the Convention] to propose one of any other form. But, in his private opinion, he had no scruple in declaring, supported as he was by the opinion of so many of the good and wise, that the British government was the best in the world, and he doubted much whether anything short of it would do in America." It was "the model to which we should approach as nearly as possible." The House of Lords he styled "a most noble institution," especially commending it as "a permanent barrier against every pernicious innovation." Hamilton then presented a detailed plan, which, he said, represented his own views of what was desirable in America: an Executive for life,1 with extreme monarchic powers (including an absolute veto), chosen by two degrees of indirect election; 2 a Senate for life, chosen by indirect election; and a representative assembly chosen directly by the people; this government to appoint the governors of the States, and, through them, to exercise an absolute veto upon all State legislation.

Perhaps the deep distrust of popular government and of human nature was shown nowhere more alarmingly than in the violent objection to the wise provision, finally inserted in the Constitution, excluding Congressmen from Federal offices (Art I, sec. 6). Mason pointed to the shameful corruption and venality in England at that day, due to the want of such a rule, where accordingly the king's ministers secured their majorities notoriously by bribing members of Parliament with lucrative offices and sinecures.<sup>3</sup> Hamilton, Morris, and Gorham of Massachusetts, defended that bribery in England, and wished to leave it possible to the executive here, as perhaps "necessary," at times, "to secure to govern-

<sup>1&</sup>quot; For good behavior," which meant for life, subject only to impeachment in extreme cases — a remedy practically impossible under such a frame of government. It is interesting to note that several members expressed themselves in favor of a life-executive; and two formal motions to that effect were pressed to a vote. The second was defeated by only six states to four (July 17).

<sup>&</sup>lt;sup>2</sup> Freeholders to choose an electoral college, which should choose a more select electoral college, which doubly refined body should choose the life "Governor."

<sup>&</sup>lt;sup>8</sup>Cf. Modern History, § 416, for a like condition in France at an even later time.

ment its proper influence." Said Morris: "We must govern men through their vices." "Vices, as they exist, must be turned against each other." "Loaves and fishes must bribe the demagogues." And Hamilton added: "We must take man as we find him, and if we wish him to serve the public, we must enlist his passions in doing so."

Such statements went almost unchallenged. — Dissent, if expressed at all, cloaked itself in apologetic and modest phrase, or excused itself on the ground of expediency. This was due to the unfortunate absence of a group of great figures whom we might have expected to see in that gathering. Every prominent patriot of Revolutionary fame, on the conservative side, was present, except John Adams and John Jay; but, great as the Virginia delegation was, it might have been greater still, had it included Thomas Jefferson, Patrick Henry, Richard Henry Lee, or Thomas Paine; and it would no doubt have been well had Massachusetts sent Samuel Adams, or New York her great war-governor, George Clinton. Four or five of these democratic leaders would have given a different tone to the debates. As things were, the lonely representatives of democracy were George Mason and the aged and genial Franklin. And the measure Franklin seems to have had closest at heart was the undemocratic one of abolishing all pay for the national executive and legislature (a measure which would have thoroughly insured that all such offices should be the monopoly of a leisure class); while even George Mason, as Madison reports him, "admitted that we had been too democratic," though he was fearful the Convention was going to the other extreme. Mason, too, advocated a property qualification for eligibility to the Senate, because "one important object in constituting the Senate was to secure the rights of property" (June 26); and, a month later, he moved for a landed qualification for membership even in the lower House.2

<sup>&</sup>lt;sup>1</sup> Cf. also Mason's letter to his son (Source Book, No. 155).

<sup>&</sup>lt;sup>2</sup> Compare with Mason's ideas eleven years earlier. (Source Book, No. 136, comment.) Mason's feelings about the aristocratic tendencies in the Convention are referred to in ib. Nos. 155, 157, 162, and 163,

201. Problems and Models.—Some undemocratic features of the Constitution, resulting from the attitude of the Convention just portrayed, will be treated later (§§ 207, 208). It is convenient first to dispose of the provisions over which the Convention itself had serious differences of opinion.

Such differences were many. There were present Nationalists and State-sovereignty men, "Northerners" and "Southerners," commercial interests and agricultural interests, advocates of extending slavery and friends of restricting slavery; and these various lines were so intertangled as to prevent any definite and continuous "parties" in the Convention. It is customary and convenient to speak of a "large-State party" and "a small-State party"; but the men who divided in this particular way on one great question found themselves in quite different combinations on almost every other problem. No praise is too high for the patience and "sweet reasonableness" (failing only with a few individuals and on rare occasions) with which on all these matters the great statesmen of that memorable assembly strove first to convince one another, and, failing that, to find a rational basis for compromise.

High praise, too, is due their profound aversion to mere theory, their instinctive preference for that which had been proven good. Mr. Gladstone once said: "As the British constitution is the most subtle organism which has proceeded from progressive history, so the American constitution is the most wonderful work ever struck off at a given moment by the hand and purpose of man." This sentence has helped to spread the idea that the Philadelphia Convention invented a whole set of new institutions. Such an impression is mistaken. Practically every piece of political machinery in the Constitution was taken (sometimes with a slight modification) from the familiar workings of the State constitutions.

At the same time, the total result was new,—a new type of federal government different from anything the world had seen. True, the

<sup>&</sup>lt;sup>1</sup>The notes to the Constitution in the Appendix give many illustrations. English precedent influenced the Convention profoundly, but after all most effectively through its earlier influence upon State institutions. Other countries were sometimes referred to in the debates as examples, or, more commonly, as warnings; but such references were mainly academic in character and superficial in their influence.

principle of nationality and the principle of state sovereignty had long been contending in American experience, and a compromise between the two at Philadelphia produced this new form of government (§ 203). Therefore it is sometimes argued plausibly that even in this respect the Constitution was merely an expression "at a given moment" of a long and complex historical development. But the work of the Convention was itself a supreme crisis in American development. The Convention did not merely register past history in its Constitution: it made history by its decisions; and, spite of the undemocratic phases of its work, it must forever tower a notable landmark in human progress.

202. Procedure.¹—Some months before the meeting, Madison had drawn up several propositions concerning a new government, for the consideration of such correspondents as Jefferson and Washington. The Virginia delegates were the first to arrive at Philadelphia; and, while they waited for others, they caucused daily, formulating these suggestions of Madison into the Virginia Plan,—which was then presented to the Convention, May 29, by Randolph, in a brilliant speech.

The plan was embodied in fifteen resolutions. It provided for a two-House legislature. The lower House was to be chosen by the "people" (that is, by those who should be given the franchise), and was to be apportioned among the States in proportion to population or wealth (so that Virginia, Pennsylvania, and Massachusetts each would have sixteen

<sup>1</sup> The Convention lasted four months, - from May 25 to September 17. Most that we know about it comes from Madison's notes. Madison had been disappointed in the meager information regarding the establishment of earlier confederacies, and he believed that upon the success of the federation now to be formed "would be staked the happiness of a people, great even in its infancy, and possibly the cause of liberty throughout the world." Accordingly, he determined to preserve full records of its genesis. Missing no session, he kept careful notes of each day's proceedings and of each speaker's arguments; and each evening he wrote up these notes more fully, submitting them sometimes to the various debaters for correction. In 1837 Congress bought the manuscript from Mrs. Madison, and published it as "Madison's Journal of the Constitutional Convention" (an unhappy title, since it leads to confusion with the official "Journal" of the Secretary of the Convention). A few other members took imperfect notes and several wrote letters that throw light upon the attitude of certain men. All these sources are collected and edited by Professor Max Farrand in The Records of the Federal Convention of 1787 (1911).

or seventeen delegates to one from Delaware or Rhode Island). The upper House was to be chosen by the lower. There was no provision for equality of the States in either branch of the legislature, and no security that a small State would have any representative at all in the upper House. As to power, this central legislature was not limited in any definite way: virtually, it was to fix its own limits. And—a central feature of the plan—it was to have an absolute veto upon any State legislation which it thought inconsistent with national laws.

This went much farther toward consolidation than the final result was to go. It would have left the States hardly more than convenient administrative districts, and would have created a government more like that of modern France than like that of the present United States.<sup>1</sup>

[For reference as the account progresses.]

The further procedure had seven periods.

a. For two weeks, in committee of the whole,<sup>2</sup> the Randolph resolutions were debated, clause by clause. In the end they were elaborated into nineteen of the same general character. Then came an interruption. So far, the large States, in favor of real national union, had had things their own way; but at last the small-State delegates had united upon the New Jersey Plan, which was now presented to the Convention by Patterson.

The Virginia Plan would have substituted for the old Confederation a wholly new type of government. The New Jersey Plan would merely have amended the Confederation in some particulars (and so was more in accord with the instructions all delegates had received from the legislatures that appointed them). It would not have touched the third or fourth defects in the Articles, as those defects are classified above (§§ 194, 197); but it would have helped cure the other evils. It would have given the central government more powers (i.e. to impose tariffs and to use force

<sup>&</sup>lt;sup>1</sup> This and the New Jersey Plan are given in full in the Source Book.

<sup>&</sup>lt;sup>2</sup> Legislatures and conventions go into "committee of the whole" to secure greater freedom of debate (and sometimes more secrecy in voting) than the usual rules permit in regular session. When the committee votes "to rise," the regular presiding officer resumes the chair, and the chairman of the committee reports. (Usually the votes and debates are not entered in the official record, but only this report of the result.) The assembly then takes up the report of this committee, as it would that of any other committee, for discussion and action; but the real fate of legislative measures, and the most important amendments and debates, come commonly in committee of the whole.

against a delinquent State), and it designed great improvements in governmental machinery. Congress was still to remain a gathering of delegates from sovereign and equal States; but there was to be a true executive and an imposing federal judiciary.

- b. The committee of the whole gave another week to a comparison of the two plans. Then, by what seemed a decisive vote, it set aside the new proposals and returned to the Virginia Plan as the basis for further work.
- c. Not now in committee, but in formal Convention, the nineteen resolutions were again considered, clause by clause,—during the six weeks from June 19 to July 26. Midway in this period came the great crisis, when day by day the Convention tottered on the brink of disruption in the contest between large and small States,—a calamity which was finally averted by the Connecticut Compromise (§ 203).
- d. The Convention then took an adjournment of eleven days, while the conclusions so far agreed upon were put into the form of a constitution, in Articles and Sections, by a Committee of Detail.<sup>1</sup>
- e. From August 6 to September 10, the Convention considered this draft of a constitution, section by section.
- f. Next, a Committee of Revision (often referred to as the "Committee on Style") redrafted the Constitution according to the latest conclusions of the Convention. To Gouverneur Morris, chairman of this committee, we owe in large degree the admirable arrangement and clear wording of the document.
- g. Once more the convention reviewed its work in this new form (September 12-17). This time few changes were made; and September 17 the Constitution in its final form was signed by thirty-nine delegates, representing twelve States.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> This committee also added a large amount of material upon matters which the Convention had not discussed at all, — some of it merely technical, some of it highly important. Unhappily, except for the results, we know very little of the work of this or of the other great committees of the Convention.

<sup>&</sup>lt;sup>2</sup> Thirteen of the fifty-five delegates had permanently withdrawn or were temporarily absent; and three of those present (Randolph, Mason, and Gerry) refused to sign. Randolph afterwards urged ratification in Virginia, but the remaining dissentients remained earnest opponents of ratification. In July, Mason had said that it could not be more inconvenient for any gentleman to remain absent from his private affairs than it was for him; but he would "bury

203. The Connecticut Compromise. — Early in the debates, the Connecticut delegates (Roger Sherman, Oliver Ellsworth, and William Johnson) had two or three times proposed a compromise between the Virginia and the New Jersey plans, i.e. that the lower House of the legislature should represent the people, and that the upper House should represent States, each State having there an equal vote. When feeling ran highest between the large-State and small-State parties (§ 202, c), this proposal was renewed with effect.

The small-State delegates had served notice that they would not submit to the Virginia Plan in its extreme form. Debate grew violent. A large-State delegate threatened that if not persuasion, then the sword, should consolidate a union. Small-State men retorted bitterly that they would seek European protection, if needful, against coercion.

Each State had one vote. Virginia, Pennsylvania, and Massachusetts were the true "large States"; but with them, on this issue were ranged North Carolina, South Carolina, and Georgia (cf. § 178, and Source Book, No. 146). New Jersey, New York, Delaware, Maryland, and Connecticut comprised the "small-State party." Rhode Island never appointed delegates, and the New Hampshire representatives were not on the ground until July 23, after this question had been settled. Had these two States taken part, the "small States" would have controlled the Convention from the first, and no important result could have been secured.

his bones in this city, rather than expose his country to the consequences of a dissolution without anything being done." August 31, however, he declared he "would sooner chop off his right hand than put it to the Constitution as it now stands." His "objections" are given in the Source Book, Nos. 162 and 163.

<sup>&</sup>lt;sup>1</sup> The debates of this critical day are given practically in full—from Madison's account—in the Source Book, No. 161.

<sup>&</sup>lt;sup>2</sup> New York was then little more than the valley of the Hudson (§ 179, note). Hamilton, delegate from that State, was an extreme centralizer; but he was outvoted always by his two colleagues. In the height of this debate, those gentlemen seceded from the Convention; and after that event New York had no vote whatever, since the legislature had provided that the State should not be represented by less than two of the three delegates. Partly for this reason, Hamilton had little influence upon the work of the Convention. His great service came after its adjournment, in securing ratification.

The critical vote came July 2, after a week's strenuous debate. The first ten States to vote stood five to five. If either party won, the other was likely to organize a separate convention. Georgia was still to vote. Under these conditions, one of the two Georgia delegates voted on the small-State side (against his own convictions), so as to throw away the vote of his State and leave the result a tie. This gave time for reflection. Said Roger Sherman, "We are now at full stop, and nobody [he supposed] meant that we should break up without doing something." In the desultory discussion that followed, several members suggested a committee to devise some compromise. Finally, the matter was referred to a Committee of Eleven, one from each State present, and the Convention adjourned for three days.

The moderate men, who desired compromise, won their victory in selecting the members of this committee. The most uncompromising members of the Convention in this dispute were the great leaders from Virginia, Pennsylvania, and Massachusetts, — Madison and Randolph, Wilson and Gouverneur Morris, and Rufus King. Desperate as the case stood, Madison and Wilson spoke against referring the question to a committee at all. Properly enough, these men were all left off the committee, the places from their states being filled by those of their colleagues most in sympathy with small-State views, — Mason, Franklin, and Gerry.

July 5, this committee reported once more the Connecticut Compromise. Large-state leaders were still opposed; but, after ten days more of debate, the plan carried by a bare majority. Again the few irreconcilables from the large States seemed on the point of breaking up the Convention. An immediate adjournment for a day gave time for blood to cool, however, and the next morning an early caucus of the large States agreed, informally, to abide by the vote, —as the only alternative to complete failure. At the opening of the next session, Gouverneur Morris moved a reconsideration of the compromise; but he found no second. The genius of our government had been fixed, — partly national, partly federal.

A few days later it was decided that the two delegates from each State in the Senate should vote not as a unit, but "by head." This was a real concession to the national party; but it was more than offset, in the closing days of the Convention, by a provision (granted to conciliate the small States) that "No State, without its own consent, shall be deprived of its equal suffrage in the Senate" (Art. V, close).

204. Excursus: States and Nation.\(^1\)— As a consequence of the "Connecticut Compromise," and of other arrangements that followed, each citizen of the United States is directly subject to two distinct authorities, the Federal government and a State government. Here lies the peculiarity of our Constitution. The Federal government is no longer compelled to act indirectly, through State governments, as under the old Confederation. It acts directly upon the citizen, but only within a prescribed field. Elsewhere the State retains complete authority,—as supreme within its domain as the Central government in its, and neither with any right to trespass on the field of the other.\(^2\)

The Constitution tried to mark off the two fields from one another by three devices: (1) by "enumerating," in eighteen paragraphs (Art. I, sec. 8) the powers given to Congress; (2) by forbidding certain powers

<sup>&</sup>lt;sup>1</sup> This long section (204) should be first read, and afterward discussed with frequent reference to open books.

Justice Cooley puts this compactly in his great work, Principles of Constitutional Law (34): "When a particular power is found to belong to the States, they are entitled to the same complete independence in its exercise as is the National government in wielding its authority." There should be no possible confusion of this relation between States and Nation with the relation between a State and its subdivisions. Counties, cities, school districts have their distinct fields of authority, to be sure, but they derive that authority from the State and hold it subject to regulation by the State. This is in no sense true of the State in relation to the Federal government.

<sup>&</sup>lt;sup>3</sup> The Virginia Plan contained no enumeration; and when such a device was suggested in debate, it was always postponed as impracticable. The New Jersey Plan did contain a brief enumeration of important powers; and a longer one was included in a plan presented early in the debates by Pinckney (long lost, but recently rediscovered). Both these plans were referred to the Committee of Detail (§ 202, d). Moreover, Sherman had presented, shortly before, a detailed enumeration (of which we have no copy); and Ellsworth,

to the States (Art. I, sec. 10); and (3) by providing (expressly in the tenth amendment, and by implication throughout) that powers not granted to the Federal government are reserved to the States. It is customary, therefore, to call our government "a government of enumerated powers."

Those powers are vast. They include sole control over foreign relations (with the making of peace and war, and consequently of maintaining military and naval forces); and, in domestic matters, the control of naturalization, coinage and weights and measures, the post office and postal service, copyrights and patents, commerce between citizens living in different States, and taxation so far as needful to enable the Government to care for all these duties.

Imposing as is this enumeration, these powers touch our daily life less closely and less vitally than do the powers reserved to the States. The State regulates the franchise (indirectly, even the Federal franchise 1), marriage and divorce and all family relations, inheritance, education, all property and industrial conditions (except those that may be connected with interstate commerce), and all criminal law, as well as all subdivision of powers between the smaller units within the State. One illustration brings out vividly the importance of the field of State legislation. If the student will list the important legislative reforms in England during the nineteenth century (the "century of reform" 2), he will find that, of the twelve or fourteen great subjects, only two or three, in a government like ours, could have come before Congress, while all the rest would have belonged to the States. (Cf. also § 459 ff. for very recent State activity in American reform.)

In a federal government there is inevitably a constant contest between the advocates of stronger central control and the upholders of the rights of the States. Parties have sometimes divided on these lines; but in general it is a question mainly of "in's" and "out's." In power, either party is apt to seek to extend the province of the government. In opposition, the

Sherman's colleague and disciple, was a member of the committee and probably saw that Sherman's proposal was duly considered there. At all events, the report of this committee, on August 6, contained an enumeration much as we have it in the Constitution to-day.

<sup>&</sup>lt;sup>1</sup> Except as certain provisions have been put beyond the control of either State or Congress by the Fifteenth Amendment.

<sup>&</sup>lt;sup>2</sup> Cf. Modern History, § 542 ff.

same party appeals to States rights, to restrict a power which seems dangerous in the hands of opponents.

The party anxious to limit the Federal government has always sought to restrict it closely to the powers precisely enumerated. Its opponents have met its war cry, "a government of enumerated powers," with the shibboleth, "Implied powers" (powers implied in those expressly granted, or resulting naturally from them, or necessary to their proper exercise). It is under cover of this phrase that the vast development of national power has taken place. Thus the Constitution gave Congress power to regulate interstate commerce. of that day, that power meant only authority to prevent one State setting up barriers against another's commerce. Under the same phrase to-day Congress regulates railroad rates (freight on commerce) and adulteration of foods (character of goods carried in this commerce). This expansion of authority is essential to our well-being. The States are no longer competent to manage these common interests. Steam and electricity, and our consequent intimate trade relations, make many matters fit subjects for national control now which were better off in the hands of the States a hundred years ago. It would be better, no doubt, to give such powers distinctly to the Federal government by adding them to the enumeration of powers; but our Constitution makes such express amendment exceedingly difficult (§ 242), and so it is fortunate that we can meet new needs as they arise by even this dangerous process of "forced construction" at the hands of Congress and the Supreme Court.1

In expanding "implied powers," two expressions in the Constitution have been especially appealed to, —the "general welfare" clause, and the "necessary and proper" clause.

<sup>1 &</sup>quot;They [the men of the Philadelphia Convention] foresaw that their work would need to be elucidated by judicial commentary; but they were far from conjecturing the *enormous strain* to which some of their expressions would be subjected in the effort to apply them to new facts. . . . The Americans have

a. The words "to provide for the general welfare" occur twice,—once in the preamble, once in the first paragraph, of the enumeration of powers. In the preamble the clause could not convey power; and, moreover, in that connection, the words are taken from a similar passage in the old Articles of Confederation. In the other passage (Art. I, sec. 8), paragraphing and punctuation show beyond reasonable dispute that "to . . . provide for the general welfare" is not an independent grant of power, coordinate with "to lay taxes," or "to coin money." The infinitive "to . . . provide" is not substantive, like these others, but adverbial, restricting the meaning of the preceding infinitive "to lay . . . taxes."

The English is unmistakable: but the history of the passage makes this meaning, if possible, even more certain. Originally, as reported by the Committee on Detail, the passage read merely, "To lay and collect taxes, duties, imposts, and excises." Some two weeks later (August 22), another committee suggested that this unlimited taxing power be restricted by adding the words "for the naument of the debts and necessary expenses of the United States." This amendment became confused with the question of paying the Revolutionary debt, and was not at that time adopted. But opposition to a grant of unlimited power of taxation continued to find expression: and the Committee on Style restored the amendment as we have it, altering the form from a prepositional to an infinitive phrase. Plainly, however, the addition remained an adverbial modifier of restrictive purpose. Congress was given power to lay taxes so far as needful in order to pay the debts of the government and provide for the general welfare, — so far, of course, as powers elsewhere given enable it to provide for the general welfare. As Justice Story well said (Commentaries on the Constitution, I, § 929): [This phrase, to provide, etc.] "was first brought forward in connection with the taxing power; it was adopted as a qualification or limitation of the objects of that power; and it was not discussed as an independent power." Chief Justice Marshall, also, in giving the decision of the Supreme Court in the case of Gibbons vs. Ogden (9 Wheaton, 197) in 1824, speaks of the passage briefly as a restrictive modifier of the preceding infinitive.

b. In "necessary and proper," "necessary" would at first seem to be the stronger word. But, then, why is "proper" added? Does the passage mean that a power should not be used, even if necessary, unless

more than once bent their constitution that they might not be forced to break it."—James Bryce, American Commonwealth, Part I, ch. xxxiii.

also proper? Or does "necessary" mean merely convenient? The latter is a not unnatural conclusion, and has been adopted by the courts. With this view, it is possible to go a long way with "implied powers," without straining any other language of the Constitution. This vague or careless phrase is the true basis for the growth of the doctrine of implied powers.

205. "Second Great Compromise" (Sectional Jealousies). — It was decided early that representation in the lower House should be "proportional"; but the Convention for a long time sought for a way to take wealth into account in fixing the proportion. Finally, it was agreed that (in that day) there was no more satisfactory way of determining the relative wealth of States than by counting their people. Accordingly, it was decided that Representatives and direct taxes should be apportioned among the States in proportion to population (Art. I, sec. 1). This decision was adopted the more readily because it was conceded that property would be especially protected in the upper House.

Two questions remained regarding this proportion: (1) Should slaves be counted in the population? (2) Should the principle of proportion apply to States admitted in future, as well as to the original thirteen?

a. Hamilton and Madison had repeatedly warned the Convention that the real division of interests was not between large and small States, but between North and South. This now became apparent in one of the hottest contests of the four months. In determining representation, the South wanted slaves to count as men. Many Northern members were vehemently opposed to this, both because of a rising sentiment against slavery, and because they feared an undue weight for the South in Congress. The outcome was the "Second Great Compromise," — the three fifths ratio, so that five slaves 2 should

<sup>&</sup>lt;sup>1</sup> Mason and Gerry, almost alone (among the opponents of the Constitution, at least), seem to have realized the possibilities of this phrase. Cf. Source Book, No. 162. For later developments, cf. §§ 222 and 280, b.

<sup>&</sup>lt;sup>2</sup> The Constitution recognizes slavery in several passages, but it carefully avoids using the word.

count equal to three free persons in fixing the number of Representatives from a State.<sup>1</sup>

b. Morris and the New Englanders still struggled to prevent the adoption of proportional representation as a permanent principle. After the Government should once have been instituted, argued Morris, let Congress provide for reapportionment (or refuse to provide it) as it might think best from time to time, without compulsion from the Constitution. His purpose (as he stated frankly) was to prevent any true reapportionment so far as would concern new States from the West. The total representation from such States, it was urged by several delegates, ought never to exceed that from the original thirteen.

This unworthy jealousy was due partly to the fact that the West was still regarded as an offshoot of the South,<sup>2</sup> and partly to dislike of its democracy. "The new States will know less of the public interest," said Morris, and "will not be able to furnish men equally enlightened." Even in the old States, he added, "the back members [western members] are always the most averse to the best measures"; and he even tried to justify the pernicious arrangement in colonial Pennsylvania, whereby the eastern section had largely disfranchised the western inhabitants (§ 137).

The Virginia delegation, influenced perhaps by Virginia's recent dominion in the West, stood forth as the especial champions of that section. Mason argued unanswerably that both justice and policy demanded that new States "be treated as equals, and subjected to no degrading discriminations." This view prevailed. On motion of Randolph, the Constitution itself provided wisely for a census, and consequent reapportionment, every tenth year.

<sup>&</sup>lt;sup>1</sup> A brief special report may be called for regarding a like compromise in the Articles of Confederation as to contributions to the Federal treasury. This will explain partly why "representation" and "direct taxes" are coupled in this section of the Constitution. Cf. also debates in the Continental Congress on the Articles of Confederation (Source Book, No. 146).

<sup>&</sup>lt;sup>2</sup> Settlement in the Northwest had not yet begun. During this debate, the Continental Congress at New York was discussing the Northwest Ordinance (§ 182).

<sup>&</sup>lt;sup>8</sup> The Constitution of the German Empire leaves reapportionment to the central legislature (as Morris wished ours to do). As a result, during the forty years since the establishment of the Empire, there has been no reapportionment, although tremendous changes have taken place in population. Cf. Modern History, §§ 475, 485.

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206. The "Third Great Compromise," also, was concerned with slavery. New England wished Congress to have power over commerce, so that it might encourage American shipping against foreign competition. The South feared that Congress, with this power, might raise most of the Federal revenue by taxing the great Southern exports, cotton, rice, and tobacco,—or might even prevent further importation of slaves.¹ Finally Congress was given power to regulate commerce, providing, however, (1) that it should not tax exports; and (2) that it should not forbid the importation of slaves for twenty years,—though it might impose a tax, not to exceed ten dollars a head, upon such importation.

207. The Judiciary has been called fitly "that part of our government on which the rest hinges." It decides controversies between States, and between State and Nation; it even overrides Congress; and its life tenure makes it independent of control. (See a, b, c.)

a. A final arbiter was needed somewhere, in case of conflict between State and Nation. The Virginia Plan gave the decision to the Federal legislature (§ 202). The New Jersey Plan

<sup>1</sup> Georgia and South Carolina felt that they must have more slaves to develop their rice swamps, and made it clear that they would not come into the Union unless their interests in this matter were guarded. Virginia, Delaware, and Maryland (and North Carolina in part) had already prohibited the foreign slave trade by State laws. The most powerful advocate of national prohibition upon the trade was George Mason, a great Virginia slaveholder. Pointing out the futility of State restrictions, if the great Northwest was to be filled with slaves through the ports of South Carolina and Georgia, and arguing therefore that the matter concerned not those States alone, he continued: "Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the immigration of Whites, who really strengthen a country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of heaven on a country. As nations cannot be punished in the next world, they must be in this." (See also debates in Continental Congress in Source Book, No. 146. Mason spoke with the greater vehemence because of his anger at Puritan New England, which, he believed, was striking an unholy bargain with the two Southern States in the interest of its commerce and of a dangerously centralized government. Cf. Source Book, No. 163.)

gave it to the State judiciaries. It was finally placed in the Federal judiciary.

Virginia's proposal for a Congressional veto on State legislatures was twice agreed to, but was finally cut out after a strenuous debate (July 17). Luther Martin, a small-State leader, at once moved to insert a paragraph from the New Jersey Plan regarding the power and duty of State judiciaries to treat Federal laws which were in accord with the Constitution as "the supreme law of the respective States . . . anything in the laws of the individual States to the contrary notwithstanding." This was agreed to without debate.\(^1\) Apparently, it was accepted as a substitute for the defeated proposition. It left the final arbiter a branch of the State governments.

But the next day, when the Federal judiciary came up for consideration, Madison moved that its jurisdiction should extend "to all cases arising under the national laws, and to such other questions as may involve the national peace and harmony." This likewise was accepted unanimously. Either the Convention did not see the need for defining more clearly the overlapping fields of State and Federal judiciaries, or the small-State and large-State forces did not choose to measure strength again, when the Connecticut Compromise had just been adopted.

In this shape the matter went to the Committee on Detail; and that Committee threw the weight into the national scale, by a new provision regarding appeals. On the Federal judiciary, the Virginia Plan and the conclusions of the Convention so far were vague. The Committee's report, however, was very detailed, following, in the main, the admirable suggestions of the New Jersey Plan,<sup>2</sup> with some extensions. That plan had suggested appeals from State courts, but only in cases arising under those Federal laws which concerned taxation and commerce (and in cases affecting foreigners or foreign relations). In place of so enumerating and limiting appeals, the Committee's report left the matter subject to future regulation by Congress.

The Convention accepted this part of the Committee's report without discussion—which indicates that the State-sovereignty men did not suspect that they were so transferring the final arbiter from the States to the Federal government. Nor do the Nationalists seem to have at once appreciated their victory. Three weeks later (August 23), Pinckney, Wilson, and Madison made one more desperate attempt to restore to Congress

<sup>&</sup>lt;sup>1</sup> This is the basis of § 2 of Article VI in the Constitution.

<sup>&</sup>lt;sup>2</sup> Article VI is based closely upon this report, rather than upon any preceding discussions or resolutions of the Convention.

its veto upon the States, on the ground that without such power the Federal government could not defend itself against State encroachment. Said Wilson, "This is the keystone wanted to complete the wide arch of government we are raising." The motion was defeated, six States to five, by about the usual division between large and small-State parties.

But the "keystone" had already been inserted. True, the provision regarding this appellate power of the judiciary was worthless without subsequent action by Congress. That body might have given narrow limits to appellate jurisdiction. But the First Congress did extend it in the most sweeping way possible, so as to include every case in which any authority of the Federal Government might be questioned (§ 217).

This law has been sometimes threatened, but has never been repealed. To it, directly, is due the magnified position of the Federal judiciary. The clause of the Constitution which permits the law was "the sleeping lion of the Constitution." Its importance seems not to have been fully understood at the time, even in the Convention. Had its bearing been comprehended by the people of the country, the Constitution would almost certainly have failed of ratification (§ 211).

b. The power to void an Act of Congress is not derived from any express provision of the Constitution. It is based upon judicial custom in England and America. In conflicts between king and parliament, or between king and the Common Law, English courts had sometimes claimed the right to say which of the conflicting authorities should prevail (some half dozen times in several centuries); but this rare power of the English judiciary had already virtually disappeared, because the English Revolution of 1688 had removed practically all possibility of such conflicts. Throughout colonial times, however, the English privy council, acting as a court of appeal, had voided Acts of colonial legislatures which it regarded as conflicting with colonial charters or with English laws (§ 118 (5), note). As soon as the colonies became States, the State courts followed a corresponding custom and assumed the right to decide between State legislation and more fundamental law (a State constitution, or an ancient principle of the Common law). Such cases, however, had been very rare; and outside the lawyer

<sup>&</sup>lt;sup>1</sup> In New Jersey, in 1780, the highest court declared an act of the legislature void because inconsistent with the State Constitution (cf. "Holmes vs. Wal-

class, the people resented the practice bitterly.¹ Even within the Convention, some members disliked the practice; but it was seen clearly there that the Federal courts would test Federal legislation by comparing it with the Constitution, and would void such acts as were "plainly" unconstitutional. No provision to give the courts that power was inserted, because none was thought needful.

Since that time, however, the power has been extended, both by Federal and State courts, to a degree undreamed in 1787 by its most ardent champions. Especially has this been true of the Federal Supreme Court, which, because of its life tenure, has been more independent of public opinion than State courts have been. Through this development, the Supreme Court has become not merely the "guardian" of the Constitution, but also the chief "amender" of the Constitution. It has vastly augmented the field of national authority, by approving as "constitutional" new powers assumed by Congress or President; and again it has sometimes seriously limited that field by declaring unconstitutional certain laws which seemed to it likely to interfere with "vested interests."

c. Life tenure. Hamilton and his group failed to secure life tenure for the executive and the Senate; but they did secure it for the more important judiciary. In early English history, the judges had been removable at the king's pleasure.

ton" in Amer. Hist. Review, IV, 456 ff.), and three of the New Jersey delegates at Philadelphia had been connected with the case, on the bench or as counsel. There was a like decision in Virginia in 1782, and an opinion to the same effect from the North Carolina court just as the Philadelphia Convention was gathering. The Rhode Island case has been described (§191). These seem to be the only instances from 1776 to 1787. But in one year recently (1906) 101 State laws were declared unconstitutional by supreme courts, State or Federal, and the total number of cases for the seven years 1902–1908 was 468.

<sup>&</sup>lt;sup>1</sup> For a striking illustration at a somewhat later time, see Baldwin, *The American Judiciary*, 112.

<sup>&</sup>lt;sup>2</sup>This peculiar American power of the courts is not a necessary accompaniment of a written constitution. It is not found in any of the European republics with written constitutions. In Switzerland and France, the legislature is the sole judge of the constitutionality of its own acts; and public opinion can therefore secure more immediate action than with us.

The Stuart tyrants abused this power to debase the courts into servile tools. Therefore, the English Revolution provided that thereafter judges should be removed only "on address." That is, a judge held for life, unless two thirds of parliament voted that he should be removed. For such action, however, no formal trial was necessary, nor even formal charges of wrongdoing. English courts were made dependent upon the approval of parliament.

In the State constitutions, so far, the judges usually had been appointive (§ 153). If for long terms, then commonly they were removable "on address," as in England. But the Federal Constitution (like some State constitutions) gave the courts a tenure more independent than had ever been known in England. Federal judges hold "during good behavior," and can be removed only by impeachment,—i.e., conviction for "treason, bribery, or other high crime or misdemeanor," by a two-thirds vote of the Senate, after legal trial upon specific charges. Without affording any opening for such charges, the judiciary may thwart the popular will and the will of every other branch of the government for years.

In the Federalist, Hamilton argued that in giving judges tenure for life, the Constitution merely followed the laudable practice of England, whose courts were recognized as models for learning and impartiality. This argument took no account of the tremendous difference between removal "on address" and removal only on "impeachment." In England the courts had been made independent of the irresponsible monarch, but only by bringing them into close dependence upon the popular branch of the government. In America, as Jefferson said, "we have made them independent of the nation itself." Moreover, even if the English courts had been independent of the nation, it would have mattered less, because of their more limited functions. The boundless significance of the American arrangement lies in the combination of exemption from popular control with the vast powers treated in a and b above.

<sup>&</sup>lt;sup>1</sup> Can the student find in the Constitution whether Congress can lower the salaries of judges of whom it may disapprove?

<sup>&</sup>lt;sup>2</sup> When Jefferson, in Paris, learned of Madison's plan for a Congressional veto on State legislation, he wrote advising instead the Federal judicial veto

In simple fact, it has sometimes taken twenty years to change a majority of the Supreme Court by new appointments.<sup>1</sup> Certainly it is contrary to all principles of democracy that, even conceivably, a whole generation should be unable to control or change "that part of the government upon which all the rest hinges." To-day it is as probable that some reconstitution of this part of the people's government will become a political issue, as it was probable twenty years ago in England that a like question would arise for the House of Lords.<sup>2</sup>

Says Professor Channing (Jeffersonian System, 112): "Perhaps nothing in the Constitution of the United States is more extraordinary than the failure of that instrument to provide any means for getting rid of the judges of the Federal courts except by process of impeachment." And says a foreign scholar more at length (Boutmy, Constitutional Law, 117): "This power [the Supreme Court] has the last word in the numberless questions which come under its jurisdiction. The sovereign people after a time conquers other powers, but this Court almost always remains beyond its reach. For more than twenty or even thirty years . . . it may misuse its authority with impunity, may practically invalidate a law voted by all the other powers, or a policy unanimously accepted by public opinion. . . . I do not know of any more striking political paradox than this supremacy of a non-elected power [which the same writer styles "a small eligarchy of nine irremovable judges "] in a democracy reputed to be of the extreme type." 3 hurs.

208. Three other undemocratic features of the Constitution aneed brief treatment.

which was finally adopted — except, as he makes clear, that he expected the courts to remain dependent upon the popular will through Congress, according to the American and English practice of the time (Letter of June 20, 1787, to Madison). This suggestion, therefore, was in no way inconsistent with Jefferson's later stringent criticism of the Federal courts and their power.

1 Some limitations and threatened limitations upon the impunity of the courts have occurred, in later history, in times of great popular excitement (§§ 218, 240, 256-257, 353, and 390).

<sup>2</sup> Since this passage was written, Theodore Roosevelt has suggested (1912) that whenever the Supreme Court declares a Congressional law unconstitutional, a referendum be provided to the people.

<sup>8</sup> An extended and striking treatment of the Federal judiciary may be found in a recent work by an American scholar, — J. Allen Smith's Spirit of American Government, ch. v.

<sup>4</sup>The indirect election of the Senate and its avowed undemocratic purpose have been dealt with (§ 200 and close of § 203), and the indirect election and

a. Indirect election of the President. The men of the Convention meant to establish a true electoral college. They thought they had done so; and they prided themselves particularly upon this part of their work. They supposed there would be chosen in each State 1 a select body of men, of social standing and property, and that these several bodies would then deliberate calmly and use their best judgment in selecting a chief executive.

Here the Convention failed utterly. The growth of sentiment for popular government, together with the development of a party system and preliminary nominations, has made the electoral college obsolete except in form. The form, indeed, survives. Technically each "elector" is still at liberty, after his election, to vote his private choice for President and to change his mind, before voting, as often as he likes. But, in reality, each "elector" is chosen to vote for a particular candidate; and unwritten law makes it impossible for him to think of doing otherwise. The "electors" have been transformed into "mere letter carriers." Indeed, the voter rarely reads their names on the tickets.<sup>2</sup>

b. "Checks and balances." In England, before the year 1400, centuries of struggle against an irresponsible monarchy had built into the "constitution" a system of reciprocal checks. No one part of the government—king, lords, or commons—could do anything of consequence against the determined opposition of any other part. This elaborate system of balances

life tenure of the judiciary (§ 207). One other like feature—the undue difficulty of amendment—has been briefly referred to, and will be treated more fully in § 242.

<sup>&</sup>lt;sup>1</sup> The Constitution leaves the method of appointing "electors" to the State legislatures. It was expected that those bodies themselves would commonly appoint,—and that thus we should have popular inclinations "refined by two successive filtrations." In the first election, indeed, several States did so choose their "electors" (§ 212), and some continued the practice for many years,—South Carolina until 1860 (§ 295).

<sup>&</sup>lt;sup>2</sup>A somewhat similar evasion of the Constitution is now (1912) going on in the election of senators (§ 467).

had been a victory for freedom, so far as it went; and it came to be looked upon as a necessary feature of <u>free government</u>. After the publication of Blackstone's law writings (1770), the "separation of powers" (i.e. the reciprocal independence of executive, legislative, and judicial departments) became almost an axiom in English political thought.<sup>1</sup>

In reality, however, as we can now see, English practice by 1787 was already a century ahead of the doctrine. The Revolution of 1688 had made the popular branch of the government supreme, except for a modified veto by the Lords. Thus, the system of "cheeks and balances" had practically disappeared in England (in favor of a truer democracy), when it was adopted, in most elaborate form, in America. Moreover, while in England it had been originally devised as a protection against an arbitrary monarch, it was adopted in America mainly as a protection against a "turbulent people." <sup>2</sup>

The system reversed the general tendency in the early State constitutions, which had inclined toward supremacy by the popular branch of the government (§ 153 ff.). It must be added, however, that the adoption of this plan of checks was generally welcomed by extreme democrats at the time, because to them democracy was still largely synonymous with distrust of government (§ 70). Accordingly, they favored any arrangement which should keep it from governing. The result was an arrangement which may well be praised for having at times conduced to stability, but

Nearly two thousand years before, Aristotle had argued for such a "separation," as a defense against tyranny. In 1748, the French writer, Montesquieu, in *The Spirit of Laws*, gave the doctrine wide popularity. For a curious attempt to apply the principle in France, cf. *Modern History*, § 357.

<sup>&</sup>lt;sup>2</sup> Madison was the most prominent advocate of the system of "checks." He desired to prevent one part of the government from encroaching upon another; but fundamentally it was democracy which he sought to "check." Said he, "It is against the enterprising ambition of this department [the representative] that the people ought to indulge all their jealousy and exhaust all their precautions." Federalist, No. 48. Lecky (Democracy and Liberty, I, 9) describes this system of checks in the American Constitution as designed to divide and restrict power, to secure property, to check appetite for organic change, to guard individual liberty against the tyranny of the multitude." The same critic calls all these devices "substitutes" for the desired but unattainable monarchy and aristocracy.

which also has often produced embarrassing and harmful deadlocks. When the people, after a long campaign, have deliberately chosen a House of Representatives to carry out their settled policy, they often have to wait two years to get around a Presidential veto, and perhaps two years or four years more before they have a chance to change a hostile hold-over majority in the Senate. Even then, a Supreme Court, by a vote perhaps of five to four, may nullify the popular will for a generation longer. And all this says nothing of the almost insuperable difficulty of amending the Constitution itself, when the nation may wish to change some provision in that ancient document devised by men of other times and designed for other conditions than those of our day.

c. Special protection for property rather than for men. Repeatedly the Convention refused to entertain a motion for a bill of rights for men; but, besides the guardianship expected from Senate, President, and Supreme Court, there were inserted two express provisions to shield property. (1) Even the Federal government can take private property only "by due process of law,"—i.e. through the decision of a court after judicial trial; and (2) the States are forbidden to pass any law "impairing the obligation of contracts." By reason of these clauses, says President Hadley, property interests in America are "in a stronger position against any attempt at government control" than they are in any European country."

President Hadley points out that the first provision has resulted "in preventing a majority of the voters, acting in the legislature or through the courts (the convenient European methods) from disturbing existing arrangements with regard to railroad building or factory operation, until the stockholders

<sup>1</sup> Articles IV and VI of the Constitution, it is true, do contain some essential provisions of a bill of rights,—the strict definition of treason as compared with the meaning of that term in many other countries; the prohibition against ex post facto laws and bills of attainder (cf. § 159, note); and the restriction upon suspension of the writ of habeas corpus. Part of the Convention thought that such matters pertained only to State governments. There did remain, however, a serious want in this respect until the adoption of the first ten amendments (§ 216).

<sup>&</sup>lt;sup>2</sup> Arthur T. Hadley (President of Yale University), "The Constitutional Position of Property in America," in *The Independent*, April 16, 1908.

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or owners have had opportunity to have the case tried in the courts"; and, as the same article intimates, the courts have usually been inclined to favor vested property interests. President Hadley asserts also that in the Convention "no man foresaw" this result from the clause; but careful students of the period must admit, that, fully foreseen or not, the result was at least in line with the desires of the Convention.

The even more pernicious results of the second provision could not well have been foreseen. They have come about through a remarkable decision of the Supreme Court (the Dartmouth College Case, 1819; cf. § 280, c), extending the meaning of the word "contract" to include even the grants of privilege and power made by a State itself to publicservice corporations. As a consequence, many such corporations have been inviolably intrenched, for an indefinite period 1 in the future, in special privileges which they secured from careless or corrupt legislatures and for which they render no adequate return to society, - to the grievous burden of taxpayers and to the prevention of needed reforms. In the hundred years from 1803 to 1903, the Supreme Court declared unconstitutional two hundred State laws: fifty-seven of these were voided on the ground that they impaired the obligation of some "contract." Most of these fifty-seven (and many more of the two hundred, voided on other grounds) had aimed solely at needful regulation of great corporations in the interest of social well-being, - such legislation as is common in European democracies like England or France or Switzerland.

11

<sup>&</sup>lt;sup>1</sup>According to the spirit of this decision, unless the State has limited the lifetime of a grant, or has expressly reserved its own right to change the grant at will, the grant runs forever. In recent years, the States have in great measure guarded themselves against such danger for the future by expressly reserving their right to modify all such grants. An amendment to the constitution of Wisconsin runs: "All acts [dealing with corporations] may be altered and repealed by the legislature at any time." This provision, now, is a part of the "contract" when the Wisconsin legislature grants a franchise to any corporation.

209. The Federal Franchise.— No doubt the Convention would have put forth a more aristocratic document but for two things. (1) The Nationalists feared the State governments more than they feared the people of the States; and, sometimes, it was practically necessary to intrust power to one or the other of these two. (2) If the Constitution were clearly and decidedly more undemocratic than a given State constitution, it would be hard to secure ratification in that State,—and it was not going to be easy to get States enough at best. We owe such democratic character as the Constitution has, in great degree, to the relatively unknown men, who, ten years before, had framed the Revolutionary State constitutions.

A good illustration of all this is seen in the settlement regarding the Federal franchise. The only part of the government left to be chosen directly by the people was the House of Representatives; and, apparently, only the first cause mentioned above prevented this choice also being intrusted to the State legislatures. Then the second cause saved us from a rigid limitation of the Federal franchise. When it had been decided to leave the matter to "the people," the question arose, who were "the people" in this political sense. Hamilton, Morris, and Dickinson strove earnestly to limit the franchise to freeholders, - so as to exclude "those multitudes without property and without principle, with whom our country, like all others, will, in time, abound." 1 Even Madison expressed himself cautiously as theoretically in favor of such restriction, fearing that a propertyless majority would either plunder the rich or become the tools of an aristocracy. Franklin argued vigorously against the restriction, urging the educational value of the franchise for the masses; and George Mason, in the language of his bill of rights of 1776, declared, "The true idea is that every man having evidence of attachment to the community, and permanent common interest with it, ought to share in all its rights and privileges." 2 But the defeat of the proposed restriction, it is plain, was due not to these lonely champions, but to the reminder that in more than half the States the State franchise was already wider than landholding, and that no one holding the franchise in his own State could be expected to vote for a Constitution

<sup>&</sup>lt;sup>1</sup>These words are Dickinson's, but the sentiment was general.

<sup>&</sup>lt;sup>2</sup>Cf. § 154, and Source Book, No. 136, and comment.

that would disfranchise him in the Federal government. <sup>1</sup> The provision finally adopted, therefore, aimed to keep the franchise as restricted as was compatible with probable ratification. The Federal franchise was to be no wider in any State than the State franchise in that State.

In the outcome, this arrangement has worked for democracy. The States, acting one by one, modified their constitutions in the direction of greater democracy faster than one great unit like the Nation could have done; and as any State extended its own franchise, so far it extended also the Federal franchise (cf. § 284).

210. Ratification. — The "two critical decisions" of the Convention, it has been said, were: (1) to substitute a new plan of government, — instead of trying merely to "patch up" the old constitution; and (2) to put that new government into operation when it should be accepted by nine States, without waiting for all of them.

The last decision was directly contrary to instructions from the State legislatures which had appointed the delegates. Of course it was also in conflict with a specific provision in the Articles of Confederation,—to which the States had solemnly pledged "their sacred faith" (§ 196). But men had come to see that America must either remain passive, slowly strangling in the grip of the old constitution, or she must break its bonds. Constitutional remedy, it had been demonstrated, was impossible. Wisely and patriotically, the Convention recommended, and the country adopted, an unconstitutional remedy. The ratification of the Constitution was a peaceful revolution.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> The voters in the States were not to vote directly, it is true, in ratifying or rejecting the Constitution; but they were to choose conventions for the express purpose, and, commonly, they would pledge their delegates more or less definitely.

<sup>&</sup>lt;sup>2</sup> This was freely admitted. A friendly looker-on wrote:—

<sup>&</sup>quot;Here, too, I saw some pretty shows: a revolution without blows:

For, as I understood the cunning elves, the people all revolted from themselves."

In a different tone, the States which, at first, refused to ratify the new government, reproached the majority bitterly for "seceding" unconstitutionally from the old Confederation.

This method of establishing the new government without waiting for all the States was first suggested in the Convention 1 on June 5 by James Wilson; and Pinckney at once mentioned nine States as sufficient. Seven weeks later, Gorham recurred briefly to this idea. On neither occasion, however, was there any debate or even a motion. The revolutionary suggestion came first before the Convention formally in a provision reported by the Committee on Detail: "The ratification of the Conventions of . . . States shall be sufficient for organizing this Constitution." This part of the Committee's report was under discussion on August 30-31, and the blank was finally filled with "nine." Then Madison and King objected to the vague wording, which might imply that States which had not themselves ratified were still to be bound by the action of nine others; and, "in order to confine the operation of the government to the States ratifying," says Madison, an amendment added the words "between the said States." With slight change of wording by the Committee on Style and with no change of meaning, this provision is found in Article VII of the Constitution.

In all the discussion, no one suggested that the Constitution ought to bind any State which did not itself accept it. Indeed, Wilson, strongest of centralizers, thought even King's amendment unnecessary, because, he argued, it was impossible to think that the first form would bind a State without its own consent.

When Congress received the Constitution, it expressed neither approval nor disapproval; but it did approve the method provided for taking the sense of the States, and accordingly it recommended the State legislatures to call State conventions. Now the contest was transferred from Philadelphia to the country at large, and in every State men divided into parties. The advocates of the "new roof" shrewdly took to themselves the name Federalists, instead of the unpopular

<sup>&</sup>lt;sup>1</sup> Such a method was first suggested, so far as the writer knows, by Stephen Higginson of Massachusetts in a letter to General Knox, February 8, 1787. Higginson argues ingeniously to prove that such ratification might be considered constitutional. (Amer. Hist. Association Report for 1896, I, 748 ff.)

<sup>&</sup>lt;sup>2</sup> Luther Martin of Maryland was one of the delegates who withdrew from the Philadelphia Convention toward its close. In a letter to his legislature, justifying his action, he explains that the Convention had voted down a resolution for a "federal" form of government and instead had adopted a resolution for a "national government." "Afterwards the word 'national' was struck out by them, because they thought the word might tend to alarm; and

term Nationalists, and so left to their opponents only the weak appellation *Antifederalists*. A torrent of pamphlets and newspaper articles issued from the press, and every crossroads was a stage for vehement oratory. A strenuous ninemonths campaign gave a bare victory for the Constitution.

## [For general impression only.]

In public discussion, as in the ratifying conventions, the proposed Constitution was attacked partly for its encroachments on the States, partly for fanciful reasons, but chiefly for its undemocratic features. Opponents pointed to the absence of a bill of rights, — especially to the lack of guarantee for jury trial in Federal courts,—and to the infrequency of elections, and to the vast powers of the President and Senate (parts of the government remote from popular control).

The real source of apprehension, however, was not any specific provision in the document so much as a vague distrust of the aristocratic Convention.<sup>2</sup> This suspicion was intensified by the secrecy with which that body had surrounded its deliberations; and many people believed sincerely that the meeting at Philadelphia had been "as deep and dark a conspiracy against the liberties of a free people" as had ever been conceived in the darkest ages. In the closing days of the Convention, Mason had asserted that such a constitution "must end either in monarchy or tyrannical aristocracy." Soon, popular pamphlets exaggerated this view. An ironical democrat, claiming to be a "Turk," praised the Constitution for "its resemblance to our much-admired Sublime Porte," with detailed parallels; and "John Humble" exhorted his fellow "low-born" ("all but some six hundred of the inhabitants of America") dutifully to allow the few "well-born" to set up their "Divine Constitution" and rule the country.

although now they who advocate this system pretend to call themselves federalists, in Convention the distinction was quite the reverse. Those who opposed the system were there considered and styled the federal party, those who advocated it, the antifederal."—ELLIOT'S Debates, I, 362.

<sup>&</sup>lt;sup>1</sup> The most famous collection of such essays is the long series which appeared week after week in New York papers under the title *The Federalist*. They were written by Hamilton, Madison, and Jay, and were soon republished in book form. They remain the most famous commentary on the Constitution.

<sup>&</sup>lt;sup>2</sup> Cf. Source Book, No. 160, for the large proportion of delegates of Philadelphia who seem to have had little special qualification except that they were "gentlemen of good birth and large fortune." And cf. also No. 152.

Still both parties had to admit the seriousness of the existing situation. The Antifederalists had no remedy to propose. The Federalists offered one for which they claimed no peculiar excellence, but which, they urged, did offer escape from anarchy,—probably the only escape likely to be available. Under such pressure, and a sense of personal responsibility if he rejected a possible cure for his country's ills, many a flaming Antifederalist, elected to a State convention expressly to reject the Constitution, came over to its support. 1

Nor did the conventions realize the nationalizing character of the Constitution. Says Henry Cabot Lodge (Daniel Webster, 176), — practical statesman and strong centralizer as he is, — "When the Constitution was adopted by the votes of States at Philadelphia, and accepted by the votes of States in popular conventions, it is safe to say that there was not a man in the country, from Washington and Hamilton on the one side to George Clinton and George Mason on the other, who regarded the new system as anything but an experiment, entered upon by the States, and from which each and every State had the right peaceably to withdraw—a right very likely to be exercised."

This, no doubt, is an overstatement. It expresses the general opinion of the day; but men like James Wilson of Pennsylvania certainly held stronger views of the national character of the new government. William McDonald's more moderate statement (Jacksonian Democracy, "American Nation" series, 107) is well within the truth: "Had it been generally understood that the Federal government, once established, would be beyond control of the States save by the prescribed process of amendment to the Constitution, or that the Federal judiciary was to be the final interpreter of the Constitution in all cases whatsoever, it may well be doubted whether the 'new roof' would have been accepted at all." (Cf. § 211.)

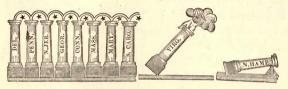
### [Details for later reference.]

The Constitution was sent forth September 17, 1787. Organized and ready, the Federalists at first carried all before them, securing ratification during December and January in Delaware, New Jersey, Georgia, Connecticut, and, after a bitter struggle, in Pennsylvania. Somewhat later, Maryland and

<sup>&</sup>lt;sup>1</sup> More personal arguments were not neglected. In Massachusetts the Federalists brought over Hancock by promising him a reëlection as governor and perhaps implying strongly that he should be the first Vice President of the new government (Source Book, No. 164).

South Carolina were added to the list. The remaining States long remained doubtful or opposed. North Carolina and Rhode Island refused to ratify. They could be spared,—as perhaps New Hampshire could have been; 1 but a like failure in any one of Massachusetts, New York, or Virginia would almost surely have queered the whole movement. In all three of

# Eighth Federal PILLAR reared



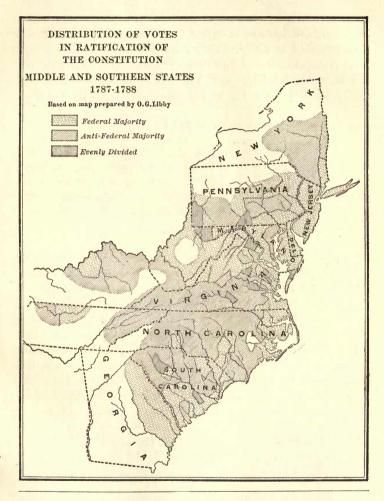
(From the Boston Independent Chronicle, June 12, 1788.)2

these States (as probably in most of the others) a direct vote of the people would certainly have rejected the Constitution.3 Even in the conventions, there was at first a strong hostile majority in each of these three; and, after the many weeks of argument and persuasion, to have defeated ratification would have required in the final vote a change in Massachusetts of only 10 votes out of 355; in Virginia, of only 5 out of 168; and in New York, of 2 out of 57. Even these slim majorities would have been impossible, except for pledges from the Federalists that they would join in securing certain desired amendments as soon as the new government should be in The New Hampshire convention changed its operation. mind, and ratified on June 15 (making the ninth State), but the absolutely essential accession of Virginia did not take place until June 25, — just in time for the news to reach the North for the

<sup>&</sup>lt;sup>1</sup>In New Hampshire a hostile convention had adjourned for some months.

<sup>&</sup>lt;sup>2</sup> The Chronicle guessed wrong as to the order of the approaching ratification. See text.

<sup>&</sup>lt;sup>8</sup>The Rhode Island legislature, instead of calling a convention, distributed copies of the Constitution among the voters and provided for a direct popular vote. The Federalists, certain of defeat, declaimed against this method as



improper, and remained away from the polls. The vote stood 2708 to 232. Two years later, a convention accepted the Constitution 34 to 32. In general, the commercial centers favored the Constitution, while the agricultural and western sections opposed it. See map above, from Libby's "The Distribution of the Vote for the Ratifying Conventions" in Wisconsin Historical Bulletin, I, No. 1.

Fourth of July celebrations.¹ New York's ratification came still later, and was due primarily to Hamilton. Never did his splendid intellect render his country nobler service. Day by day, against almost hopeless odds, and for a time almost alone in debate, by powerful logic and gentle persuasion, he beat down and wore away the two thirds majority against the Constitution, until at last the greater leaders of the opposition came frankly to his side.

[For reading in class only.]

211. Excursus: "We the People." — Who ratified the Constitution? The several States, as States? or one consolidated people? Of the second view, Professor William McDonald says very fitly, "No theory could have a slighter historical foundation"; but that theory is still taught in many leading books, and is often regarded as identical with patriotism. It rests, however, wholly upon the opening words of the preamble to the Constitution: "We, the people of the United States . . . do ordain and establish this Constitution." Merely as language, these words have no more value than the Fifth Article of the Constitution, which explicitly says twice that the ratifying parties are the States; and such slight significance as the preamble might otherwise have, disappears upon tracing its history.

The preamble appeared first in the report of the Committee of Detail; but it then read "We, the people of the States of New Hampshire, Massachusetts, Rhode Island [and so on through the list] do ordain," etc. Plainly, this did not mean a consolidated nation. It meant thirteen peoples, each acting directly,

¹ At Albany, on the Fourth, the news caused the wildest excitement. The Federalists celebrated by firing ten guns for the new government. The Antis retorted with thirteen guns for the Confederation, which, they claimed, was still the constitutional government. Afterwards, they made a bonfire of a copy of the new Constitution and of the handbills announcing Virginia's ratification. In the ashes, the rallied Federalists planted a lofty pole with another copy of the Constitution nailed to the top, and in the riot that followed, knives were used and some blood was shed. In Pennsylvania more serious riots took place,—if less picturesque,—with participation by militia and cannon.

<sup>&</sup>lt;sup>2</sup> Jacksonian Democracy ("American Nation" series), 109.

not through legislatures. The Convention accepted the wording without debate. Almost at the close of the Convention, the Committee on Style changed the words to their present form. No explanation was ever made by a member of the Convention for the change, but it explains itself. The Convention had now decided to put the new government into operation between the first nine States ratifying. It was impossible to name these in advance, and obviously it would be highly improper to name any which might not come in at all; so all names were dropped out. No change of meaning was designed. The new form, like the first, was accepted without debate.

Outside the Convention, however, this was at first not understood; and States-rights men vehemently attacked the wording, fearing that it did mean a consolidated people,—until Madison assured them that it did not. Samuel Adams wrote to Richard Henry Lee, "I stumble at the threshold"; and, in the Virginia Convention, Patrick Henry exclaimed,— "What right had they to say, 'We, the people'... instead of 'We, the States'? If the States be not the parties to this compact, it must be one great consolidated national government of the people of all the States." Madison answered: "Who are the parties? The people; 1 but not the people as composing one great body: the people as composing thirteen sovereignties." Otherwise, he adds in proof, a majority would bind all the States; "but, sir, no State is bound, as it is, without its own

¹The writer once heard a Federal judge, in a public address, quote this far, and stop here, to prove that Madison taught the doctrine of ratification by a consolidated nation. Horace Greeley's Great American Conflict (I, 81) contains a similar misrepresentation of the record. After quoting Henry's objections, with specific page reference to the records of the Virginia convention, Greeley continues, without page reference of course,—"These cavilers were answered frankly and firmly, "It is the work of the people of the United States, as distinguished from the States in their primary and sovereign capacity, and why should not the fact be truly stated." Of course, this is "newspaper history." That was the way Greeley thought Henry ought to have been answered. The real answer was the precise opposite.

consent." And he goes on to explain that the words mean only that in each State the people act in the most solemn way, not merely through the usual legislative channel.<sup>2</sup>

Twice before, Henry had made the same objection; but in his later attacks upon the Constitution, he does not recur to it. On this point Madison's answer was final. No other man could speak on this subject with so much authority. The idea of this method of ratification (by State conventions) had been original with Madison,<sup>3</sup> and all through the sessions of the Philadelphia Convention he had been its chief champion.<sup>4</sup>

Thirty years later, the doctrine of ratification by a consolidated people, based on the opening words of the preamble, was revived by Chief Justice Marshall, and was soon given added emphasis by the massive and patriotic oratory of Daniel Webster; and the idea took its place in the mind of the North as an essential article in the creed of patriotism,—along with the much more excusable misunderstanding regarding the Declaration of Independence and the Union (§ 187). The plain historical fact, however, is that the several States, looking upon themselves as so many distinct sovereignties, and, feeling absolutely free either to accept

<sup>&</sup>lt;sup>1</sup>This argument of Madison disposes absolutely of the plea that a consolidated nation acted *through* the States as convenient election districts.

<sup>&</sup>lt;sup>2</sup> Madison amplified this last thought in the Federalist (No. 39): Ratification "is to be given by the people, not as individuals, but as composing the distinct and independent States to which they respectively belong. It is the assent and ratification of the several States, derived from the Supreme authority in each State,—the authority of the people themselves [not merely from the subordinate authority of the State legislature] . . Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the Constitution, if established, will be a federal, not a national, constitution."

<sup>&</sup>lt;sup>8</sup> Cf. Madison's account of the preliminaries of the Philadelphia Convention in the Preface to his *Journal*.

<sup>&</sup>lt;sup>4</sup> Part of the confusion was due to the loose use of political terms. Most members of the Convention used *State* as equivalent to *State government* or *State legislature*. Madison was one of the few men of the day who saw that the State was really the people and not the government. He desired ratification by the *States*, in this highest sense, and not merely by *temporary agents* of the States.

or reject the Constitution, did decide to accept it,—and, by so doing, made possible the future development of a consolidated nation.

Says William McDonald (Jacksonian Democracy, 109, 110):—"Webster's doctrine of 'the people' was a glorious fiction. It has entered into the warp and woof of our constitutional creed; but it was fiction, nevertheless. . . . If anything is clear in the history of the United States, it is that the Constitution was established by the States, acting through conventions authorized by the legislatures thereof, and not by the people of the United States, in any such sense as Webster had in mind." (Cf. the quotation from Senator Lodge, at the close of § 210.)

For Further Reading.—The story of the struggle for a new constitution should be read if possible either in Fiske's Critical Period or in McLaughlin's Confederation and Constitution (chs. iii-vi and ix-xv). On constitutional interpretation, students cannot be asked to go beyond the specific footnote references given above. The Source Book contains considerable material.

Exercise. — The constitution and notes in the Appendix should be read in class and talked over at this stage, until the student is absolutely at home with such questions as accompany the document there.

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### CHAPTER IX

### FEDERALIST ORGANIZATION

# I. CONSTITUTIONAL DEVELOPMENT WRITTEN AND UNWRITTEN

212. The first elections¹ under the Constitution were very unlike those of the present time; and they showed a striking variety among themselves. Presidential electors were chosen (1) by legislatures in six States out of the ten that took part;² (2) by popular vote (but in districts) in Pennsylvania, Maryland, and Virginia;³ and (3) in Massachusetts by a quaint mixture of the two methods.⁴ In no State did the people choose them directly and on one general ticket,—the method so universal to-day.⁵

¹ The dying Congress of the Confederation provided for these elections by a vote of September 13, with nine States present. (Cf. § 188, note, for dwindling attendance during the preceding year.) A week later, the attendance had sunk to six States, and, by October 14, to two. Thereafter, to keep up a shadow of government, a few delegates met day by day, had their names recorded in the journal, and then, for want of a quorum, adjourned to some favorite tavern. The Congress expired for want of a quorum seven months before the new government was organized.

<sup>&</sup>lt;sup>2</sup> This was the method which had been generally anticipated. Cf. § 208 a and note. Can the student account for the missing three States of the thirteen,—by help of a paragraph below for one of them?

<sup>&</sup>lt;sup>3</sup> Virginia lost two of her votes, because in two districts no elections were held. Maryland, also, lost two votes. Two of her electors, after being chosen, failed to attend the electoral meeting, on account of gout and poor roads.

<sup>&</sup>lt;sup>4</sup> In each Congressional district, the people *nominated* three candidates, from whom the legislature chose one, — with two more "electors at large." Why did that make the proper number? (See Constitution.)

<sup>&</sup>lt;sup>5</sup> New Hampshire *tried* popular election on a general ticket; but there was no machinery for previous nominations, so that the people of one part of the State could know what set of candidates their friends elsewhere were sup-

Two forcible illustrations were afforded of disregard of the popular will and of the public weal by "delegated" government. In elections by legislatures, custom favored a joint ballot (the two Houses voting as one body). This method was used in five of the six States which chose electors by legislatures. But in New Hampshire, the upper House was Federalist, while the more numerous and more representative lower House was Antifederalist. If the two voted in one body, the Antifederalists would prevail. Accordingly the Senate insisted upon election by concurrent vote—as ordinary bills are passed—so that it might have a veto on the other House. The wrangle lasted for weeks, until the midnight preceding the day when the electors in the various States were to cast their ballots. Then, not to lose the vote of the State altogether, the larger House surrendered, and chose electors acceptable to the Senate.

In New York, the situation was similar, but the outcome different. The farthest the Senate would go toward a compromise was that each Chamber should choose half the electors out of men nominated by the other. The Antifederalist House refused to yield its claim to a joint ballot; and New York had no part in the Presidential election, — nor, for some time, did she have any United States Senators.

There was no party organization, and there had been no formal nominations. All electors knew they were expected to vote for Washington for President, and he received the 69 votes cast. But for Vice President there was no such agreement. Some of the Antifederalists had even hoped to elect George Clinton of New York, Hamilton's chief adversary there; but the plan fell to pieces when New York failed to take part in the election. Eleven names were voted for by the 69 electors, five States splitting their votes. Virginia divided her ten between Adams, Jay, Hancock, and Clinton. John Adams was elected, but by only thirty-four votes, — one less than half.¹

porting. Accordingly, no candidates received a majority of all votes cast; and the law required, in such case, that the election go to the legislature—with results given below.

<sup>1</sup> Such a vote would not elect to-day. Explain why it did then.

Part of this scattering was due to honest fear lest Adams receive the same vote as Washington, and so tie him for the Presidency [before the Twelfth Amendment]; but in two States at least the scattering of the vote

The Continental Congress had named the first Wednesday in March for the inauguration of the new government at New York City. On that day, however, only 8 Senators (out of 22) and 13 Representatives (out of 59) had arrived; and the electoral votes could not be counted. The two Houses met from day to day, for roll call and adjournment, sending occasional urgent entreaties to dilatory members in neighboring States; but not till almost five weeks later (April 6) was the necessary quorum secured. Then matters moved rapidly; and April 30, Washington was inaugurated with great state and solemnity.2 213. The Struggle for Simplicity. — For nearly three weeks, Congress wrangled over matters of ceremony. After solemn deliberation, the Senate recommended that Washington be styled "His Highness, President of the United States of America and Protector of the Liberties of the Same." The more democratic Representatives insisted on giving only the title used in the Constitution - "President of the United States." Finally this House actually sent an address to Washington by this title; and the Senate had to lay aside its tinsel.3

was due to trickery by Hamilton, who disliked Adams (McMaster, History of the People of the United States, I, 526-530).

<sup>&</sup>lt;sup>1</sup> In 1789, that Wednesday fell upon March 4; and ever since, that day has been kept for the inauguration of a new President. This has become exceedingly awkward. Elections now take place in November. The old President remains in charge for five months; while the newly elected Congress (unless summoned in special session) does not assemble for thirteen months. The arrangement has sometimes left the government for many critical months in the hands of a President and Congress whom the nation has just repudiated at the polls. A much-needed change (which might be established by Congress and President at any time) is to inaugurate both branches of a newly chosen government within two months after the elections.

<sup>&</sup>lt;sup>2</sup> What were some of the essential proceedings, after Congress secured a quorum, before Washington could be inaugurated?

<sup>&</sup>lt;sup>8</sup> William Maclay, one of the few democratic Senators, tells us that Adams (presiding in the Senate) spoke forty minutes from the chair in opposition to this simple form. "What," he exclaimed, "will the common people of other countries, what will the sailors and soldiers, say of 'George Washington, President of United States'? They will despise him to all eternity" (Maclay's Journal, 27).

The immediate occasion for this disturbance was the need to decide how to treat the speech with which Washington "opened" the sessions of Congress. That speech itself was couched in terms such as the king of England used toward parliament on like occasions. After the custom of parliament, each House replied with an "address of thanks," riding in carriages from the Halls of Congress to Washington's audience room, and standing in his presence while the addresses were read. All this procedure was another of the trappings of Old-World formalism which happily dropped from our practice at the inauguration of Jefferson (§ 254). Since that time, the President sends to Congress written "messages."

During the debate over titles, one particularly quaint episode occurred. The Senate minutes referred to Washington's speech as "His most gracious speech," the form always used in parliament regarding the speech from the Throne. Senator Maclay objected to the phrase, and finally it was struck from the record. Vice President Adams, however, defended it hotly, declaring (according to Maclay) that if he could have foreseen such agitation, he "would never have drawn his sword" against England in the Revolution.

It has been too much the custom to ridicule the objectors to these "harmless" forms and titles. The titles were "harmless"; but the spirit in which they were demanded was not. That spirit was quite as violent, and quite as ridiculous in its extravagance and lack of humor, as was the democratic opposition to it. The aristocrats believed that government ought to be hedged about with ceremonial to secure due reverence. It is easy to find matter for laughter in the manifestations of the democratic opposition; but at least let us acknowledge gratefully our debt to it for turning the current of American practice away from childish or slavish ceremonial and verbiage, toward manly simplicity and common sense.

<sup>&</sup>lt;sup>1</sup> Soon after, the struggle was renewed on the bill to establish the mint. It was proposed that each coin should bear the image of the President during whose administration it was coined—after the fashion of all royal coinage. A few radicals attacked this "disposition to ape monarchic practice," and the proposal was dropped, in favor of the use of an emblematic "Goddess of Liberty."

<sup>&</sup>lt;sup>2</sup> Jefferson wrote from Paris, rejoicing at the defeat of the proposed title: "I hope the titles of Excellency, Honor, Worship, Esquire, forever disappeared from among us from that moment. I wish that of Mr. would follow them." "Mister" had not ceased to denote social rank in America.

214. Fixing the Constitutional Position of the Senate in its Executive Functions.—Another question of forms had to do not merely with ceremony, but directly with power. The Constitution requires the consent of the Senate to Presidential appointments and to treaties; but does not say how that consent shall be given. Washington and his Cabinet were at first inclined to treat the Senate as an English monarch treated his Privy Council. When the first nomination for a foreign minister came up (June 17), Vice President Adams attempted to take the "advice and consent" of the Senators one by one, viva voce. This attack upon the independence of the Senate was foiled by Maclay, who insisted upon vote by ballot.

August 22-23 occurred a more important incident of like nature. Through the Secretary of War, Washington had prepared a treaty with certain Indian tribes. Instead of sending the printed document to the Senate for consideration, Washington came in person, took the Vice President's presiding chair, asked Secretary Knox to read the treaty aloud (which was done hurriedly and indistinctly), and then asked at once for "advice and consent," to be given in his presence. As Maclay properly observes, there was "no chance for a fair investigation while the President of the United States sat there with his Secretary of War to support his opinions and overawe the timid and neutral." Still the question was being put, when Maclay's sturdy republicanism once more intervened. He called for certain other papers bearing on the subject, and this resulted in a suggestion for postponement and for the submission of all papers to a committee. Maclay asserts that Washington, who had received the first interruption with "an aspect of stern displeasure," now "started up in a violent fret," exclaiming, "This defeats every purpose of my coming here." At length, however, he assented to the proposition for delay.

<sup>&</sup>lt;sup>1</sup>The Journal of William Maclay is a curious work which should be accessible to every student of this period. Maclay, Senator from Pennsylvania, was an honest, well-meaning, rather suspicious man, without breadth of view,

A little later, when Hamilton wished to appear in person to argue his financial plans, Congress refused to receive him. So was fixed the custom that Cabinet officers shall make all their recommendations, through the President, in written form; and subsequent Presidents have made all their communications to Congress in writing.

215. Evolution of a "Cabinet."—The Constitution, by its language, suggests single heads for various executive departments (rather than the committees customary under the old Confederation). Very early, therefore, Congress established three departments,—State, Treasury, and War,—together with an Attorney-generalship. Washington appointed as the three "Secretaries," Jefferson, Hamilton, and Henry Knox; and made Edmund Randolph the Attorney-general.

These officials were designed, separately, to advise and assist the President; but neither the Act of Congress nor the Constitution made any reference to them as one collective body,—that is, as a "Cabinet." And yet, though very different from the English body of that name, the Cabinet has become by custom an important part of our constitutional machinery. The written Constitution provides only that the President "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." This gave no warrant for asking advice, for instance, from the Secretary of War upon a matter of finance or of diplomacy; but almost at once Washington began to treat the group as one official family.

or social graces, but with an ardent republicanism. He was no hero worshiper. John Adams (his pet aversion) is credited with "a very silly kind of laugh . . . the most unmeaning simper that ever dimpled the face of folly." Madison is styled "His Littleness." Hamilton appears with "a very boyish, giddy manner." And even Jefferson wears "a rambling, vacant look."

<sup>&</sup>lt;sup>1</sup> At this time the Attorney-general was not head of a specific department, as were the several Secretaries. He was merely the general advisor of the President in legal complications. In 1870 he became head of a new "Department of Justice."

# EVOLUTION OF A CABINET

When he was troubled as to the constitutionality of the Bank Bill (§ 222), he asked both Hamilton and Jefferson for written opinions; and, in 1793, when war between England and France raised serious questions as to the proper policy for America (§ 230), he called the three Secretaries and Randolph into personal counsel in a body. This was the first "Cabinet meeting", of which we have definite knowledge. The name appears later in the same year.

President Adams lived at odds with his Cabinet (1797–1801), but Jefferson revived and confirmed the meetings as a regular procedure. From his day (1801–1809), there has been little change in the Cabinet except in size.<sup>2</sup>

The Cabinet now meets at fixed times, one day of each week being known as Cabinet day. No minutes of the meetings are kept. Important matters are discussed, and sometimes votes are taken; but such votes are in no way binding upon the President. On one occasion, President Lincoln found every member of his Cabinet against him, and dismissed the matter by stating, "Seven nays, one aye; the ayes have it."

One of the first official acts of a new President is to send to the Senate his nominations for heads of departments. The approval of even a hostile Senate for these nominations is usually a matter of form. In the First Congress, the casting vote of the Vice President established the absolute right of the President to dismiss at will these officials and other presidential appointees.

<sup>&</sup>lt;sup>1</sup> A letter of Washington of the preceding year seems to *imply* that such meetings were already practiced.

<sup>&</sup>lt;sup>2</sup> From time to time Congress has decreed new departments. In 1798 a Secretary of the Navy was given part of the duties of the old Department of War. The Post Office was established in 1790 as a part of the Treasury Department, but in 1829 the Postmaster-general became the equal of the other heads of departments. In 1849 there were added a Department of the Interior; and out of this were carved the Department of Agriculture, in 1889, and the Department of Commerce and Labor in 1903.

<sup>&</sup>lt;sup>3</sup> The consent of the Senate being required for the appointment, it was argued that like consent was essential to dismissal. Further reason for this view was found in the fact that the precise duties of each "Secretary" are fixed by Congress, in the creation of the Department—not by the President.

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216. The Bill of Rights. — Seven of the ratifying State conventions had proposed amendments, 124 in number. Early in the first session of Congress, Madison introduced a list of twenty amendments. Twelve were adopted by Congress, and ten of these were ratified by legislatures in the necessary three fourths of the States.

These ten amendments <sup>3</sup> are commonly known as "The Bill of Rights," and they were designed to supply that particular lack in the Constitution. They forbid Congress to interfere with freedom of religion, freedom of the press, or freedom of petition, and they prohibit general warrants or excessive bail or cruel and unusual punishments. They further guarantee to citizens, in criminal accusations, a right to trial by a jury of the neighborhood (§§ 139, 140), and, in civil cases, the right to jury trial, if desired by either party, when the amount in dispute exceeds twenty dollars. The ninth and tenth amendments are general in character, and are intended to emphasize the idea that the Federal government is limited to those powers enumerated in the Constitution.<sup>4</sup>

Still, the decision was wise. The President certainly should have complete freedom in naming and changing his chief advisers, upon whom in so great measure the success of his administration must rest.

<sup>1</sup> Many of these, of course, were practically identical. The largest number from one State was 32 from New York.

<sup>2</sup> In what other ways might the amendments have been proposed and adopted? (Study carefully Article V of the Constitution.) The last of these State ratifications was not received until the close of 1791, after a period of two years. For some amendments, a much longer time has elapsed (four years, for the eleventh). This reveals a serious defect in Article V. Some specific time should have been provided within which ratification should take place.

<sup>8</sup> Read the amendments in Appendix, and compare with this analysis. Of the two that failed, one dealt with reapportionment, and the other provided that any change in the pay of Congressmen should not apply to the Congress that passed the law (a sensible provision, which would have prevented "back-pay" scandals in our later history).

<sup>4</sup> Since they were all additions, rather then modifications, it was natural to annex these amendments, as separate articles, at the close of the Constitution. The same practice, however, has been followed with later amendments, even where (notably with the eleventh and twelfth) the matter would have been

All these amendments were intended to restrict the Central government, but this is expressed directly only in the first and last amendments, and many people think of the restrictions as applying to the States. It is unfortunate that that the wording is not more specific. Congress can give no religion preference over another; but a State legislature may do so,—unless forbidden by the constitution. Indeed, some States did maintain religious establishments for many years after the ratification of this amendment to the Federal Constitution (§§ 291, 294).

217. The Judiciary augmented. — The Constitution made it the duty of Congress to provide a Supreme Court. The "original jurisdiction" of that Court was stated in the Constitution; but Congress was left at liberty to regulate the "appellate jurisdiction," and to provide inferior courts, or not, at its discretion. The great Judiciary Act of 1789 established a system of which the main features still remain.<sup>1</sup>

a. It provided for a Supreme Court (a Chief Justice and five Associate Justices) to sit at the Capital.<sup>2</sup>

b. It established two grades of inferior courts covering the entire Union.

There were at first thirteen District Courts, each with a resident judge. These districts were grouped into three circuits, each with its Circuit Court intermediate between District Court and Supreme Court. At this time, there were no distinct Circuit Judges. Each Circuit Court consisted of a District Judge from one of the districts within its borders and of two Justices of the Supreme Court "on circuit."

c. It provided for appeals to the Supreme Court, not only from inferior Federal courts, but also from any State court, in all cases where such a court had denied any right or power

much better managed by recasting a paragraph in the original document. Even the first amendments might well have found place in Article I, section 9. Let the class rewrite the main body of the Constitution in such fashion as to incorporate the various amendments, up to date.

<sup>&</sup>lt;sup>1</sup> Cf. Appendix I, and references there, for the most important changes since.

<sup>&</sup>lt;sup>2</sup> The number of Associate Justices is now eight (1912).

claimed under a Federal law or treaty or under the Constitution.

218. Supreme Court limited by the Eleventh Amendment.— The first decision to draw public attention to the enormous powers of the Supreme Court was in the case of Chisholm v. Georgia, in 1793. Chisholm, a citizen of South Carolina, sued in the Supreme Court to recover a debt from the State of Georgia.<sup>2</sup> The Constitution states that "the judicial power shall extend . . . to controversies between a State and citizens of another State." Georgia, however, claimed that this phrase meant only that a State could sue private citizens in the Federal Court, not that a State could itself be sued by private individuals. If the language were used for the first time to-day, such interpretation would be unnatural; but the words must be taken in the light of State-sovereignty ideas of that era, and, beyond all doubt, the understanding of Georgia was the general understanding when the Constitution was ratified.

In the discussions over ratification, fear was sometimes expressed that this clause might enable a private citizen to sue "a sovereign State." In all such cases, the leading Federalists explained that such meaning was impossible. Madison, in the Virginia convention, declared the objection "without reason," because "it is not in the power of individuals to call any State into court." In the same debate, John Marshall (afterwards Chief Justice), in defending the clause as it stood, exclaimed: "I hope no gentlemen will think that a State will be called at the bar of a Federal court. . . . It is not natural to suppose that the sovereign power should be dragged before a court. The intent is to enable States to recover claims against individuals residing in other States." And Hamilton in the Federalist (No. 81) declared any other view "altogether forced and unaccountable," because "it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its own consent."

<sup>&</sup>lt;sup>1</sup> This was the most important portion of the law (cf. § 207 a); it is given in full in Appendix I. The establishment of inferior Federal courts (b) also greatly extended the authority of the Federal judiciary, in practice, at the expense of State courts, since it made the Federal courts so much more accessible than if there had been only one court at Washington.

What authority is there in the Constitution for bringing this suit originally in the Supreme Court, if it could be brought at all, rather than in a District Court?

Now, however, influenced by the reasoning of Chief Justice Jav and Justice Wilson, the Court, by a divided vote, assumed jurisdiction. Georgia refused to appear, and judgment went against her. Georgia thereupon threatened death "without benefit of clergy" to any Federal marshal who should attempt to collect the award.1 Similar suits were pending in other States, and there was widespread alarm. The legislatures of Massachusetts, Connecticut, and Virginia called for a constitutional amendment, and passed vigorous resolutions denouncing the Court's decision as "dangerous to the peace, safety, and independence of the several States, and repugnant to the first principles of a federal government"; and Congress by almost unanimous vote in both Houses submitted to the people the eleventh amendment, to reverse the decision of the Court and establish the interpretation of the Constitution maintained by Georgia. The ratification of the amendment was not formally announced until 1798; but no attempt was made to enforce the decision of the Court against Georgia.

It follows from the eleventh amendment that, without its own consent, a State cannot be sued by private citizens, — its own or from other States. Most States, therefore, have established a Court of Claims, in which any claim against the State may be presented; and when a claim has there been declared valid, it is customary for the legislature to make the necessary appropriation for payment. If the State refuses to pay, it cannot be forced to do so. In several cases, States have repudiated bonds issued for the building of railways, and other like debts, where popular feeling suspected fraud or deceit in securing the loan.

### II. HAMILTON'S "PLAN," FINANCIAL AND CON-STITUTIONAL

219. Funding and Assumption. — For the first year, Congress made appropriations amounting to \$640,000,<sup>2</sup> and provided

<sup>&</sup>lt;sup>1</sup> The bill to this effect passed the lower House of the Georgia legislature 19 to 8. Before the upper House took it up, the general movement for a reversal of the Court (as described below) had such headway that no further action was thought necessary.

<sup>&</sup>lt;sup>2</sup> About one hundredth as much per citizen as the cost of the national government in recent years.

for this expense by a low tariff.<sup>1</sup> Meanwhile, Hamilton's marvelous industry and skill had worked out a comprehensive plan to care for the old debt and to reorganize the chaotic finances of the nation.

He recommended that the new government formally take over the "Continental debt" (both the \$11,500,000 due abroad and the \$40,500,000 held at home), and "fund" it, by taking it up, at face value, in exchange for new bonds payable in fifteen and twenty years. To make full provision for the foreign part of this debt was inevitable, if the United States was to have standing among the nations, and Congress gave unanimous approval to this portion of the funding scheme. With regard to creditors at home, however, there was no such compulsion; and many members of Congress objected to taking over in full the old domestic debt. For the most part, the certificates had passed into the hands of speculators, at twelve or fifteen cents on the dollar; and, it was argued, there was neither necessity nor propriety in voting fortunes out of the people's money to men who had so traded on their country's needs.<sup>3</sup> But Hamil-

¹ On the third day after Congress had secured a quorum, Madison introduced the bill. In its original form, it was purely a revenue measure; but, through the efforts of Pennsylvania members in particular (cf. § 124), it was amended so as to include many duties designed mainly to "protect" American manufactures. Indeed, this purpose (which is not named in the constitutional enumeration of the powers of Congress) was expressed in the title of the bill. Strictly speaking, however, the bill remained a bill for revenue, with incidental protective features. The law was based upon the idea in the proposed "revenue amendments" of 1781 and 1783 (§ 196), and the rates averaged about 7½ per cent.

<sup>&</sup>lt;sup>2</sup> About one eighth of the foreign and one third of the domestic debt consisted of *unpaid interest*.

<sup>&</sup>lt;sup>8</sup> Every one professed willingness to pay original holders of the certificates all that the certificates had meant to them. Indeed, Madison, parting company now with Hamilton, prepared a complex scheme for a commission to pay off the domestic debt after full inquiry, paying original holders in full, where they still held the paper, and, in other cases, paying the later purchasers whatever they had given for the certificates, and giving the rest of the value to former holders. This proposal, perhaps, was nearer abstract justice than was Hamilton's; but it was too cumbersome for practice.

ton and his friends maintained forcefully that no other course would establish national credit or redeem the faith pledged by the old Congress as the price of Independence; and this view prevailed.<sup>1</sup>

220. "Assumption."—A third part of the funding scheme was long in danger. Hamilton wished the Federal government to assume the war debts of the States (some twenty-two millions). The States that had already paid their debts resented bitterly the prospect of now having to help pay also the debts of other States; States-rights men denied the constitutional right of Congress to assume debts that did not belong to the whole Union; and many patriots shuddered at the picture of the newborn nation setting out under a debt of seventy-four millions of dollars. After a desperate and apparently hopeless struggle, this feature, too, was carried by a log-rolling bargain. Jefferson was persuaded to secure two Virginia congressmen for "assumption," in return for Hamilton's promise of enough Northern votes to locate the proposed Capital on the Potomac.

<sup>&</sup>lt;sup>1</sup> Even before Hamilton's proposals were made public, his purpose seems to have leaked out; and wealthy men in New York and Philadelphia hastily started agents in swift-sailing vessels for distant colonies, and on horseback for back counties, to buy up certificates at the prevailing prices, before the news should arrive. This fact intensified the opposition to the plan. Indeed, many believed that Hamilton himself was corruptly interested in this speculation. From this charge, happily, he can be absolutely acquitted; but it is possible that he had been careless in letting out official secrets to less scrupulous friends; and some members of Congress who were to support his recommendations strongly were among these speculators. Cf. Maclay's Journal, 177-179, and elsewhere.

The plan, proposed by Hamilton and adopted by Congress, offered to redeem also the continental currency at one cent on the dollar. Six millions of dollars were so "redeemed." No more was ever presented.

<sup>&</sup>lt;sup>2</sup> About \$18 a head for the population, or about as much per head as the annual expenses of our government in recent years.

<sup>&</sup>lt;sup>8</sup> EXERCISE.—Let the student make clear to himself, from the text, the use of the terms funding and "assumption." Is it not clear why this arrangement between Hamilton and Jefferson cannot be called a compromise, but must be styled "log-rolling"? Did Hamilton actually pay off any of the debt of the country?

All this was vigorous financiering. American credit was established at a stroke. Confidence returned at home. Money came out of hiding, and we entered upon an era of business prosperity.

But it was more than mere financiering. Hamilton cared as much for the constitutional and political results as for the financial. He saw clearly that these measures would be "a powerful cement to union" "by arraying property on the side of the new government." Especially was this true of assumption. If that part of the plan had failed, then all holders of State bonds would have been inclined to oppose national taxation as a hindrance to possible State taxation — whereby they themselves might be paid. After "assumption" carried, all such creditors were transformed into ardent advocates of the new government and of every extension of its powers; because the stronger it grew and the more it taxed, the safer their own private fortunes. The commercial forces of the country were consolidated behind the new government, and pretexts were afforded for that government to reach out to the exercise of new powers.\(^1\) (Cf.\(^5\) 221.)

221. Revenue: The Whisky Rebellion.— The victory of "assumption" made necessary a large revenue. A second part of Hamilton's plan dealt with this. In accord with his recommendations, duties were increased slightly on goods imported from abroad; and, in 1791, Congress imposed a heavy "excise" on spirits distilled at home. To-day such an excise falls chiefly upon large distilleries run by capitalists, who pay the tax first and then collect it again from the "ultimate consumer" in increased price.<sup>2</sup> But, in that time, whisky, a universal drink,

<sup>&</sup>lt;sup>1</sup> Jefferson soon regretted bitterly his aid to this centralizing force, and claimed that he had been tricked by Hamilton. "Hamilton's system," said he, "flowed from principles adverse to liberty, and was calculated to undermine the Republic." And Maclay wrote during the contest,—"The Secretary's people scarce disguise their design, which is to create a mass of debts which will justify them in seizing all the [re]sources of government, thus annihilating the State legislatures and creating an empire on the basis of consolidation."

<sup>&</sup>lt;sup>2</sup> Tariffs and excises are *indirect* taxes (one external, the other internal) paid in the first instance by importer or manufacturer, but in the end by the people who buy and use the goods.

was manufactured in countless petty "stills" scattered over the country, especially in the poorer western counties, where the farmer could not market his grain in any other way. These small producers felt it a cruel hardship to have to pay a tax at all upon their peculiar product, particularly in advance of marketing it, when currency was almost unknown among them; and the whole western section believed that the Federal tax bore most heavily upon their part of the country, which was least able to bear taxation.

Moreover, an excise involves a widespread machinery of inspectors and tax-collectors (very unlike a few custom houses on a frontier) and minute inquiry into private business. The legislatures of North Carolina, Virginia, Maryland, and Pennsylvania passed vehement resolutions condemning the law; and in four western counties of Pennsylvania the United States officials were driven out or set at nought for three years, — by methods that make a curious parody upon the methods toward English officials in the years before the Battle of Lexington.

This was the Whisky Rebellion. Finally, under Hamilton's advice, Washington marched 15,000 militia from neighboring States into the insurgent counties, and obedience was restored. The most important result of the whisky tax was not the increased revenue, but this constitutional result,—the demonstration that the new government was able and determined to enforce its laws.<sup>2</sup>
222. National Bank and Implied Powers.—Hamilton per-

suaded Congress also to incorporate a National Bank. The government held part of the stock, and named some of the

<sup>&</sup>lt;sup>1</sup> A pack-horse could carry not more than four bushels of grain; but, reduced to the form of whisky, he could carry twenty-four bushels. Cf. § 175 on markets for Western settlers. Western Pennsylvania is said, alone, to have had 3000 stills. The student will know something of the modern feeling in the mountain districts of Southern States against the excise.

<sup>&</sup>lt;sup>2</sup> The Whisky Rebellion is worth a special report. It was the first rebellion against the Federal government. (Compare with Shays's Rebellion against a State.) Two leaders were tried for treason and condemned to death, but they were pardoned by Washington. Happily, the nation has never imposed a death penalty for political opposition.

managing Board. In return, the Bank acted as the agent of the government in securing loans, and took care of the national funds. In other respects, it was like other banks, — receiving deposits, issuing paper notes (which in this case formed a safe and much-needed currency), transferring credits and cash from one part of the country to another, and making loans on suitable security. Banking facilities had been meager; and the convenience of this institution bound the commercial classes still more closely to the new government.

The most significant thing about the Bank, however, is that its establishment led to the development of the doctrine of "implied powers." To create a corporation is not among the powers enumerated for Congress. Indeed, efforts to include that particular power had been defeated in the Philadelphia Convention. Hamilton, however, insisted that it was covered by the "necessary and proper" clause (§ 204, b). "Necessary," he urged, meant only "suitable"; and a national bank would be a suitable and convenient means to carry out the enumerated powers of borrowing money and caring for national finances. After serious hesitation, Washington signed the bill.<sup>3</sup>

Exercise. — Review Hamilton's financial plan, making out an abstract of its various parts in the form of a "brief." Review carefully § 204 in connection with § 222.

#### III. SECTIONAL DISPUTES

223. Slavery. — The first contests under the new government were sectional. The conflicts upon assumption, the tariff, and

<sup>&</sup>lt;sup>1</sup> There was a central bank at Philadelphia, with eight branches in leading cities.

<sup>&</sup>lt;sup>2</sup> Enemies soon pointed out a danger that a bank connected with the government might exert tremendous political influence for the party in power by granting or refusing loans to business men.

<sup>&</sup>lt;sup>3</sup> He had invited opinions from Jefferson as well as from Hamilton; and the debate between the two great Secretaries began the dispute as to "strict construction" and "loose" or "broad" construction of the Coustitution. The arguments of both are given in full in MacDonald's Select Documents, 76-98. Thirty years later, Chief Justice Marshall affirmed the constitutionality of a second National Bank upon Hamilton's grounds (§ 280, b).

the Bank had all been conflicts mainly between North and South,—commercial section and agricultural section. This unhappy sectionalism was intensified from the first by the slavery question.

In the North, as far as through Virginia indeed, antislavery sentiment was gradually growing. Some States had abolished slavery; others were making arrangements for gradual emancipation; still more had forbidden importation of more slaves into their territory. In the first session of the First Congress, a Virginia Representative moved a national tax of ten dollars a head upon all slaves imported into any State. After a bitter debate the matter was dropped. At the next session, petitions were presented from two Pennsylvania societies praying Congress to use its "constitutional powers" to limit slavery and protect the Negro. The resulting debate was as fierce as any in our history, bristling with vituperation and with threats of secession; and the House finally adopted resolutions declaring that it had no constitutional power to interfere with the treatment of slaves, or to abolish slavery, within any State.1

The next aggressive move came from the South in a demand for a Fugitive Slave Law, and in 1793 there was passed a disgraceful statute. The Constitution sanctioned slavery and made it the legal duty of Congress to provide the necessary machinery for the capture and return of fugitive slaves; but the law should at least have given to any Negro claimed as a slave the benefit of the doubt until proof of the claim was complete. The presumption should have been in his favor. Such, indeed, was the maxim of the Roman Imperial law.<sup>2</sup> But this American law followed rather the medieval maxim that a masterless man must belong to some master. It was a base surrender of human rights to property rights. It as-

<sup>&</sup>lt;sup>1</sup> Mild statements were made as to the power of Congress to secure decent treatment of slaves in slave-ships on the high seas, but no action along this line was suggested.

<sup>&</sup>lt;sup>2</sup> Ancient World, § 535.

sumed that the claim of a pretended master was good unless disproved by evidence. No jury trial was provided, and a free Negro, seized in a strange locality, might easily find it impossible to adduce proof of his freedom, — especially as the law failed to provide securities as to summoning witnesses. Everything was left to the judge, while a crushing fine was provided for any citizen aiding a Negro who might prove to be an escaped slave. In every detail the presumption of the law was against the Negro.

In a more enlightened age the courts would have held the law unconstitutional, since it neither provided securities for the accused in criminal cases (if the claim that a Negro was an escaped slave constituted a criminal case) nor insured the jury trial guaranteed by the seventh amendment in civil cases. But law, after all, is merely what the courts, sustained by public opinion, declare it to be. This abominable statute was sustained by American courts, and, under its sanction, gangs of kidnapers could, and sometimes did, carry off free men to a horrible slavery. After some fifty years (in the famous Prigg v. Pennsylvania case) the Supreme Court of the nation definitely upheld the constitutionality of the law, except as to the provision requiring State officials to act as Federal officers in carrying it out (1842). The more active public opinion of the forties took advantage of this leak to undermine the operation of the law.1 Then the Fugitive Slave Law of 1850 (§ 347) merely reënacted the old abuses with more efficient machinery, i.e. with special Federal commissioners to enforce them.

224. Expansion by Sections. — The reunion of the old thirteen States was completed by the ratification of the Constitution in North Carolina (November, 1789) and in Rhode Island (1790). Almost at the same time began the expansion of the Union through the admission of new States, — Vermont in 1791, and Kentucky in 1792. Toward the close of the Federalist period, Tennessee was admitted (1796); and in 1802, early in the following period, Ohio came in (§ 184). Regarding these new States, three matters call for consideration — one bad, two good.

<sup>&</sup>lt;sup>1</sup> In some parts of the Union public opinion made the law inoperative from the first. In 1793 a slave was rescued from pursuers in Massachusetts.

- a. Sectionalism. Of the original thirteen States, seven were north of Mason and Dixon's line; but some of these were still slaveholding States, so that the Slave and Free sections were not unequal. The bills permitting the admission of Kentucky and Vermont were passed within a few days of each other, and the action was consciously designed to maintain the balance,—especially in the Senate,—between the forces for and against slavery. This policy long continued; and the division of opinion in the North gave a practical advantage to the Slave States.
- b. Democracy. Both Kentucky and Vermont gave the franchise to all White males twenty-one years of age; and though Tennessee and Ohio failed to go so far, still they also were much more democratic than the older States. The admission of new Western States began at once to change the political complexion of the Union in the direction of greater democracy.
- c. Nationality. Quite as important at that time was the impulse to nationality. Unlike the original thirteen States, the new commonwealths had never known political existence as sovereign bodies. They were the children of the Union, created by it and fostered by it; and, after admission, the tendency to nationality was stronger within their borders than—other conditions being the same—within the original States. Probably the most powerful single force in our history on the side of union has been this addition of the many new States carved out of the national domain. Left to itself, the union of the original States, with their traditions of State sovereignty, could hardly have lasted half a century.

### IV. RISE OF POLITICAL PARTIES

225. The Elements.—The early years of Washington's administration saw no political parties, in any true sense.

<sup>&</sup>lt;sup>1</sup> Ohio was the only new State of this period to which these words apply in the strictest sense, but this is the place to note the beginning of this new force in American life. The physiographic reasons for greater national feeling in the new States are suggested in § 244.

The adoption of the Constitution had closed the first contest between national parties. The Federalists were left, almost without opposition, to organize the government they had established; <sup>1</sup> and, within a few months, party lines were wiped out.

But elements were present for new divisions. Men soon found themselves for or against government policies according to their varying inclination to (1) aristocracy or democracy, (2) commercial or agricultural interests, (3) a strong or a weak government, and (4) English or French sympathies. divergent views, too, had a logical grouping. The commercial interests wished a strong central government (§ 206), and favored England because our commerce was mainly with that country.2 In the wars of the French Revolution, - which had now begun, - England stood for the old order, against democratic France; and so these commercial interests, already inclined to aristocracy, received an added impulse in that direction. On the other hand, the democratic portion of society found its chief strength in agricultural districts; retained its Revolutionary hatred for England, and was fervently attached to France (formerly our ally and now the European champion of democracy); and, according to universal democratic feeling in that day, looked with distrust upon any strong government.

226. New Parties. — Hamilton stood for the aristocratic, pro-English tendency; Jefferson for the democratic, pro-French

¹ It is sometimes said that Washington tried to reconcile the two old parties and so appointed to his Cabinet two leaders from the Antifederalists, — Jefferson and Randolph. This is absurd. Jefferson had criticized the Constitution, — though less severely than Hamilton had, — but he had used his influence for its ratification; and, though Randolph refused to sign the final draft of the Constitution at Philadelphia, he had, afterward, in the Virginia convention been one of the chief leaders for ratification. The Cabinet represented merely the different wings of the old Federalist party.

<sup>&</sup>lt;sup>2</sup> After the Revolution almost as exclusively as before, — which suggests that the English navigation acts had not in great measure diverted colonial commerce from its natural channels.

view. Soon the two were contending in the Cabinet, as Jefferson puts it, "like cocks in a pit." By 1792 these divergent views in the country at large had crystallized into new political parties, — especially because of the feeling regarding Hamilton's financial policy. Jefferson believed that that policy, if not checked, would result in monarchy, and he called his own party "Republican" by contrast. His opponents tried to discredit it by stigmatizing it "Democratic." Hamilton's new party shrewdly took the old name "Federalist."

Jefferson first uses the term "Republican" in a party sense in a letter to Washington (May, 1792): "The Republican party among us, who wish to preserve the government in its present form. . . . "Years later, he affirmed, "The real differences . . . consisted in their different degrees of inclination to Monarchy or Republicanism"; and again, "A short review . . . will show that the contests of that day were contests of principle between the adherents of republican and of kingly government."

The new parties were in no sense continuations of those of 1787-1788. Men were aligned anew, on new issues, after an interval when party organization and party names had been dropped. Madison became a Republican; Patrick Henry and Luther Martin joined the new Federalists. It is true, however, that the Republicans were reproached with receiving into their ranks the greater part of the former Antifederalists,—as the Federalists were denounced for receiving the Tories.

Unhappily, from the beginning, the party lines were largely sectional. The North, especially New England, was mainly Federalist; the South was predominantly Republican.<sup>2</sup>

227. Working of Parties in Elections: Caucus Nominations. — Washington was a Federalist, but his fairness and patriotism so exalted him that the Republicans were unwilling to oppose his reëlection. In 1793 he again received every electoral vote, while Adams became Vice President again by 77 votes to 50 for George Clinton. The Republicans were fatally handicapped in their canvass for Clinton by their lack of a candi-

<sup>&</sup>lt;sup>1</sup>By 1793 both men had resigned. Hamilton was never again to hold office, but he continued to direct his party's policy in great degree.

<sup>&</sup>lt;sup>2</sup> Explain this fact from the occupations of the two sections.

date of their own for the presidency; but they secured a strong majority in the new House of Representatives.

Washington refused to be a candidate for a third term. Then, in 1796, came a party contest. The Federalist members of Congress in caucus nominated Adams and Thomas Pinckney. Republican Congressmen nominated Jefferson. Adams won by three votes. Jefferson became Vice President.

Before the Twelfth Amendment, each elector voted for two names without designating one for President, one for Vice President. If all Federalist electors had voted for both their candidates, there would have been no choice for first place. To prevent this result, several Federalist electors threw away their second votes, so that Pinckney (on the winning ticket) received fewer votes than Jefferson (on the other). The consequence was absurd,—President and Vice President from hostile parties.

228. Excursus: Party government was still a new thing in the world. The men who made the Constitution did not dream of permanent parties, or they thought of them only as a

<sup>1</sup> Washington's noble "Farewell Address" warned his countrymen against "entangling alliances" abroad and sectional divisions at home. It should be read by all students.

<sup>&</sup>lt;sup>2</sup> It had become customary, just before, for members of each party in a State legislature to "caucus," in order to nominate candidates for State offices. This device was now seized upon for national nominations. Of course it rendered nugatory at once the intention of the Constitution as to the deliberation of the electors and their "refining" the popular will. It remained for them only to follow the "recommendation" of the party caucus. This matter illustrates the fact that the Constitution failed to foresee or provide for party government. (Cf. § 228.)

The nominating "caucus," self-appointed, originated in town government. John Adams has left the earliest account of it as it appeared in Boston (Diary for February, 1773): "This day I learned that the caucus club meets at certain times in the garret of Tom Dawes. . . . He has a large house, and he has a movable partition in his garret, which he takes down, and the whole club meets in one room. There they smoke tobacco till you cannot see from one end of the room to the other. There they drink flip, I suppose, and there they choose a moderator, who puts questions to vote regularly; and selectmen, assessors, collectors, firewards, and representatives are regularly chosen before they are chosen by the town." It was his control over this caucus which made Samuel Adams for so long the "boss" of Boston.

dreaded possibility. The Constitution makes no provision for the chief force which was to run it, — which is a chief reason why our unwritten constitution has come to be so different from the written document.

Government by party seems to be most wholesome when party lines correspond in fair degree to the natural differences between conservatives and progressives in society. One portion of society sees most clearly the present good and the possible dangers in change, and feels that to maintain existing advantages is more important than to try for new ones. Another section sees most clearly the existing evils and the possible gain in change, and feels that to try to improve conditions, even at the risk of experiment, is more important than merely to preserve existing good. Each party draws its strength from some of the noblest and some of the basest of human qualities. The true reformer will find himself associated with reckless adventurers and self-seeking demagogues; while the thoughtful conservative, struggling to preserve society from harmful revolution, will find much of his support in the inertia, selfishness, and stupidity of comfortable respectability, and in the greed of "special privilege." "Stupidity is naturally Tory"; but "Folly is naturally Liberal." 2

The term party government applies to countries where the people are divided into political parties, and the party with the most votes back of it controls the course of government. This system was developed in England, but in very imperfect fashion preceding the nineteenth century.

<sup>&</sup>lt;sup>1</sup>Said John Adams, in October, 1792: "There is nothing which I dread so much as the division of the Republic into two great parties, each under its leader, concerting measures in opposition to each other. This, in my humble apprehension, is to be feared as the greatest political evil under our Constitution." Jefferson, on the other hand, foresaw dimly the inevitableness of party divisions, "founded," as he said, "in the nature of man."

<sup>&</sup>lt;sup>2</sup> This paragraph is condensed roughly from a notable and much longer passage in Lecky's *England in the Eighteenth Century* (I, 513-515). Colonel Higginson had the final quotation in mind probably, when he wrote of these first American political parties, "Some men became Federalists because they were high-minded, and some because they were narrow-minded; while the more far-sighted and also the less scrupulous became Republicans,"

(Cf. Modern History, § 252.) To-day it is the mark of free government in all large units. One of its characteristics is moderation, because the shifting of only a small fraction of the total vote will usually displace the ruling party. In America the check of parties has replaced, for most useful purposes, the elaborate system of checks devised by the Philadelphia Convention.

229. Party Feeling.—It took a generation for men to learn that political difference did not necessarily mean moral viciousness. Jefferson suspected his adversaries of plotting against the Republic (§ 226); and, still more absurdly, they accused him of wishing to subvert all society— in the interest of bloody anarchy or at least of a general proscription of property.

Jefferson claimed to have heard Hamilton say that the Constitution was a "shilly-shally thing, of mere milk and water, which could not last and was good only as a step to something better." Almost at his death, Hamilton did write of the Constitution: "Contrary to all my anticipations of its fate, as you know, I am still trying to prop the frail and worthless fabric" (Works, Lodge ed., VII, 591). Such expressions were common among the Federalist leaders. Knowing Hamilton's admiration for the British form of government, it is not wholly amazing that Jefferson understood his "something better" to be that type of monarchy. This, however, was unjust to Hamilton. He knew that monarchy was impossible in America. The truth seems to be (1) that, in optimistic hours, he hoped to make the Constitution into "something better" through growth and interpretation; 1 but (2) that, in moments of despair, he expected the Union to fail, as the old Confederation had failed. — to be replaced, possibly, by a still stronger government, after internal convulsion and civil war.2

The real fault of the Federalist leaders was their fundamental disbelief in popular government. (Cf. also § 200.) After Jefferson's victory in

<sup>&</sup>lt;sup>1</sup> In later years, Madison characterized the division of parties more fairly: Hamilton, said he, "wished to administer the government into what he thought it ought to be; while the Republicans wished to keep it in conformity to its meaning as understood by the men who adopted it."

<sup>&</sup>lt;sup>2</sup> There is ground for thinking that Hamilton's desire to keep himself available for military leadership in such an anticipated struggle was his reason for not declining the duel in which Burr killed him.

1800, this feeling found its most violent expression. Fisher Ames, a Boston idol, declared: "Our country is too big for union, too sordid for patriotism, too democratic for liberty. . . . Its vice will govern it. . . . This is ordained for democracies." Cabot, another Massachusetts leader, declared, "We are democratic altogether, and I hold democracy, in its natural operation, to be the government of the worst." And Hamilton is reported to have exclaimed, pounding the table with clenched fist: "The people, sir! Your people is a great beast."

Dennie's Portfolio, the chief literary publication of the time, railed at greater length: "Democracy . . . is on trial here, and the issue will be civil war, desolation, and anarchy. No wise man but discerns its imperfections; no good man but shudders at its miseries; no honest man but proclaims its fraud; and no brave man but draws his sword against its force. The institution of a scheme of policy so radically contemptible and vicious, . . . " etc. And Theodore Dwight of Connecticut (brother of the President of Yale College), in a Fourth of July oration, asserted: "The great object of Jacobinism 2 . . . is to destroy every trace of civilization in the world, and force mankind back into a savage state. . . . We have a country governed by blockheads and knaves; the ties of marriage are severed and destroyed; our wives and daughters are thrown into the stews; our children are cast into the world from the breast and forgotten; filial piety is extinguished; and our surnames, the only mark of distinction among families, are abolished. Can the imagination paint anything more dreadful on this side hell?" In one Connecticut town, while Jefferson was President, a much-applauded Fourth of July toast ran: "Thomas Jefferson, may be receive from his fellow-citizens the reward of his merit - a halter."

It was one step more from such twaddle to suspect Jefferson and his friends of designs upon the property or the life of Federalist leaders. Gouverneur Morris' diary for 1804 contains the passage: "Wednesday, January 18, I dined at [Rufus] King's with General Hamilton.... They were both alarmed at the conduct of our rulers, and think the Constitution about to be overthrown: I think it already overthrown. They apprehend a bloody anarchy: I apprehend an anarchy in which property, not lives, will be sacrificed." With possibly some humorous exaggeration, Fisher Ames wrote: "My health is good for nothing,

<sup>&</sup>lt;sup>1</sup> CAUTION. — The student must not forget that the following expressions were spoken a few years later than the words of Jefferson with which they are contrasted.

 $<sup>^2\,\</sup>mathrm{A}$  term borrowed from the French Revolution, and applied to the Republicans by their opponents.

but . . . if the Jacobins make haste, I may yet live to be hanged." And Pickering, another New England leader, expatiates at length on the danger to himself and his friends from "the revenge, the malice, the ambition, the rapacity of the [Republican] leaders"; and in a letter to Rufus King he writes: "I am disgusted with the men who now rule, and with their measures. At some manifestations of their malignancy, I am shocked. The cowardly wretch at their head, while, like a Parisian Revolutionary monster, prating about humanity, would feel an infernal pleasure in the utter destruction of his opponents." More briefly, Fisher Ames referred to Jefferson and Gallatin as "knaves and cold-thinking villains." <sup>1</sup>

### V. FOREIGN RELATIONS

Within a week of Washington's first inauguration, the French Revolution began. Soon that tremendous movement involved all Europe in war.<sup>2</sup> Even the new-born American nation had only four years of quiet, in which to attend to pressing domestic concerns, before it too was drawn into complicated and troublesome foreign questions. These complications were to absorb a great part of American energy, and to vitally affect the course of American development, for twenty years, closing with a great war. During the first part of that period (the remaining eight years of Federalist rule) they fall into four chapters (§§ 230-233).

230. Relations with France, to 1795.—Popular sympathy went out enthusiastically to the French Republic in its desperate struggle against the "coalized despots." Everywhere in America there broke forth a rage for "civic feasts" and "Democratic clubs," and loud demands were voiced that we return to France, in her need, the aid we had received from her shortly before in our own Revolution. But on receiving news of war between France and England, in the spring of 1793, Washington called together his Cabinet (§ 215), and, with its unanimous approval, determined upon his famous

<sup>&</sup>lt;sup>1</sup> The real differences of opinion are suggested more fairly, perhaps, in a letter from Samuel Adams to John Adams (November 25, 1790): "A Republic, you tell me, is a government in which the People have an essential share in the Sovereignty. Is not the whole Sovereignty, my friend, essentially in the People?"

<sup>&</sup>lt;sup>2</sup> Modern History, §§ 329-343; especially §§ 337, 343.

"Neutrality Proclamation." This document is one of our greatest state papers. Coming at that critical time, it went far toward starting America upon a century-long policy of wise separation from Old-World quarrels.

Washington had no authority to fix the policy of the nation. That belongs to Congress. Accordingly, the proclamation did not declare that the United States would remain neutral. It did not even use the word. But it did refer effectively to the duties and advantages of neutrality for America, and was really a stately recommendation of such a policy. Public opinion soon pronounced overwhelmingly for the policy so recommended, and it may be said to have been established by the informal mandate of the people.

For a moment, however, the proclamation drew upon Washington loud abuse. Moreover, the new French minister, "Citizen" Genêt, attempted to disregard it, by using American ports for French privateers, as if they had been ports of an allied country. In this and other attempts to embroil us with England, he had much popular sympathy. At last, however, Genêt even threatened to appeal openly from the government to the people. American feeling rebelled at such presumptuous interference by a representative of a foreign power; and the Administration was generally supported when it demanded that France recall its minister.

231. English relations were complicated by (1) unfulfilled conditions of the treaty of 1783; (2) our desire for trading

In Washington's day that policy was particularly wholesome, because we could enter European politics only as the tail to the French or English kite. Foreigners observed among us "many adherents of France, and some of England, but few advocates of an American policy." Washington's policy, persisted in for generations, gave us time to free ourselves from this degrading "colonialism." Francis A. Walker's passage in this connection deserves to be quoted in full: "Colonialism is the disposition . . . to look abroad for standards of thought, action, or manners; not to be satisfied with the approbation of its own taste, judgment, or conscience. . . Colonialism, which . . . is simply want of self-respect in a community, was the curse of our earlier politics as it was of our earlier society. The States which had become independent in government were still unduly dependent in thought and feeling upon the old World. . . . "

privileges which we had enjoyed as colonies but had lost when we took ourselves out of the British Empire; and (3) different views of international law  $^{1}$  regarding the rights of neutrals in the great European war (a, b, c, below).

- a. England still held our "Northwest posts," and had made no compensation for slaves carried to freedom by her troops, while American pre-Revolutionary debts to Englishmen were still unpaid (§ 162). Moreover, indefinite terms in the treaty left an uncertain boundary line on the extreme Northeast (§ 232).
- b. England's "navigation acts" now shut our trade from her West Indies, just as if we had been Dutchmen or Spaniards. But that trade was more vitally important to us than to European countries, and it was essential to the English colonies (§ 131). British governors had already found themselves forced at times to suspend the restrictions and invite American ships to the islands, to avoid famine; while at other times much smuggling was carried on. We clamored for regular trading privileges with the islands.
- c. The English navy was trying to conquer France by shutting off foreign commerce. England looked upon our trade with France as an aid to the military resistance of that power. We regarded England's restrictions upon that trade as interference with neutral rights. Five points here were in dispute.
- (1) Supreme on the sea, England declared the French coast under "blockade." This meant that an English war vessel might seize, anywhere on the sea, a neutral ship whose official papers showed her bound for a "blockaded" port. America insisted that a blockade did not deserve recognition unless a blockading fleet actually lay off each harbor, so as to make entrance practically impossible. We called the English meas-

<sup>&</sup>lt;sup>1</sup> International law is not *law*, but *custom* which has won general approval, and which defines how notions *are expected* to act toward one another under given conditions. This body of custom has grown more definite, and has changed greatly, during the past century; but many of the points then in dispute between England and America are still unsettled. On the whole, however, America stood for an advanced interpretation, and her contentions have gained ground,—to the gain of ourselves and the world.

ure a "paper blockade." England soon modified it, to apply only to the French coast along the Channel, which a fleet at each entrance could close effectively; but we were not content.

- (2) France began (May, 1793) seizing American ships bound to England with foodstuffs, on the ground that such cargo was "contraband." England gladly followed this example, offering payment, it is true, for the food seized. We held that only military supplies were contraband.<sup>2</sup>
- (3) England captured neutral vessels bound even to an unblockaded port, if they carried goods belonging to citizens of a country with which she was at war. America claimed, "Free ships make free goods." 3
- (4) In time of peace, French "navigation acts" shut foreign trade from the French West Indies. During the French and Indian War, unable to carry on trade with these colonies herself because of England's fleet, France had suspended her restrictions, inviting neutral nations to do her carrying for her. England then proclaimed "The Rule of 1756,"—namely, that commerce which France would not permit with French colonies in peace, England would not permit in war. Now France had again opened her island trade to neutrals, and England again announced her Rule of '56.
- (5) More serious than any of these matters, to our eyes to-day, was the seizure of American seamen,—though at the time it awoke far less protest than the seizure of property. England had always recruited sailors for her men-of-war by the press gang; and—so essential was the war navy—English courts had always refused to interfere. Great numbers of British seamen deserted now to secure better wages and better conditions on American merchant ships; and they were often protected by fraudulent papers of "citizenship," easily secured in American ports. English vessels claimed the right to search American ships and take back

<sup>&</sup>lt;sup>1</sup>The modern understanding of blockade is more nearly in accord with this final English position than with the rigid American claim, — which indeed we abandoned in our blockade of the Southern ports in the Civil War. Paper blockades are not recognized by international law.

<sup>&</sup>lt;sup>2</sup>The Russian-Japanese War proved that this is still a vexed question. Food for an army, or for a besieged town, comes under the head of military supplies. And if England to-day were at war, and should lose command of the sea, there is no doubt her enemies would try to starve her into submission by shutting out American food.

<sup>&</sup>lt;sup>3</sup>This maxim had been set up by Holland in 1650, and agreed to by northern European nations in 1780, except for England's opposition. War on land has long recognized, in considerable degree, that private property should be taken by a hostile army only as a necessary war measure, not merely for plunder. At sea, this civilizing doctrine has made slower progress, and piratical customs have continued.

such sailors. Then the practice was extended to the impressment of other British subjects found there, and even to those who had been legally "naturalized" by American law.<sup>1</sup> Worse still, in irritation at the American encouragement to their deserters, English officers sometimes impressed born Americans, either by mistake or by set purpose.

The "right of search" exists. In time of war, a war vessel of either power may stop and search a neutral trading vessel on the high seas to ascertain (1) whether it really is a neutral vessel as its flag proclaims; (2) whether it is bound for any blockaded port; (3) whether it carries "contraband." If strong presumption is found against the vessel on any of these points, it may be carried to a "prize court" for trial, and if adjudged guilty, it becomes "lawful prize." But no "right of search" applies to seizing people; and the "right" must always be exercised with discretion and without unduly embarrassing neutral trade.

All England's vicious practices were carried out by other European belligerents also; but England's navy was the only one able to injure us seriously. As scores of American vessels with valuable cargoes were swept into British prize courts, American feeling rose to war heat. In the spring of 1794 Congress laid a temporary embargo upon all American shipping (that it might not be caught at sea, without warning, by the expected war), and threatened to seize all moneys in America due British creditors, to offset British seizures of American ships. This would have meant war.

That disaster was averted only by the calm resolution of Washington. He appointed John Jay special envoy to negotiate with England; and in November, 1794, "Jay's Treaty" was ready for ratification. By its terms, impressment was not mentioned nor blockade defined. England had her way, too, as to contrabrand and neutral ships; but she agreed to vacate the Northwest posts, to open to American trade her West India ports under certain restrictions, and to make compensation to

<sup>&</sup>lt;sup>1</sup>England denied the right of an Englishman to change his allegiance. "Once an Englishman, always an Englishman." The American contention of a man's right to change his citizenship by "naturalization" has prevailed.

<sup>&</sup>lt;sup>2</sup> England offered to open the West India ports to American trade, but only to small coasting vessels, and upon condition that America promise for twelve years not to export to any part of the world molasses, sugar, coffee, cocoa, or

American citizens for recent seizures of ships and goods.<sup>1</sup> The American government dropped the claim for compensation for the deported Negroes, and promised to compensate British creditors who had been unable to collect pre-Revolutionary debts.

It took all Washington's influence to secure ratification of the treaty in the Senate; and even so, after bitter debates, there was not a vote to spare.<sup>2</sup> Among the people, excitement and opposition were intense. Jay was burned in effigy. Hamilton was stoned from a public platform where he advocated ratification. Washington himself was heaped with vituperation. The Virginia legislature voted down a resolution expressing trust in her greatest son, and the national House of Representatives struck out the customary words "undiminished confidence" from an address to him.

Had Jay been less sympathetic toward England or better acquainted with American conditions, it is barely possible he might have secured better terms. The treaty certainly left much to be desired; but at worst it was well worth while. America secured undisputed possession of her full territory and satisfaction for commercial injuries.<sup>3</sup> If we gained

cotton. The English intention, probably, was simply to maintain her navigation system with regard to other countries, by making sure that American vessels, admitted to the Island ports, should not carry the products of those colonies to other parts of the world as well as to the United States, and that such products, if brought first to the United States, should not be reëxported. Jay, too, seems to have been ignorant that these restrictions would hamper American commerce. The twelfth article of the treaty, containing this trade provision, was particularly unpopular, and was cut out by the Senate before ratification.

<sup>1</sup> England finally paid \$6,000,000 to American claimants.

<sup>2</sup>To carry out some provisions of the treaty (payment of British creditors) an appropriation was necessary; and this had to be made by the House of Representatives. That chamber would not have ratified the treaty, if left to itself, and now showed disposition to defeat it indirectly. By a close vote, however, the position was maintained that treaty-making belongs, by the Constitution, to the President and Senate; and that it is the constitutional duty of the House to make the necessary appropriations. This precedent has been followed on later occasions, though not without some difference of opinion.

<sup>8</sup> No treaty at that time could have secured from England the abandonment of impressment; but that practice had not yet reached the height to which it came later.

little else, we gained what we needed most—time. To our new and unprepared nation, war at that moment would have been ruin. The treaty permitted, for seventeen years, an honorable escape. Moreover, one feature of the treaty was a distinct step onward for humanity, though at the time its significance was little appreciated. The Jay Treaty deserves to be held in honorable memory, because it provided for the first instance of international arbitration in modern times and in the modern sense (§ 232).

232. Arbitration. — The treaty of 1783 had named the St. Croix River as the boundary of Maine from the sea to the highlands. But that unexplored region contained several rivers bearing that name. The treaty-map, with its red-ink drawings, had been lost; and several thousand square miles of territory had fallen into honest dispute.

The treaty of 1794 submitted the question to adjudication by a commission (two men chosen by each power, they to have authority to choose a fifth); and each nation pledged itself to abide by the award. The commission was to act as an international court, with somewhat of judicial procedure. It was not to be merely a meeting of diplomats, to make a bargain, or to seek out a compromise. It was to examine evidence and hear argument, and was sworn to do justice according to the real merits of the case, as an ordinary court decides title to property between private claimants.

This rational agreement called forth violent outcry. In England, the ministry were assailed for "basely sacrificing British honor"; and, on this side the water, there was much senseless clamor about "not surrendering American soil without first fighting to the last drop of our blood." To such silly, question-begging pretense of patriotism, Hamilton's reply was unanswerable: "It would be a horrid and destructive principle that nations could not terminate a dispute about a parcel of territory by peaceful arbitration, but only by war."

233. Spanish troubles have been treated in earlier chapters. In 1795, after vigorous negotiation, not unaccompanied with virtual threats of war, the *Pinckney Treaty* secured what seemed on paper a fairly satis-

factory adjustment. Spain (1) recognized the thirty-first parallel as the northern boundary of Florida (§ 162, note); (2) bound herself to restrain Indian hostilities; (3) promised the "right of deposit" at New Orleans (§ 175); and (4) agreed to pay for previous seizures, after arbitration of claims by a mixed commission.<sup>1</sup> In practice, it is true, Spanish officials in America continued unwarranted abuses.

234. New Troubles with France: "The War of 1798."—If the Jay Treaty saved us from war with one country, it wellnigh plunged us into war with another. France was disappointed and angered; and her government, in a violent protest, charged the United States with weakness and bad faith. Washington had just recalled Monroe, our minister to France, because of dislike for his pro-French conduct; and France insultingly refused to receive Pinckney, who had been appointed to the place. Soon she withdrew her minister from America, and, to the full extent of her power, began aggressions upon our commerce.

Meantime, the administration of Adams had opened, — to be occupied almost wholly by these troubles and by the disputes at home growing out of them. The new President sent Gerry, Pinckney, and John Marshall to France to negotiate a settlement. The French administrators first ignored these gentlemen, and then, through secret agents, tried to intimidate them and to demand tribute in money for their own private pockets.<sup>2</sup>

The publication of this infamous matter in America, and Pinckney's famous phrase, "Millions for defense, but not a cent for tribute," silenced the friends of France and fanned popular indignation to white heat. Even the Southern States elected Federalist congressmen; and, in 1798, the Federalists once more gained possession for a moment of all branches of the

¹ Commissions had been provided also in the Jay Treaty to adjudicate the claims of English citizens for old debts, and of American citizens for recent losses. Such commissions, to decide the value of *private claims*, were a notable advance; but they should not be confounded with a commission to decide between two nations.

<sup>&</sup>lt;sup>2</sup> Special report: The X. Y. Z. affair.

government. Meantime, in the old Congress, enough waverers were swept off on the Federalist tide to give that party a working majority. In the summer of 1798, preparations for war were hastened. The army was reorganized, with Washington's as commander in chief and Hamilton as his second in command; war vessels were built. War was not formally declared, it did exist in fact. Scores of ships were commissioned as privateers, to prey upon French merchantmen; and the frigate Constellation fought and captured the French Vengeance.

At this moment, in a roundabout way the French government intimated that it would be glad to renew negotiations. Adams had won great applause by his declaration, "I will never send another minister to France without assurance that he will be received, respected, and honored as becomes the representative of a great, free, powerful, and independent nation"; but now patriotically he threw away his popularity and the chance predominance of his party, in order to save his country from war. Even without the previous knowledge of his Cabinet, he appointed another embassy; <sup>2</sup> and the treaty of 1800 secured our trade, for the time, from further French aggression.

### VI. DOMESTIC TROUBLES, 1797-1800

235. War Taxes: "Fries' Rebellion." — Preparation for war necessitated more revenue. The tariff was raised; a Stamp Act was passed; and a "direct tax" of \$2,000,000 was apportioned among the States. All these measures caused loud outcry, and the last resulted in a "rebellion."

The direct tax was collected upon slaves and real estate. Houses were assessed according to size and number of windows. Officers were fre-

<sup>1</sup> Washington had become so warm a partisan that he wished to exclude all Republicans from the army.

<sup>&</sup>lt;sup>2</sup> Adams showed a patriotic courage in this act, which is perhaps his best claim to grateful remembrance. He himself proposed for his epitaph, "Here lies John Adams, who took upon himself the responsibility for the peace with France, in 1800."

<sup>&</sup>lt;sup>3</sup> The Stamp Act was similar to the British Act of 1765. Read Walker's Making of the Nation, 144.

quently insulted or resisted in their attempts to measure houses.¹ In Pennsylvania a number of rioters were arrested. They were promptly rescued by armed men led by a certain Fries. President Adams thought it necessary to call out an army to repress the "insurrection." Fries was condemned to be hung for treason, but was pardoned by the President (cf. § 220), — to the indignation of leading Federalists, who clamored for an "example." ²

236. Alien and Sedition Acts. — Political controversy had grown excessively bitter. Republican editors poured forth upon the President and his administration abuse which in our better-mannered era would be regarded as blackguardism. The Federalists, made quite mad by their new lease of power, retorted with language equally foul, and with the notorious "alien and sedition" laws, — repressive, tyrannical, dangerous to the spirit of free institutions.

A new Naturalization Act raised the period of necessary residence in the United States from five years to fourteen; and an Alien Law authorized the President, without trial,3 merely at his pleasure, to order out of the country "any aliens he shall judge dangerous to the peace and safety of the United States," and, if they remained, to imprison them "so long as, in the opinion of the President, the public safety may require." The Sedition Law provided fine and imprisonment for "combining" to oppose measures of the government, and for "any false, scandalous, or malicious writing against the government" or against its high officials, 'with intent to bring them into disrepute.'

<sup>&</sup>lt;sup>1</sup> A favorite device was to pour slops on their heads from the windows.

<sup>&</sup>lt;sup>2</sup> Adams himself had blamed Washington severely for pardoning the leaders of the Whisky Rebellion. On the question of whether Fries' conduct really constituted "treason," cf. Walker's *Making of the Nation*, 147.

<sup>&</sup>lt;sup>8</sup> The denial of jury trial was defended on the ground that the Sixth Amendment applied only to "citizens."

<sup>&</sup>lt;sup>4</sup> A third Alien Act (regarding "alien enemies") was perfectly proper and is still in force. It authorizes the President to expel from the country all citizens of a nation with which the United States is at war, if he think such action needful.

Of course, seditious utterance and slander, if provable, were already punishable in *State courts*, under the Common Law. But, since the Zenger trial (§ 119), prosecutions of this sort for *political* utterances had become obsolete. The people, with sound instinct, had preferred to endure some bad manners, rather than to imperil liberty. This reënactment of obsolete practice by a national law, to be enforced in the Government's own courts, was a sinister indication of the Federalist disposition to stifle political criticism. In spirit at least it was in conflict with the first amendment.

President Adams took no part in securing this legislation; and he made no use of the Alien Act. But Federalist judges manifested a stern animosity in securing convictions under the Sedition Law. Mathew Lyon, a Vermont congressman, charged Adams with "unbounded thirst for ridiculous pomp and for foolish adulation" and with "selfish avarice." For these words, he was punished by imprisonment for four months and by a fine of \$1000. Nine other convictions followed in the few months remaining of Federalist rule; and a few like cases occurred even in Federalist State courts.¹ One grand jury indicted a man for circulating a petition for repeal of a law.

237. Virginia and Kentucky Resolutions. — To the Republicans this Federalist legislation appeared to be a conscious violation of the "bill of rights" in the Constitution, and they apprehended further attacks upon personal liberty. Appeal to the violently partisan courts offered little chance of redress; and they turned for protection to the State governments and

<sup>&</sup>lt;sup>1</sup> Cf. Professor Frank Maloy Anderson's articles in *American Historical Review*, October, 1899, and January, 1900. Forty years later, Congress reimbursed Lyon's heirs with interest.

<sup>&</sup>lt;sup>2</sup> Jefferson wrote to George Mason (Works, Washington ed., IV, 257): "I consider those laws only an experiment on the American mind to see how far it will bear an avowed violation of the Constitution. If this goes down, we shall see attempted another act of Congress declaring that the President shall continue in office during life, reserving to another occasion the transfer of the succession to his heirs and the establishment of the Senate for life. That these things are in contemplation, I have no doubt." In the same passage, Jefferson suggests that "Monk" [Hamilton] "may be playing the game for the restoration of his most gracious majesty, George III."

the doctrine of State sovereignty. The Federalists, drunk with power, had threatened tyranny: the Republicans, in frenzied panic, sought refuge in a doctrine of anarchy. Multitudes of popular meetings denounced the Alien and Sedition laws, properly enough; and the Republican legislatures of Virginia and Kentucky passed mischievous resolutions of protest, asserting the principle of Nullification.

### [To be discussed with books open only.]

The Virginia Resolutions called upon the other States to join in declaring the Alien and Sedition acts unconstitutional and therefore void. Just how the laws were to be *made* void in practice, was not clear; but the resolutions affirmed "That, in case of a deliberate, palpable, and dangerous exercise [by the Central government] of . . . powers not granted by the said compact [the Constitution], the States . . . have the right, and are in duty bound, to interpose."

The first Kentucky Resolutions affirmed (1) "that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force"; (2) "that the government created by this compact [the Constitution] was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its powers"; (3) "that to this compact each State acceded as a State, and is an integral party, its co-States forming . . . the other party"; and (4) "that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress." It was further asserted "that this Commonwealth is determined, as it doubts not its co-States are, tamely to submit to undelegated . . . powers in no . . . body of men on earth"; but the only action suggested is that the other States "unite with this Commonwealth in requesting the repeal [of the objectionable legislation] at the next session of Congress." 2

In debate, however, the leading advocate of the Resolutions added: "If upon the representations of the States, from whom they derive their

<sup>&</sup>lt;sup>1</sup> Jefferson wrote the first draft of the resolutions for Kentucky; Madison, for Virginia, in somewhat gentler form. Indeed, the first set of Kentucky Resolutions, in 1798, did not contain the word *Nullification*, though it was used in debate, but it appeared explicitly in a second set, in 1799.

<sup>&</sup>lt;sup>2</sup> MacDonald's Select Documents gives these Resolutions and also the Alien and Sedition Laws (pp. 137 ff.).

powers, they [Congress] should nevertheless attempt to enforce [those laws], I hesitate not to declare it as my opinion that it is then the right and the duty of the several States to nullify those acts, and to protect their citizens from their operation. But I hope and trust such an event will never happen, and that Congress will always have sufficient virtue, wisdom, and prudence, upon the representation of a majority of the States, to expunge all obnoxious laws." 1

The Resolutions of 1799 were more strenuous in statement of principle, though even less emphatic as to proposed action. Irritated by the unfavorable responses from other States, the Kentucky legislature now used the word nullification, but was careful not to advise its application. It again asserted the central doctrine of its former resolutions—that the government is not judge of its own powers, and added (1) "that the several States who formed [the Constitution], being sovereign and independent, have the unquestionable right to judge"; and (2) "that a Nullification by these sovereignties of all unauthorized acts done under color of that instrument is the rightful remedy." But all this is a prelude to only "a solemn protest" against the Alien and Sedition acts.

It has been noted that the war frenzy of 1798–1799 had momentarily put the Federalists in control of most of the State legislatures, or at least of the lower Houses. This accidental predominance explains why the Southern States in general made no response to the Virginia and Kentucky appeals, while several Northern legislatures condemned those Resolutions severely,—sometimes expressing approval of the Alien and Sedition laws, always denying the right of a State government to judge of the constitutionality of Congressional acts. Several replies denied the Kentucky doctrine that there was "no common judge" between a State and the Union, affirming that the Supreme Court filled that position.

This, of course, has come now to be the universal belief.

Apparently, then, these resolutions did not mean nullification by one State, unless a majority of States favored such action. If this champion had made the proportion three fourths, he would have had the number necessary to override a law by constitutional amendment. The matter was left vague; and "nullification" in these resolutions is vastly different from the precise and definite claim of Calhoun in 1830 as to the right of any State to act upon its own judgment (§ 300).

In that day, however, the other doctrine — that there was "no common judge" — was not surprising. It grew naturally out of the vagueness or timidity of the Philadelphia Convention in this matter. The Supreme Court itself, we must remember, had not yet used the power to pass upon the constitutionality of the Acts of Congress. It had not even claimed that right, and was not to do so for some years more (§ 257); and the very New England States which now affirmed this mighty province for the Supreme Court denied it explicitly fifteen years later, adopting in express terms the doctrine of these Kentucky Resolutions (§§ 269, 270).

It is well, however, for the student, at this stage, to realize that nullification, whether of Jefferson's brand in 1798, or New England's in 1814, or Calhoun's in 1830, was absurd in logic, and would have been anarchic in practice. Any group of citizens or of States which feels itself sufficiently oppressed, has the natural right to rebel, and try to change the government by revolution, —as America did in 1776. The right of revolution is the fundamental guarantee for liberty in organized society. The question regarding it is never one of abstract right, but always of concrete righteousness under given conditions. In result, too, revolution means either the confirmation of the existing government or the substitution of another government. But nullification meant a constitutional right to reduce the government to a shadow while claiming its protection.

#### VII. EXPIRING FEDERALISM

238. Causes of Federalist Overthrow. — The Federalist leaders had fallen into foolish blunders (like the house tax) because they did not understand popular feeling; and they had attempted reactionary and despotic measures (like the Sedition Act) because they did not believe in popular government. They were out of touch with the most wholesome tendency of the times. The brief reactionary movement in American life was dying, and the people had resumed their march toward democracy. When an arrogant French Directory threatened the Federalist administration, patriotism had temporarily rallied the nation

to its support; but with the passing of that foreign danger, passed also the chance of further Federalist rule.

"Before it died, Federalism had degenerated into a senile Toryism, as much out of touch with the age, and as incapable of political activity, as Jacobitism in England." — Ford, American Politics, 119.

"The blunder of the Federalists [in passing the Alien and Sedition Acts] was not an accidental one . . . It was thoroughly characteristic. It sprang out of a distrust of the masses; a belief that the people must always be repressed or led; a reliance on Powers, Estates, and Vested Interests within the Commonwealth; a readiness to use force;—all of which were of the essence of the aristocratic politics of the last quarter of the eighteenth century."—Walker, Making of the Nation.

239. Disreputable Trickery in the Election of 1800. — The Federalists tried to bolster their cause by inducing Washington to be a candidate once more, in 1800; but his refusal and death threw them back upon Adams, whose old Revolutionary popularity made him still their most available man. The Republican candidates were Jefferson and Burr (the latter a sharp New York politician). Lacking true majorities, the Federalists strove to manufacture false ones. The electoral vote finally stood only 73 to 65 against them; but, if the twenty or so votes secured by disreputable trickery, against the will of the people, had been restored to the column where they belonged, their defeat would have shown overwhelmingly, and the vote would have stood about 100 to 40. Details throw light upon the political morality of the times.

a. A Massachusetts law provided for choosing electors, in districts, by popular vote. Early Congressional elections showed a strong drift towards Republicanism, and it was certain that party would carry several, at least, of the sixteen electors. The old legislature, still Federalist by a small majority, was summoned, in special session, and repealed the electoral law, choosing Federalist electors itself. New Hampshire took similar action.

<sup>&</sup>lt;sup>1</sup> A term applied to a small faction of reactionaries in England, who, even after the Revolution of 1688, still clung to the doctrine of Divine Right, and therefore claimed to owe allegiance to the exiled Jameses, or *Jacobi*.

- b. In *Pennsylvania* the new House of Representatives was strongly Republican, but hold-over members, from the war-election, kept the Senate Federalist.<sup>1</sup> So far, that State had always chosen its electors by popular vote. This time the Senate would not agree to the necessary law (since that method would give most of the districts to the Republicans). There being no law on the matter, it was then necessary for the legislature itself to choose electors. All elections of officers by that body had been by joint ballot. The Senate now insisted upon a concurrent vote (cf. § 212), and finally compromised upon a scheme which allowed it to name seven of the fifteen electors.<sup>2</sup>
- c. In New York the law provided that electors should be chosen by the legislature. This choice would belong to a new (Republican) legislature just elected. Hamilton wrote to Governor Jay, urging him to prevent this result by calling a special session of the expiring Federalist legislature (as in Massachusetts) so that that body might repeal the law and turn the choice of electors over to the people, in districts, in which case some Federalists might have been chosen. To Jay's honor, he refused to accept this suggestion, indorsing the paper with the words, "Proposing a measure for party purposes which I think it would not become me to adopt."
- d. When the contest was over, and it was plain that the people had turned the Federalists out of all the elective branches of the government, the expiring and repudiated Congress and President used the few days left them to intrench their party in the appointive branch of government,—the judiciary,—"that part of the government upon which all the rest hinges," and indulged in a desperate attempt to rob the majority even of its choice for the executive. These attempts call for more extended treatment (§§ 239, 240).
- 240. The Judiciary Act of 1801 was merely an unscrupulous attempt to perpetuate Federalist rule.<sup>3</sup> (1) Provision was

<sup>1</sup> In a new constitution, in 1790, Pennsylvania exchanged its one-House legislation for the prevalent two-chambered system.

<sup>&</sup>lt;sup>2</sup> This shabby trick—a deliberate violation of a popular mandate—was loudly applauded by the Federalists as lofty patriotism. Said the Philadelphia United States Gazette of the Federalist Senators: "[They] deserve the praises and blessings of all America. They have checked the mad enthusiasm of a deluded populace (!) . . . They have saved a falling world."

<sup>&</sup>lt;sup>8</sup> The Federalist argument for the bill (when the question of repeal came up the next year) rested chiefly upon the necessity for separate circuit courts, in order to protect the Supreme Court Justices from riding circuit. But the Supreme Court, in plain matter of fact, had never been overworked.

made that the first vacancy in the Supreme Court should not be filled, but that the number of Justices should at that future time be reduced by one. In the natural order of things, this would prevent Jefferson from making any appointments to that bench. (2) New Circuit Courts were created (§ 217), and the number of circuits was increased to six, with three judges for each except the last. This made places for sixteen new judges, to be immediately appointed by Adams in the remaining nineteen days of his administration. (3) The number of District Courts was increased from thirteen to twenty-three, making places for eight more such appointments. In addition, of course, there were clerks and marshals to be named for all these new courts.

Adams was not able to make his last appointments under this law until late on the last evening of his term of office; and the judges so appointed have gone by the name of "the Midnight Judges" in our later history. One of the worst features of a thoroughly bad business was that these appointments were used to take care of Federalist politicians now thrown out of any other job. The Constitution prevented the appointment of members of the expiring Congress to any of the new judgeships just created by them (cf. § 200); but this constitutional provision was evaded with as little compunction as went to thwarting the will of the people. Former District judges were promoted to the new Circuit judgeships, and their former places were filled by "retired" Federalist congressmen.<sup>1</sup>

Apart from this shallow evasion of a law in the Constitution, the appointments set a vicious example. The people at the polls had repudiated certain men for government positions; but President Adams, the agent of the people, thought it proper to place those men in more important government positions for life, where the people could not touch them. This sad abuse of the Presidential power has had much later

It had then only ten cases before it, and, in the preceding ten years of its life, it had had fewer cases than are customary in one year now. The weakness of the Federalist argument appears in the fact that the bill was repealed and the old order restored and maintained seventy years longer.

<sup>&</sup>lt;sup>1</sup> In urging repeal in 1802, John Randolph, Republican leader in Congress, declared that the Federalists had turned the Judiciary into "a hospital for decayed politicians."

imitation. Such a practice is repugnant to every principle of representative government.

241. Attempt on the Presidency. — One other incident led almost to civil war, and resulted finally in the twelfth amendment. Jefferson and Burr had received the same electoral vote. Every Republican had intended Jefferson for President and Burr for second place, but, under the clumsy provision of the Constitution (cf. §§ 212, 227, note) the election between these two was now left to the old House of Representatives, in which the Federalists had their expiring war majority.¹

The Federalists planned at first to create a deadlock and prevent any election until after March 4, when they might declare government at a standstill and elect the presiding officer of the old Senate as President of the country. Jefferson wrote at the time that they were kept from this attempt only by definite threats that it would be the signal for the Middle States to arm and call a convention to revise the Constitution. Then they fell back upon a trick, more in agreement with the letter of the Constitution, but one which would equally have cheated the nation of its will. The House of Representatives had the legal right to choose Burr for President, instead of Jefferson; and seemed bent upon this course, until Hamilton rendered his last great service to his country by opposing such action.<sup>2</sup>

Then, after a delay of five weeks, and thirty-six ballotings, the House chose Jefferson President; and early in the first session of the next Congress the twelfth amendment was proposed and ratified, for naming separately President and Vice President on the electoral ballots.

<sup>&</sup>lt;sup>1</sup> The new House, elected some months before, but not to meet for nearly a year longer, was overwhelmingly Republican; but, by our clumsy arrangement, once more a repudiated party remained in control at a critical moment. Cf. § 212.

<sup>&</sup>lt;sup>2</sup> Hamilton does not seem to have felt the enormity of the proposed violation of the nation's will; but he knew Burr to be a reckless political adventurer, and thought his election more dangerous to the country than even the dreaded election of Jefferson.

- 242. Excursus: Difficulty of Amendment. The first ten amendments, we have seen, came in one body, as a part of the bargain by which ratification of the Constitution was secured. The eleventh and twelfth came in response to passions which might otherwise have led easily to civil war. The next three amendments in one group were to result from civil war (§§ 382-385). Between these and the twelfth, more than sixty years elapsed; and since the last of these Civil War amendments, forty years more have passed without further change in the written document of the Constitution in spite of many long-continued popular demands. In practice, the amending clause has proven seriously defective. A Constitution that can be modified, constitutionally, only through fear of war or as the result of war, is too "rigid."
- J. W. Burgess, a conservative scholar, believes in a written constitution as a check upon hasty action by a majority; but he says with distinct reference to the situation in the United States: "When in a democratic political society, the well-matured, long and deliberately formed will of the majority can be successfully thwarted, in the amendment of its organic law, by the will of the minority, there is just as much danger to the State from revolution and violence as there is from the caprice of the majority where the sovereignty of the bare majority is acknowledged."

Professor J. Allen Smith (Spirit of American Government, 46 ff.) counts some 2200 proposed amendments since 1789, including direct election of President and of the Senate, and legislative control over the judiciary. He estimates that  $\frac{1}{14}$  of the population constitutes a majority in the twelve smallest States, and so might defeat an amendment desired by  $\frac{4}{14}$  after it had passed Congress.

243. Meaning of the Federalist Period. — Alexander Hamilton is the hero of the twelve-year Federalist period. He should be judged in the main by his work in the years 1789–1793. During that critical era, he stood forth — as no other man of the day could have done — as statesman-general in the conflict between order and anarchy, union and disunion. His construc-

<sup>&</sup>lt;sup>1</sup> Review §§ 196, 216, and Article V of the Constitution. Since this page was put in type, the Sixteenth Amendment has been ratified (February, 1913), making a Federal income tax constitutional. An attempt has been made in Congress to submit an amendment which will simplify the amending process.

tive work and his genius for organization were then as indispensable to his country as Jefferson's democratic faith and inspiration were to be later. Except for Hamilton, there would hardly have been a Nation for Jefferson to Americanize. We may rejoice that Hamilton did not have his whole will, even in the matter of centralization; but we must recognize that the centralizing forces he set in motion made the Union none too strong to withstand the trials of the years that followed.

Those centralizing forces may be summarized concisely. The tremendous support of capital had been secured for almost any claim the government might make to doubtful powers. Congress had set the example of exercising doubtful and unenumerated powers; and a cover had been devised for such practice in the doctrine of implied powers. The appellate jurisdiction conferred on the Supreme Court was to enable it to defend and extend this doctrine. Congress had begun to add new States with greater dependence of feeling upon the National government. And the people at large had begun to feel a new dignity and many material gains from a strong Union.

For Further Reading. — Bassett's Federalist Period ("American Nation" series) is a satisfactory treatment. Francis A. Walker's Making of the Nation (73-167) is an admirable brief account. Biographies of Washington, Adams, and Hamilton should be accessible. Source material can be found in many collections, — notably, MacDonald's Select Documents and Hart's Contemporaries III.

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# PART III

## DEMOCRACY AND NATIONALITY 1800-1876

### CHAPTER X

#### AMERICA IN 1800

(A proper introduction to this chapter is a rereading of §§ 111, 120–124, 137, and 185.)

244. Preliminary Survey. — From the election of Jefferson to the close of the Civil War, American history is marked by six great lines of development: our territory expanded tremendously; we won our intellectual independence from Old World standards; democracy spread and deepened in our national life; our industrial system grew vastly more complex; slavery was abolished; and the spirit of Nationalism triumphed at last over all fear of disunion. These tendencies were intimately interrelated; and it was the territorial expansion which formed the chief medium through which ran the bonds between the others.

The nineteenth century has for one of its chief marks for all the globe the expansion of civilization into waste or wild spaces. England, Russia, and the United States were the three powers most interested in this movement. The two others added more territory than we; but not even for them was this growth so much the soul of things as for us. It is the key to our other growth.

Territorial growth made us truly American. Our tidewater communities remained colonial in sentiment long after they became independent politically. Only when our people had



climbed the mountain crests and turned their faces in earnest to the great West, did they cease to look to the Old World for standards of thought and culture and to hang timorously upon Old World approval. Our war for intellectual independence was waged against the Appalachian forests.

It made us democratic. The communities politically progressive have always been the frontier elements,—first the western sections of the original States, and then successive layers of new States.

It created our complex industrialism, with division of industries and of labor, and the interdependence of sections; and so it helped to bring about the inevitable conflict between slave and free labor.

It lies at the root of our growth in nationality, as opposed to the jealous, particularistic, separatist tendencies in the original Thirteen States. It was expansion into the Mississippi valley, wrought out by nature for the home of one mighty industrial empire, that transformed a handful of jangling communities, scattered amid the forests and marshes of the Atlantic slope, into a continental nation.

In all this change, throughout the nineteenth century, the ever shifting frontier, with its fluidity of life and its progressive temper, was "the line of most effective Americanization." And so Americans have exulted, with right, in mere growth,—feeling truly, if not always clearly, that it was not mere growth. Sometimes this exultation has clothed itself in cheap spread-eagleism or insolent jingoism, offensive to the polite ears of people of refinement, whose culture has not been robust enough to discern the sound instinct beneath the crude articulation. A good deal of fun has been poked at bumptious talk of "manifest destiny," and many

<sup>1</sup> Review § 185, on "the meaning of the frontier."

<sup>&</sup>lt;sup>2</sup> This talk, and especially the Western exuberance, is caricatured in a story of toasts at a dinner party of Americans in Paris during the exultation that followed the victory of the North in the Civil War. "Here's to the United States," said the first speaker (a Bostonian), "bounded on the north by British America, on the south by Mexico, on the east by the Atlantic Ocean, and on the west by the Pacific." These words represented vast and recent achievment, and still more recent preservation. "But," said the second speaker, from Chicago, "this is too limited a view. We must look to our Manifest

well-meaning critics—unable to read the great American poem in its prose version—have seen in this buoyant self-confidence only a vulgar and grotesque boastfulness of material bigness, and have lamented that the national ideals were so sordid and mean.

Sordid, for a time, American ideals did become, in great measure; but not until the later part of the nineteenth century, — when this period of expansion was over, and commercialism had replaced romance as the dominant note in our life (§ 407). Throughout the period now under consideration, the plain people felt, more or less consciously, the inner truth which the cultured critic missed. For the creation of the nation, and for its proper life, the conquest of our proper territory was first needful; and this Titanic conflict with a continent became idealized to the heart and imagination of a hardy race. This was the hundred-year American epic, — its protagonist, the tall, sinewy, saturnine frontiersman, with his long rifle and well-poised ax, and usually with his Bible, encamped in the wilderness to win a home for his children, and for a nation.

"O strange New World! That never yit wast young. Whose youth from thee by grippin' need was wrung; Brown foundlin' o' the woods, whose baby-bed Was prowled roun' by the Injun's cracklin' tread, And who grewst strong thru shifts, and wants, and pains, Nursed by stern men with empires in their brains, Who saw in vision their young Ishmael strain In each hard hand a vassal Ocean's mane! Thou taught by freedom, and by great events, To pitch new States as old-World men pitch tents!" 1

245. Physical Conditions. — Since American history now turns away from the Atlantic border, it is needful to take account more fully of the geography of the continent and the marvel-

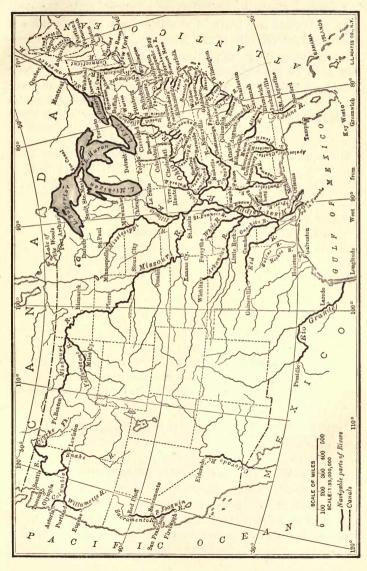
Destiny. Here's to the United States, bounded on the North by the North Pole, on the south by the South Pole, on the east by the rising, and on the west by the setting, sun." Long and uproarious applause for this ambitious sentiment only stimulated a very serious gentleman from California, who next arose: "If we are to take our manifest destiny into account, why restrain ourselves within such narrow limits? I give you the United States, bounded on the North by the Aurora Borealis, on the south by the Precession of the Equinoxes, on the east by Primeval Chaos, and on the west by the Day of Judgment!"

<sup>1</sup> Lowell's Biglow Papers.

ous physical advantages of the United States.¹ For communication with the outside world, the two oceans and the Gulf give to the United States of to-day a coast line of 18,000 miles, — a line greater in proportion to area than even the coast line of Europe. Rivers and the American shore of the Great Lakes add 19,000 miles of navigable interior waterways, — a condition absolutely beyond parallel in any other large portion of the globe. More than four fifths of these internal water roads, too, are grouped in the vast systems of the Lakes and the Mississippi, — virtually one system, — opening on the sea on two sides and draining more than a million square miles of territory (the interior third of the United States). This gives to cities a thousand miles inland the advantages of seacoast ports, and binds together, for instance, Pittsburg and Bismarck, on opposite slopes of the great valley a thousand miles across.

Above the limit of navigation, these streams, and others, furnish an unrivaled water power. Many years ago, Professor Shaler estimated that the energy already derived from the streams of this country exceeded that from the streams of all the rest of the world. This power was of particular importance in colonial days. Then, for a hundred years, it lost value, relatively, after the invention of steam and the use of coal; but now, with new devices to turn it into electric power, it looms again a chief factor in future wealth.

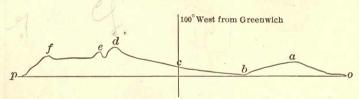
The Appalachian system contains rich deposits of coal and iron in close neighborhood (an indispensable condition for development of the manufacturing arts in the nineteenth century); while the Great Lakes make communication easy between Appalachian coal and Lake Superior iron. Other mineral deposits needful in industy exist in abundance, well distributed over the country,—copper, lead, zinc, building stone, gold and silver, salt, phosphates, clays, cements, graphite, grindstones, and a small amount of aluminum. In 1800, great forests still stretched from the Atlantic to Illinois



and western Kentucky, and the vast woods of the Pacific slope were to become our heritage at a later date. The fertile soil and abundant rainfall of the Mississippi valley, and the temperate climate of great portions of it, need only to be suggested to be appreciated. It seems probable, too, that New World conditions tend to build the European immigrant into a stronger and larger man than could have developed in his original home.

### [To be discussed with books open.]

Quite as marked are certain political results of our geography. The map of Western Europe makes clear why eight or nine distinct governments there divide an area smaller than that of the Mississippi valley. In like manner, the physical features of the Atlantic fringe of America tended to particularism, as we have seen, in industry and in politics. But the great central valley, to become the center of American history



SECTIONAL ELEVATION OF THE UNITED STATES IN LATITUDE 40° NORTH.

(After Draper. Elevations magnified.)

p-o, sea level; a, Appalachian crest; b, Mississippi; c, beginning of saline plains; d-e, Great Salt Lake region; e-f, great elevated basin; f, Coast range; o-c, Atlantic section; e-f, Pacific section.

The slope bd is more than 1000 miles long, up to the mountain passes, which are about 10,000 feet above the sea (with peaks rising 4000 or 4300 feet higher). The true rise, therefore, is less than 10 feet to a mile.

soon after 1800, tended irresistibly to political and industrial unity. Europe is "convex toward the sky." Not merely do mountains and seas create walls and moats for military defense; but, even more important, the rivers tend toward dispersion. America is "a vast concave." Its mountains guard the frontiers only. The streams of the interior tend to concentration,

of industry, trade, and population, and therefore to political unity.

Two conditions which might have operated unfavorably upon American development require mention.

(a) The diagram opposite shows a section elevation of the United States along the fortieth parallel. The meridian 100 west from Greenwich cuts the country into fairly equal but very different halves. The eastern half is essentially of one character, and was easily made one section as to communication by railroads and canals. Neither fact holds good for the western half. That vast region contains, in succession (to quote Dr. Draper), "an arid, sandy district, the soil saline and sterile; an enormous belt of elevated land without an equivalent in Europe, the eastern side a desert, the western Asiatic in character; and, on the rapid Pacific incline, the moist genial atmosphere of Great Britain and Spain;—a series of zones with all the contrasts of nature. . . . The imperial Republic has a Persia, an India, a Palestine, a Tartary of its own."

These diverse zones from east to west had little opportunity, however, to operate in hostility to political union. The American people did not come under their influence at all until just before the great Civil War. The question of Union or Disunion was settled for generations to come by men reared under the influence of the uniform eastern half of the continent.

- (b) The lines of 22 and 41 degrees Fahrenheit, for January, may be taken as convenient bounds for the true "temperate" zone. (Map, p. 2.) By those, or any other suitable lines of "equal temperature," the climatic temperate zone in North America (in the interior as on the coast) is far narrower than in Europe. Its width in Europe is one of the causes for that continent's becoming the earliest home of true civilization. Its narrowness in America is in itself a condition unfavorable to progress; but this influence was minimized by the late date of settlement and the advanced civilization of the early settlers ( $\S$  1,  $\alpha$ ).
- of whom a fifth were slaves. Two thirds of the Whites were north of Mason and Dixon's line. Nine tenths of the whole population dwelt east of the mountains, and two thirds within fifty miles of tidewater. The land was untamed,—forests hardly touched, and minerals undisturbed. Even in the coast district,

<sup>&</sup>lt;sup>1</sup>The British Isles in 1801 had 15,000,000 people. The first American census, ten years earlier, showed a population of 4,000,000. Cf. also §§ 111, 94.

settlement had only spotted the primeval wilderness; and rough fishing hamlets marked havens where now bristle innumerable masts and smokestacks.

The great bulk of the people lived in little agricultural villages or in the outlying cabin farms. Less than one twentieth were "urban." By the first census (1790), only six towns had six thousand people. Richmond, the largest city of the most populous State, had less than four thousand. The



MOVEMENT OF CENTERS OF POPULATION (3) AND MANUFACTURES (+). (The Census Bureau did not determine the center of manufactures for 1910.)

large cities were: Philadelphia, 42,500; New York, 32,000; Boston, 18,000; Charleston, 16,000; Baltimore, 14,000; and Providence, 6000. By 1800 these figures had risen to 70,000, 60,000, 24,000, 20,000, 26,000, and 8000. The first three cities had begun to pave their streets with cobblestones, and to light them with dimly flaring lamps, and they brought in wholesome drinking water in wooden pipes; but police systems and fire protection hardly existed, and the complete absence of sewers resulted in incessant fevers and plagues. In 1800 Washington was still a village of contractors and workmen, living in sheds and boarding houses.

The western march of our population had begun. In 1800 the "center of population" was eighteen miles west of Baltimore; but, ten years before, it had been forty-one miles farther east. The half million people west of the mountains dwelt still in four or five isolated groups, all included in a broad, irregular wedge of territory with its apex reaching not quite to the Mississippi (map, facing p. 275). The greater part of our own

half of the great valley was yet unknown even to the frontiersman, and two thirds our total area was classed as "unsettled." In his inaugural of 1800, Jefferson, enthusiast that he was regarding his country's future, asserted that we then had "room enough for our descendants to the hundredth and even the thousandth generation."

247. Communication remained essentially upon the pre-Revolutionary footing. The States had little more social or commercial intercourse with one another, as yet, than the colonies had enjoyed. Postage was excessive. The lowest letter rate was eight cents; and from New York to Boston it was twenty cents. A traveler could go by clumsy and cramped stagecoach, at four miles an hour, from Boston to New York in three days, and on to Philadelphia in two days more - longer than it now takes to go from Boston to San Francisco. Such travel, too, cost from three to four times as much as modern travel by rail. South of Philadelphia (except on the one route to Baltimore, perhaps) a stage was exposed to serious delays, and, south of the Potomac, traveling was possible only on horseback — with frequent embarrassments from absence of bridges or ferries. A few turnpikes had recently been built, by licensed companies, which collected exorbitant tolls for their use; and a good wagon road had been constructed from Philadelphia to Pittsburg. Elsewhere, in a wet season, the dirt roads were soon reduced to an almost impassable condition.

West of the mountains, even such roads were still wanting, for the most part, though the "Wilderness Road" (§ 170) had been widened to a wagon track. A few canals were constructed between 1790 and 1800, and attention was turning enthusiastically to the possibilities in that means of communication. But, even leaving the West out of account, freights by land averaged, it is computed, ten cents a mile per ton<sup>2</sup>—or ten times

<sup>&</sup>lt;sup>1</sup> In less than two generations, we were to treble that territory.

<sup>&</sup>lt;sup>2</sup> Read McMaster, III, 463, 465.

the rates our railroads impose for even short hauls. To move sugar 300 miles by wagon cost more than sugar to-day is worth 1000 miles from the coast.

248. Occupations remained much as before the Revolution (§ 124), but manufactures were making somewhat more headway, and the European wars favored our carrying trade. The year after the close of the Revolution had seen the first American voyage to China, and American shipmasters seized promptly and zealously upon the attractive profits of Oriental trade. John Jacob Astor set an example for the fur trade's following the furs into the far Northwest. A few iron mills had begun operations; and, between 1790 and 1812, machinery for weaving and spinning cotton was introduced from recently invented English models.

In England, Hargreaves invented the spinning jenny in 1767; Arkwright, the drawing frame two years later; Crompton, the mule spinner in 1784; Cartwright, the power loom in 1785. By 1800, these inventions had changed the system of cotton manufacture in England from the "domestic" to the "factory" system, and had greatly increased its amount.

Under the old "domestic" system, women had spun the cotton or flax thread and woolen yarn on the old-fashioned spinning wheels in their homes; and single individuals, in like fashion, in their own homes, had woven the thread into cotton cloth on hand looms. If the work was carried on in a shop, the master worked alongside a half-dozen or a dozen employees, each of whom expected in time to become a "master." But this new machinery made it cheaper to bring all the processes of manufacture into one factory, with many workers under skilled direction, with fixed hours of labor. These operatives could never hope to own mills themselves. Thus began a distinct labor class over against the new capitalistic class of factory owners. At the same time the change cut the cost of cheap cotton cloth to a fraction of the old cost. It led also to the massing of population in cities.<sup>1</sup>

In America, however, this "Industrial Revolution" made slight headway until the War of 1812 cut us off from England (§§ 266 ff.); and, even to 1830, the "domestic" system predominated.

The new possibilities in cotton manufacture called for more cotton. Until 1800, England had secured most that her factories used from India and Egypt. The southern colonies in America, even while colonies, and with their slave labor, had found the production of cotton discouragingly expensive, because of the vast difficulty in "cleaning" it, or separating the fiber from the seed. But in 1793 Eli Whitney, a Connecticut schoolmaster in Georgia, devised a piece of machinery efficient for this work and at the same time simple enough to be run by a slave. The cotton gin soon made labor employed in cleaning cotton three hundred times as effective as by the old hand method. The cultivation of cotton now advanced by leaps, until there was no exaggeration in the boast, "Cotton is King." In 1794 Jav's treaty had proposed that America should promise not to export that commodity. Indeed, in 1791 we exported only 200,000 pounds; but in 1800 the amount was 20,000,000 pounds, and this was doubled the third year after.

249. Wages; Frugality. — In the cities a small class of merchants initated in a quiet way the luxury of the corresponding class in England, — with spacious homes, silver-laden tables, and, on occasion, crimson-velvet attire. The great planters of the South, too, lived in open-handed wastefulness, but with little real comfort. Otherwise, American society was simple and frugal, — with a standard of living far below that of to-day. Necessities of life cost more (so far as they were not produced in the home), and wages were lower. Hodcarrier and skilled mason received about half the wage (in purchasing value) paid for corresponding labor to-day (and for a labor day lasting from sunrise to sunset),¹ and the income of the professional classes was insignificant by later standards.

<sup>&</sup>lt;sup>1</sup> And these wages were fifty per cent better than before the Revolution,—so that John Jay, in 1800, complains bitterly about the exorbitant wages demanded by artisans, much as John Winthrop did in 1632. For an example,—the unskilled laborers who toiled on the public buildings and streets of Washington from 1793 to 1800 received seventy dollars a year "and found" (which did not include clothing).

Says Henry Adams: "Many a country clergyman, eminent for piety and even for hospitality, brought up a family and laid aside some savings on a salary of five hundred dollars a year. President Dwight [of Yale] . . . eulogizing the life of Abijah Weld, pastor of Attleborough, declared that on a salary of \$250 Mr. Weld brought up eleven children, besides keeping a hospitable house and maintaining charity to the poor."

The homes of such professional men would now be considered plain in the extreme, lacking all luxuries and many things regarded as essentials to-day in the homes of mechanics. The farmers and mechanics of that time found clean sand a substitute for carpets, and pewter or wooden dishes sufficient for tableware. There was no linen on the table; nor prints on the walls; nor many books, nor any periodicals, in the house (unless perhaps a small weekly paper). Except for hats and shoes (which were made, as well as sold, at the village shop), all the clothing of the family was home-made, and from homespun cloth and yarn.<sup>2</sup> The three meals of the day were formed from varying combinations of salt pork, salt fish, potatoes and turnips, rye bread, and dried apples, with fresh meat for the town mechanic perhaps once a week. Among vegetables not yet known were cauliflower, sweet corn, lettice, cantaloupes, rhubarb, and tomatoes; while tropical fruits, like oranges and bananas, were the rare luxuries of the rich. Even the rich could not have ice in summer.

In all externals, life in 1800 in America was more like European life of a thousand years earlier than like our life of a hundred years later. To quote Henry Adams again: "The Saxon farmer of the eighth century enjoyed most of the comforts known to the Saxon farmer of the eighteenth... Even in New England, the ordinary farmhouse was hardly so well built, or so spacious, or so warm, as that of a well-to-do contemporary of Charlemagne." Agricultural tools and methods had improved little in four thousand years. The American farmer of 1800 plowed with the clumsy wooden, home-made bull plow, sowed his grain broadcast (by

<sup>&</sup>lt;sup>1</sup> History of United States, I, 21. Cf. bibliography at close of chapter. Such pastors tilled small farms or gardens with their own hands, to eke out their salaries.

<sup>&</sup>lt;sup>2</sup> Hence, as Dr. Adams reminds us, came the awkward shapes of coat, hat, and trousers soon to disappear, but first to become fixed in Yankee caricature. In contrasting expenditure for clothing then and now, Professor MacMaster asserts: "Many a well-to-do father of a family of to-day . . . expends each year on coats and frocks and finery a sum sufficient a hundred years ago to have defrayed the public expenses of a flourishing village, —schoolmaster, constable, and highways included."

hand), cut it with the sickle of Tubal Cain, and threshed it out on the barn floor with the flail of prehistoric times,—if he did not tread it out with his horses. Stock was poor and poorly cared for. Drainage and rotation of crops were unknown. The first threshing machine was invented in 1785, but was not yet in use, while the iron-wheeled plow, the drill, the reaper and binder, the hayrake, with the mulitude of later devices which were to revolutionize agriculture, were still in the future. Still the era of rapid change was just at hand!

250. Moral and Intellectual Conditions. — Political standards were low. Says Professor MacMaster (With the Fathers, 71):—

"A very little study of long-forgotten politics will suffice to show that in filibustering and gerrymandering (§ 327), in stealing governorships and legislatures, in using force at the polls, in 'colonizing,' <sup>2</sup> and distributing patronage to whom patronage is due—in all the frauds and tricks that go to make up the worst form of 'practical politics'—the men who founded our State and National governments were always our equals and often our masters," <sup>3</sup>

Officials, so elected, were not scrupulous as to their official conduct. To be sure there was less bribery than in more recent times. The great corporations—railways, municipal lighting companies, etc.—which, in their contest for special privileges, were to become the chief source of corrupting later legislatures and city councils, had not yet appeared. Public servants had infinitely less temptation to betray their trust for private gain than now; but public opinion as to the crime was far less sensitive than to-day.

<sup>&</sup>lt;sup>1</sup> In 1800 the only agricultural machines drawn by horses were the wooden harrow and the clumsy plow. The first improvements in this last implement date from experiments by Thomas Jefferson upon the wooden moldboard. Of hand tools there were only the spade, fork, sickle, scythe, hoe, rake, flail, and ax. All of them, except the ax, were still heavy and awkward, calling for great strength, and exhausting, even to such strength. When the cast-iron plow first appeared, about 1800, farmers declared it "poisoned the soil." By 1825, however, its adoption had made a new era. The cradle scythe for cutting grain was patented in 1803.

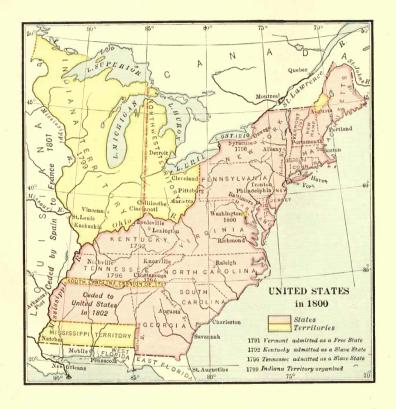
<sup>&</sup>lt;sup>2</sup> Bringing in voters from outside to carry a doubtful district.

<sup>&</sup>lt;sup>3</sup> Many illustrations of this unhappy truth have been given in preceding pages. On violence at elections, see McMaster's *History*, II, 14, 15.

For private life, drunkenness was the American vice - with victims in all classes and in almost every family. The diet (§ 249) created a universal craving for strong drink. Foreigners complained, too, of a lack of cleanliness, and were shocked at the prevalence of brutal fights at fairs and other public gatherings, with biting off of ears and gouging out of eyes as commonplace accompaniments. Likewise, they found American society coarse and immodest in conversation (like English society two generations earlier), but not immoral in conduct. As everywhere else in the world, barbarous legal punishments and loathsome jail life still flourished. The insane were caged, like wild beasts, in dungeons underneath the ordinary prisons; and debt brought more men to prison than any crime. There had begun, however, some protest from a growing spirit of greater gentleness and humanity, soon to sweep away the worst of these abominations.

America was justly famous for its political writings in connection with the Revolution and the Constitution. Otherwise, after the death of Franklin, it had had no man of letters and little desire for literature. Painting reached a high point with Copley, Stuart, and Benjamin West; but these American artists could not earn a mechanic's living at home, and were forced to seek appreciation and patronage in England. New England had developed her remarkable system of private endowed academies, for a few bright and energetic boys, as fitting schools for college; but the Boston Latin School was almost the only survivor of the Puritan attempt at public "grammar schools" (high schools). A few more colleges had been organized toward 1800; but college life was barren, and attendance was meager. Harvard had a faculty of a president, three professors, and four tutors. The elementary schools, even in New England, had decayed into a two-months' badly taught term in winter, for boys, and a like term, worse taught, in summer, for girls. Distinct instruction in law and medicine was beginning in two or three of the larger colleges or universities; but, for many years to come, most young men who entered these pro-

1. Magna Charta , 1215. 2. Petetion of Right 1628. 3. Habias Carplus ach 1679 4 Bill of Pights 1688 5. Declaration of Independence 1776 1. Then are Degnal. (Defore the law) 2. Doverts derive powers from Consent of governed to insur rights a liberty 3. It him goverts cenn to carry out the needs they have the right to abolish it. 4 Aight of Revolution Declaration of Independence Built of Dights Trame of Bovernment, of " agreek by Congress de facti government de Mire (



fessions did so through an apprenticeship in the office of an older practitioner. Most colleges offered training in theology.

Noah Webster, in defending his countrymen against foreign criticism, was compelled to admit: "Our learning is superficial to a shameful degree... Our colleges are disgracefully destitute of books and philosophical apparatus... and I am ashamed to own that scarcely a branch of science can be fully investigated in America for want of books.... As to libraries, we have no such things.... Great numbers of the most valuable authors have not found their way across the Atlantic."

- 251. Three hopeful conditions in American life in 1800, not yet touched upon, explain in large measure the wonderful progress of our people in the century that followed. These were the abundance of free land, close at hand; the unprecedented intellectual activity among the agricultural classes; and the peculiar American talent for mechanical invention.
- a. Free land, to be had for the taking, had been from the beginning the basis of American democracy. It saved colonial America from industrial serfdom, and insured a moderate degree at least of economic and social democracy, and therefore of political democracy. Free land protected the artisan against limitation of wages, by law, at the hands of aristocratic classes. Early American communities tried such limitations; but the artisan did not have to submit. He could lay aside his trade and take up a farm. Free land for some meant better wages and economic freedom for all the working classes.<sup>1</sup>

For the farming class itself, too, free land meant that only the best soils had to be used, and that, even on them, there was no such demand for costly fertilizing as in the Old World. Agriculture, the main American industry, was amazingly productive, even with the primitive methods of that day.

b. The second consideration was even more important. In every Old-World land, the men who tilled the soil formed a peasantry, — slow, stolid, unenterprising, wholly distinct from

<sup>&</sup>lt;sup>1</sup>True, wages and the standard of living were still low, by our measure; but this was because no great amount of wealth had been accumulated. Such wealth and comfort as existed was distributed less unequally than now.

the rest of society. Here, in 1800, the men who tilled the soil—to quote Francis A. Walker's passage:—

"were the same kind of men precisely as those who filled the professions or were engaged in commercial or mechanical pursuits. Of two sons of the same mother, one [the weakling of the family perhaps, because thought unfit for a farmer] became a lawyer, perhaps a judge, or went down to the city and became a merchant, or gave himself to political affairs and became a governor or a member of Congress. The other stayed upon the ancestral homestead, or made a new one for himself and his children out of the public domain, remaining all his life a plain hardworking farmer [the children of the two families mingling without suspicion of social or intellectual distinction] . . . There was then no other country in the world, . . . where equal mental activity and alertness [were] applied to the soil as to trade and industry."

c. Of mechanical insight and invention, to quote General Walker again, "it is difficult to write without producing the impression of exaggeration. There is only one nation in the world to the mass of whose population this form of genius can be attributed. That nation is our own. In other countries it is only picked men, a select few, who possess mechanical insight and aptitude, — the power of instantaneously, because instinctively, seizing upon mechanical relations, together with a high degree of native efficiency in the use of tools. With us the rule is the other way. There are few Americans of American stock, at least throughout the Northern States, who have not mechanical insight and aptitude in a measure which elsewhere would make them marked men. 'Invention is a normal function of the American brain. The American invents as the Greek chiseled, as the Venetian painted, as the modern Italian sings.'"

The explanation of this remarkable American power, General Walker finds (1) in the fact that the early settlers were in the main a picked population from the inventive English race, and (2) that upon such a society were laid the severe requirements of existence under a rigorous climate, with a quenchless desire to gratify, in the wilderness, the tastes and ambitions of a civilized society. "To make shifts, to shorten labor, to save time, to search out substitutes for what was unattainable or costly, to cut corners and break through barriers, to force one tool to serve the uses of two or three, to compel inappropriate material to answer urgent needs [not to make a thing perfect, but to make it "do"],—this was the con-

<sup>1&</sup>quot; More truly selected, in the respects of mental vigor, intellectual inquisitiveness, enterprise, and self-reliance, than any other considerable population which history knows."

stant occupation of our ancestors. Life was no routine, work was no routine, as it is to the peasantry of every country in Europe, and is fast coming to be among us. Everywhere, and at all times, it was possible, by thought and care and pains, to save something from labor, to add something to comfort and social decency. Originality of conception, boldness in framing expedients, and fertility of resource grew by constant exercise . . . until invention came to be 'a normal function of the American brain.' ''

For Further Reading. — Henry Adams' History of the United States during the First Administration of Thomas Jefferson, I, 1-74. The next hundred pages of the same is advisable also. This is the best reference on American conditions in 1800. MacMaster's History of the People of the United States has much admirable material, but too scattered and discursive for students' use. On geographical conditions, valuable readings may be found in Farrand's Basis of American History, chs. 1-4; Shaler's The United States, I, chs. 1-3 and 7-9; and Shaler's chapters in Winsor's Narrative and Critical History of America, IV; Gannett's Building of a Nation. Francis A. Walker's Making of a Nation (66-72) treats the matter of § 251 more satisfactorily than any other publication; every student should read the seven pages in full.

## CHAPTER XI

#### JEFFERSONIAN REPUBLICANISM

### I. THE "REVOLUTION OF 1800"

"As real a revolution in the principles of our government, as that of 1776 was in its form."—Jefferson, Works (Washington ed.), VIII, 133.

252. Jefferson. — From 1801 to 1809 American history is sometimes called "the biography of Thomas Jefferson." The nation believed in him; Congress swayed to his wish; his great Secretaries (Madison for State affairs, and Gallatin for the Treasury) admired and followed him. Indeed, in great measure, to 1825 (except for the distressing three years of war), his counsel continued to direct his successors.

In person, Jefferson was tall (six feet, two and a half inches), of vigorous, but loose-jointed frame, with sandy hair, and irregular, freckled, sunny face. He was an athletic and reckless horseman, an enthusiastic farmer, the friend of science and philosophy, and the valued correspondent of the most famous savants of Europe. It is easy to see him, by the accounts of contemporaries, sitting on one hip with neglected dress and slippers down-at-the-heel, chatting with rambling charm; or, with methodical industry, recording minutest weather details, drawing up neat tables to show, through a period of several years, the dates for the appearance of thirty-seven vegetables in the Washington markets, reporting judicial decisions, devising rules for parliamentary procedure, directing,

<sup>1</sup> Gallatin was a Swiss emigrant, and, for some years past, a leader of the radical Republican party in Pennsylvania. He had been identified with the earlier stages of the movement that resulted in the Whisky Rebellion. In particular, he had keenly criticized Hamilton's financial policy; and, next to Hamilton, he proved perhaps our greatest Secretary of the Treasury.

<sup>2</sup> Among the first judicial "Reports."

<sup>&</sup>lt;sup>8</sup> The first volume of its kind, and long the only one.

with gentle suggestion, the politics of a distant State, discussing with a French scientist the latest discovery in that celebrity's special field, or inditing some other form of that voluminous correspondence which well earns him the title "the greatest American letter-writer."

Jefferson's character is not to be painted by bold strokes—only by delicate pencilings. By hostile critics, these fine shadings were naturally misunderstood to imply weakness or hypocrisy. He was an intellectual aristocrat, but the prophet of democracy; a theorist of wildest speculations, but an astute practical politician upon all immediate problems; a shy man, averse to public speaking or public appearances, but a popular dictator.

In 1800 he had already had a distinguished and varied career. He entered the Virginia Assembly in the memorable session of 1769 (§ 139). Four years later he was one of the leaders in that body in organizing the first Intercolonial Committee of Correspondence (§ 140). In 1775 he became a delegate to the Continental Congress (§ 150). A year later he was again in the Virginia Assembly, to lead, almost alone, a social revolution in that State, by legislation, amid all the turmoil of war. Under his guidance, the radical reform party, in 1777-1778, prohibited further importation of slaves into the State; swept away the church establishment, along with every vestige of ancient checks upon religious freedom; overthrew the semifeudal bulwarks of primogeniture and entail, whereby the landed aristocracy had intrenched itself; and exchanged the complex barbarities of the old legal system (§ 120) for a new code marvelously simple, compact, and humane.2

<sup>&</sup>lt;sup>1</sup>Cf. § 124 and note, and § 182, note. The aristocratic opposition was particularly bitter here. The leaders pleaded for at least a double inheritance for the oldest son. Not unless it can be shown that the oldest son needs twice as much to feed and clothe him, replied Jefferson. Soon after, Jefferson's only son, a babe, died from exposure in a mid-winter flight from a Tory raid; and the aristocratic planters were not ashamed to call this calamity a "righteous judgment of God," destroying the family of the man who had wished to destroy all families.

<sup>&</sup>lt;sup>2</sup>The solid support of the Scotch-Irish western counties was what made these reforms possible. Jefferson's aims had been even more far-reaching.

Jefferson's victory in this struggle Americanized Virginia and consolidated there the democratic party he was afterward to organize for the nation at large. During 1779–1780 he served as governor of Virginia. Then after brief retirement, due to private griefs, he reappeared in the Continental Congress in 1783, for brief but distinguished service there (§ 181). In 1785 he began a five-year residence in France as American Minister. He watched the early stages of the French Revolution with eager sympathy, and while preserving in public the proper impartial attitude of a foreign minister, he was in private the valued adviser of Lafayette and other reformers, whose inexperienced enthusiasm he was sometimes able to direct wisely.

French thought now secured a strong influence upon him; but his admiration for that country in no way weakened his patriotism. He urged Monroe to come to Europe, "because it will make you adore your own country, its soil, climate, equality, liberty, laws, people, manners"; and he predicted that, while many Europeans would remove to America, no man then living would see an American seek a home in Europe. In 1790 he returned to America to take a place in Washington's Cabinet, and then to build skillfully the party of the people which triumphed in his election to the presidency.

The two things that men remember against this extended background of varied activity are: (1) that Jefferson gave immortal form to the principles of our political Revolution of 1776, in the Declaration of Independence; and (2) that he embodied in himself the democratic ideals and aspirations of the equally important social "revolution of 1800." The modest shaft that marks his resting place bears only the words (selected by himself), "Author of the Declaration of Independence, of the statute of Virginia for Religious freedom, and Father of the University of Virginia for Religious freedom, and Father of the University of Virginia for Religious freedom, and Father of the University of Virginia for Religious freedom, and Father of the University of Virginia for Religious freedom, and Father of the University of Virginia for Religious freedom, and Father of the University of Virginia for Religious freedom, and Father of the University of Virginia for Religious freedom, and Father of the University of Virginia for Religious freedom, and Father of the University of Virginia for Religious freedom.

He had hoped for gradual emancipation of slaves and for a noble system of public schools. The latter scheme he returned to enthusiastically, but with little result, in his old age; but his plans for the University of Virginia, which he reorganized, did work out the main lines along which the State Universities were afterwards to develop.

ginia." None of these achievements belonged to the period of the presidency; but, with true insight, Jefferson represented in that epitaph his work in three related fields,—political liberty, religious liberty, and higher popular education. To that simple epitaph history adds the proud dictum of one of his biographers: "If America is right, Thomas Jefferson was right."

253. Jefferson's political principles, for domestic concerns, were (1) trust in the people; (2) restriction of all government, especially of the Central government; <sup>2</sup> (3) frugality; (4) simplicity; and (5) "encouragement of agriculture, and of commerce as her handmaid," rather than of manufactures. As to foreign affairs, he hoped to begin a golden age of peace. War was a blunder. Army and navy we could dispense with. At most, we could need only "commercial coercion" to secure our rights from other nations: "Our commerce is so valuable to them that they will be glad to purchase it when the only price we ask is that they do us justice."

Most of these principles are summed up admirably in Jefferson's first inaugural. "Absolute acquiescence in the decisions of the majority is the vital principle of republics." The best government is one that "while it restrains men from injuring one another, shall leave them otherwise free to regulate their own pursuits, and shall not take from the mouth of labor the bread it has earned." He declares his purpose to secure "equal and

<sup>&</sup>lt;sup>1</sup> It is characteristic that, at the close of his brief Autobiography, in speculating upon possible services to his fellows (most of which services, he adds, would have been performed anyway by some one else, and some of them, no doubt, better), he gives prominent place to his efforts in rendering navigable a little Virginia creek and to his introduction into South Carolina of a heavier and better rice than before grown in America; adding, "The greatest service which can be rendered to any country is to add a useful plant to its cultivation, especially a bread grain." Students should read, if accessible, Jefferson's own account of his reform legislation in Virginia (Works, Washington ed., I, 49, and 175).

<sup>&</sup>lt;sup>2</sup> Government in that day was almost wholly repressive, — or beneficent to a privileged class only, at the expense of other classes. It did not yet dream of providing schools, libraries, hospitals, asylums, weather bureaus, or the manifold other activities of general helpfulness now belonging to it. In the closing years of his administration, Jefferson became one of the early advocates of this wider helpfulness (§ 266).

exact justice to all men"; to maintain "peace, commerce, and honest friendship with all nations, entangling alliances with none"; to enforce "economy in the public expense, that labor may be lightly burdened"; and to defend "freedom of religion, freedom of the press, and freedom of the person."

It is interesting to note that, years later, when rude experience had shattered his noble dream of universal peace, Jefferson turned to a vision of a New-World peace, with the United States as the protecting elder brother of American nations. He hopes for "fraternization among all American nations," and dwells upon the importance of their "coalescing in an American policy totally independent of that of Europe," adding, "When our strength will permit us to give the law to our hemisphere, it should be that the meridian of the mid-Atlantic should be the line of demarcation between peace and war,—on this side of which no act of hostility should be permitted." And again, "The day is not far distant when we [the United States] may formally require a median of partition through the ocean, on the hither side of which no European gun shall ever be fired, nor an American on the other, and when, during the rage of eternal war in Europe, the lion and the lamb within our regions shall lie down in peace."

254. Reform. — In tendering Livingston a place in the Cabinet, Jefferson in private urged him to accept, that he might be of service in "the new establishment of Republicanism. I say its new establishment; for hitherto we have seen only its travestie." The Republican victory was a real "revolution." (Cf. theme sentence for the chapter.) It marked the resumption, as is often said, of the earlier Revolutionary progress toward democracy and Americanization, which had been temporarily checked, from 1786 to 1800, by the conservative crusade for a stronger government. At the same time, the change was rather in the pervading spirit of the new administration than in specific legislation, and most of Jefferson's public speech was extremely conciliatory to his former opponents.

Jeffersonian simplicity has become a byword. On the morning of his inauguration; discarding previous practice as to a coach and four on such occasions, Jefferson walked quietly from his boarding house to the capitol to take the oath of

<sup>1</sup> Works, Washington ed., VI, 33, 54, 268; VII, 168-169, 315-317.

office. From the first he set the example that all communication with Congress, even the opening messages, should be by writing. And on matters of hospitality at the White House, he discarded the elaborate and courtly ceremonial of Washington and Adams.

Not much legal reform was found necessary. The vicious Alien and Sedition Acts had been limited in time, and had expired. The fourteen-year Naturalization law of 1797 was repealed, along with all internal revenue taxes (whisky tax and stamp duties), and the judiciary act of 1801 (§ 290).

In the past the administration had had the employment of whatever funds Congress raised. Now Jefferson and Gallatin limited their own power in this tremendous matter, by calling upon Congress to make *specific appropriations* only—a precedent since followed.

The debt had never been decreased materially by the Federalists; and the war flurry of 1798 had raised it, through new loans, to \$83,000,000, with an interest charge each year of \$3,500,000. During the last years of Federalist rule, moreover, ordinary expenditure had outrun ordinary income. Jefferson and Gallatin computed retrenchment such that sixteen years of Republican rule might pay off the debt, even after giving up all internal taxes. The tariff and sale of public lands could be counted upon to bring in \$10,000,000 a year. The \$6,000,000 formerly spent on army and navy was cut to \$1,000,000 (the army being decreased to 3000 men and most of the war vessels being docked),<sup>2</sup> and every saving possible in any other department was rigidly enforced. At the end of Jefferson's eight years, in spite of the addition of \$15,000,000 to the debt in 1803

<sup>&</sup>lt;sup>1</sup> The Federalists charged that this repeal was unconstitutional. Congress is forbidden by the Constitution to decrease the salary of a judge, or to dismiss him from office. Can it, then, take salary and office from the judge by abolishing the court? To prevent a possible interference from the Supreme Court, the sittings of that body were adjourned by law for some months, and the Court never thought best to bring the matter to decision. The Federalist charge that the Republicans had dragged the judiciary into politics was absurd.

<sup>&</sup>lt;sup>2</sup> War with the Barbary Pirates, and Indian troubles, soon trebled this outlay; but the increased revenue from tariffs, due to our growing commerce, made good the difference.

for Louisiana (§ 259), the total had sunk to \$57,000,000, with an interest charge of only \$2,000,000 a year. Promises had been well kept.

255. Civil Service.¹— Washington and Adams had excluded Republicans from all office. They had not had to dismiss any: none got in. This policy, too, had been emphatically avowed.² Now came the first change of party. If Jefferson followed his predecessors' policy to its logical results, he would dismiss all officeholders, to make room for Republican supporters. His opponents feared this result, and many supporters hoped it.

Washington and Adams did not use office to pay for party services: they did use it to strengthen the "right party" (their party) and so "save the country." But this attitude, while morally very far from the later spoils system of Jackson's day, was practically sure to glide into that system. Jefferson has been accused of introducing the spoils system, because it fell to him to make the first removals. But according to Professor Channing's careful study (Jeffersonian System, 10–17), "removals for political reasons were astonishingly few . . . less than twenty . . . mostly of marshals and district attorneys;" and spite of all changes from various causes, more than half of the officials of March 4, 1801, were still holding office four years later. A President who himself moved for the

<sup>&</sup>lt;sup>1</sup>This term is applied to the active body of public servants outside the army and navy, and not including the members of the courts, legislators, and heads of executive departments.

<sup>&</sup>lt;sup>2</sup> Washington wrote to Pickering, his Secretary of War in his second administration: "I shall not, while I have the honor of administering the government, bring a man into any office of consequence, knowingly, whose political tenets are adverse to the measures the general government are pursuing; for this, in my opinion, would be a sort of political suicide." And Senator Bayard, as mouthpiece for Adams, declared, "The politics of the office-seeker will be the great object of the President's attention, and an invincible objection if different from his own."

From the very first, Jefferson stated his intention to make some removals from these offices as the only means left to him to partly correct the Federalist monopoly of the courts and their partisan attitude. "The doorways" to that branch of the government he would keep open by appointing some Republican marshals and attorneys.

abolition of a fourth of all his appointing power, by abolishing internal taxes and the offices connected with their collection, did not desire patronage for partisan purposes. Jefferson's few partisan removals (all made under strong provocation) had far less to do with establishing a spoils system than did the many partisan appointments by Washington and Adams.

Moreover, Jefferson and Gallatin were the first statesmen in the world to think out the principles upon which alone a non-partisan civil service can be permanently maintained.¹ They saw and said that each officeholder ought to be at liberty to think and vote as his conscience led, but that, to preserve this freedom, he must refrain from "electioneering activity," or, in modern phrase, from "offensive partisanship." ²

<sup>&</sup>lt;sup>1</sup>These principles were recognized in England some fifty years later, and a generation later still, in America; and only then did a rational civil service begin in either country. Cf. § 415.

<sup>&</sup>lt;sup>2</sup> Gallatin prepared a circular to warn subordinates in his department that "while freedom of opinion and freedom of suffrage are imprescriptible rights, the President would regard any exercise of official influence to control the same rights in others as destructive of the fundamental principles of a Republican constitution"; and the accompanying letter to Jefferson makes clear that this was to apply to official activity for the administration as well as against it. Jefferson's views are set forth in his Works (Washington ed.), IV, 381, 383, 391, 402, 451, 559. Some extracts follow:—

<sup>&</sup>quot;Mr. Adams' last appointments, when he knew he was naming counsellors and aids for me and not for himself. I set aside as far as depends on me, and will not deliver commissions where still in executive hands. Officers who have been guilty of gross abuses of office, such as marshalls packing juries, etc. [to secure conviction under prosecution for "sedition"], I shall now remove, as my predecessor should have done. . . . The right of opinion shall suffer no invasion from me" (Letter to Gerry, March 29, 1801). He then thought that "of the thousands of officers in the United States, a very few individuals only, probably not twenty, will be removed" (Letter to Rush, March 24). Later he adds "industrious partisanship" as a proper cause for removal; and July 21, in reply to Federalist critics, he asks whether the minority expect to continue to monopolize the offices from which, when in power, they excluded all their opponents, and queries how a "due participation" for the majority is to be obtained, since vacancies "by death are few, by resignation, none." About a year later he admits that his program has not been followed "with the undeviating resolution I could have wished" (Letter to Lincoln, Oct. 25, 1802).

256. Attempts on the Judiciary.—Even after the repeal of the Judiciary Act of 1801, the Federalists remained in complete possession of the courts. Jefferson felt keenly the need of some change. In December of 1801 he wrote:

"They [the Federalists] have retired into the Judiciary as a stronghold. There the remains of Federalism are to be preserved and fed from the treasury; and from that battery all the works of Republicanism are to be beaten down and destroyed."

The principles of the Republicans forbade them to enlarge the courts, and so get control by new appointments; and therefore they tried, half-heartedly, to get room for foothold by impeaching some of the old judges. Justice Pickering, of the New Hampshire District, was removed on the undisputed charge of drunkenness while on duty; but an attempt to remove Justice Chase, of the Supreme Court, for partisan and unjudicial conduct failed of the necessary two thirds vote in the Senate, and the movement was dropped.

## [For discussion with books open.]

To a degree almost unbelievable to-day, the courts of 1800 were the mouthpieces of political partisanship. Chief Justice Dana of Massachusetts, in 1798, during a political campaign, in a charge to a grand jury designed to influence public opinion and votes, attacked the Republican party (including Jefferson especially) as "apostles of atheism, anarchy, bloodshed, and plunder." In 1800 Judge Addison of a Pennsylvania court, on a like occasion, said of the Republican party, "In their sheep's clothing they are ravening wolves." For this disgraceful abuse of judicial position, Addison was properly removed, when the Republicans came into possession of the State government; but Federalist Massachusetts supported and commended Dana. His charge was toasted at a Boston banquet, as dictated by "intelligence, integrity, and patriotism." Even Washington so approved it that he sent copies to his friends.

<sup>&</sup>lt;sup>1</sup> The Federalists defended Pickering on the ground of *insanity*,—insisting at the same time that there was no constitutional ground for impeachment. Indeed, it is generally held that the "high crimes and misdemeanors" named in the Constitution as the occasion for impeachment, must be such offenses as the accused man might be indicted for before a criminal court. The difficulty was evaded in the Senate by voting that Pickering was "guilty as charged."

Chase had given even greater cause of offense. In 1803, in a charge to a Maryland grand jury, he had declared that by the repeal of the Judiciary Act of 1801 "the independence of the national judiciary is already shaken to its foundation;" and that this, together with attempts to modify the system of courts in Maryland and to establish manhood suffrage there, "will, in my judgment, take away all security for property and personal liberty." Chase had presided also at two "sedition" trials, and had manifested there a partisan and browbeating disposition worthy a seventeenth-century Jeffreys. Twice his violence drove from the court the most eminent lawyers of the circuit; and he had broken up the sessions in order to make political speeches in the campaign of 1800.

The refusal of the Senate to impeach Chase has been generally applauded by historians; but, says Professor Channing sturdily (Jeffersonian System, 121): "Surely there is something absurd in the general contention that a Federal judge like Samuel Chase should hold office for life and be at full liberty to criticise in the most insolent way the agents to whom the people had intrusted the management of their affairs."

257. Excursus: John Marshall: Marbury vs. Madison. — To-day Americans in general agree that it was well for Jefferson to fail at the time in the attack upon the Judiciary, however great his provocation. In coming years the Union was to need all the strength the courts could give. Jefferson's failure left John Marshall free to complete Hamilton's work and to make a National constitution by judicial construction.

Marshall was one of Adams' late appointments. He served as Chief Justice from 1801 to 1835, and his marvelous influ-

<sup>1 &</sup>quot;The change of the State constitution," continued Chase, "by allowing universal suffrage, will, in my opinion, certainly and rapidly destroy all protection to property and all security to personal liberty; and our republican constitution will sink into a mobocracy, the worst of all possible governments. . . I can only lament that the main pillar of our State constitution has already been thrown down by the establishment of universal suffrage. By this shock alone, the whole building totters to its base, and will crumble into ruins before many years, unless it be restored to its original state. . . The modern doctrines . . . that all men in a state of society are entitled to enjoy equal liberty and equal rights, have brought this mighty mischief upon us." Compare this tone with Ludlow's dismay in 1632 at the idea of representative government at all (§ 63), and with frantic modern opposition to the movement for the recall.

ence over his associates brought to his way of thought five Republican justices appointed by Jefferson and Madison to outweigh him. He was a man of simple manners, of direct, upright, engaging character, and of mighty intellect, but of strong prejudices; and his admirers admit that he used his position to advance political views in a way that would to-day not be regarded proper.

Adams' appointments had been completed so late on March 3 that some of the commissions to marshals and attorneys were left lying undelivered on the executive table. Jefferson declared such papers of no account, and made new appointments. A certain Marbury, whom Adams had named as marshal for the District of Columbia, sued in the Supreme Court for a writ of mandamus, to compel Madison (Secretary of State) to issue to him his withheld commission. Marshall's opinion has made this case one of the most important in our history, though it was "phrased in such a manner," says Professor Channing (Jeffersonian System, 118), "that this is the one decision in Marshall's judicial career which still gives pain to all but his blindest admirers."

The court declared, through Marshall's pen, (1) that Marbury was legally entitled to the commission and that its refusal was a plain violation of a vested right; but (2) that no remedy could come in the way sought; and (3) that the suit was therefore dismissed. The importance of the decision lay in its reasoning on the second point. The Judiciary Act of 1789 had distinctly given the Supreme Court authority to issue just such writs; but, since the Constitution itself did not name any such contest between a citizen and a public officer as included in the original jurisdiction for the Supreme Court, that particular provision of the law of 1789 was now declared unconstitutional and void.

<sup>&</sup>lt;sup>1</sup> Since Marshall had been acting through March 3 as Adams' Secretary of State, in signing commissions, and since he was himself one of the late appointments, he came perilously near acting as judge in a case in which he was himself vitally interested.

This was the first time the Supreme Court declared void any part of an Act of Congress. The clause was one conferring power upon the court itself. No other so modest opportunity could have been found. But the argument of the Chief Justice went on, far beyond the immediate case, to establish this power of the courts in all cases where, in their judgment, they might find conflict between a law and the fundamental law. The decision was to become the basis for future extension of power in this important respect.

258. Unwritten Limitation of Presidential Term: Foreign Slave Trade Abolished: Republicanism Modified.—In 1804 Jefferson was reëlected by 162 electoral votes to 14; and even in the Senate of thirty-four members, there were only seven Federalists. Jefferson's popularity seemed higher than ever. Early in his second term, the Vermont legislature requested him to permit his name to be used a third time, for the campaign of 1808, and this nomination was promptly seconded by legislatures in seven other States. Jefferson declined, and used the opportunity to establish firmly one more Republican doctrine,—a limitation to possible reëlections of the executive.

Washington's refusal to be a candidate for a third term had no constitutional bearing. Indeed, Washington seems to have believed in many reëlections. He refused for purely personal reasons, and he felt it needful to excuse himself against a possible charge of lack of patriotism in laying down his task. Jefferson declined, in order to establish a principle, and he strengthened it by appealing to Washington's precedent.

<sup>&</sup>lt;sup>1</sup> In 1792 a *Circuit* Court had refused certain duties imposed upon it by an Act of Congress as not warranted by the Constitution; but the decision was brief, and confined to the particular case, and it had not come up for review by the Supreme Court. Cf. Professor Farrand on "The First Hayburn Case," in *Amer. Hist. Review* for January, 1908.

<sup>&</sup>lt;sup>2</sup> Review § 207, a and b. The student should read carefully, on the use of this power in later history, Baldwin's American Judiciary, 105–107. The real development of this vast power has come since the great Civil War. Indeed there were only two other cases in the sixty years preceding that war, one in 1851 (United States v. Ferreira), which, like the Marbury case, involved a question about the judiciary itself, and the Dred Scott case in 1857 (§ 353). Since the Civil War (in some forty-five years), there have been about twenty such cases — many of them of very great moment.

Some limit, he said, should be fixed by custom (since none was specified in the Constitution), or the President's tenure might come to be for life. The limit should be two terms, as already suggested by Washington's action. Originally he (Jefferson) had favored one term of seven years; but now eight years seemed better, "with possible removal at the end of four years." Any longer tenure would be dangerous to Republican institutions.

This response caught the popular imagination. Addresses poured in from mass meetings and legislatures approving its patriotism and its doctrine, and expressing ardent hope that the example might be followed in succeeding history. The principle became at once so firmly imbedded in our unwritten constitution that only once has an attempt been made to override it (§ 416).

Most of Jefferson's second administration was taken up with foreign affairs (§ 266); and, even in such attention as domestic matters received, a new tone of centralization was noticeable. Republicanism had been modified by the very completeness of its victory. Nearly half its adherents now had formerly been Federalists, and still remained half Federalist in political thought. Moreover, the "Old Republicans" themselves, under the responsibilities and opportunities of office, began to feel differently toward the power of the Government (§ 261 ff.). One more deed, however, recalls vividly Jefferson's earlier teachings. In 1807, on his recommendation, Congress decreed that the importation of slaves should cease the following year (the earliest moment possible under the Constitution (Art. I, sec. 9).

#### II. TERRITORIAL EXPANSION

259. Acquisition of "Louisiana."—The East was coming slowly to sympathize with the attitude of the West toward Spain's possession of the mouth of the Mississippi (§ 175). Jefferson had always done so. Man of peace as he was, he

<sup>&</sup>lt;sup>1</sup> In 1786 Jay had proposed to the Congress of the Confederation a treaty with Spain, whereby, in return for certain commercial concessions, we were to surrender for twenty-five years all claim to navigate the Mississippi. At first the East seemed to favor this; but Jefferson wrote from Paris, in solemn warning, "The act which abandons the navigation of the Mississippi is an act of separation between us and the Western country."

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had said that such portions of the vast domain of dying Spain as we wanted *must* come to us in time, — by force if necessary. But late in 1801 fell a thunderbolt: Spain had secretly ceded Louisiana back to France, then the most aggressive and powerful of European nations. Congress hastily passed a war appropriation; and Jefferson, spite of his French sympathies, saw that we must at once i fight or purchase.

Was it likely Napoleon would sell what he had striven so eagerly to get? At all events, Livingstone, our minister to France, was instructed to buy the island of New Orleans, and Monroe was sent hastily, as special envoy, to help him. Monroe found a great and unexpected bargain practically completed. Napoleon had suddenly changed front; and, April 30, 1803, for the petty price of \$15,000,000, the United States doubled its territory.

A splendid army of twenty-five thousand French veterans had just wasted away, against tropical fever and the generalship of the Negro leader Toussaint L'Ouverture, in an attempt to secure Haiti as a half-way station to Louisiana. Napoleon hesitated to send more of his soldiers to hold the swamps at the mouth of the Mississippi against American frontiersmen swarming down that stream. Moreover, he had already decided secretly upon a new war with England; and a distant colony would be exposed to almost certain seizure by the English navy. Whether or not these were the sole causes, Napoleon abandoned his dream of American colonial empire, together with his solemn pledges to Spain,<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> Jefferson said that France had become our foe "by the laws of Nature." He wrote to Livingstone: "There is on the globe one single spot, the possessor of which is our natural . . . enemy. . . France, placing herself in that door, assumes to us an attitude of defiance. . . The day that France takes possession of New Orleans . . . seals the union of two nations who, in conjunction, can maintain exclusive possession of the ocean. From that moment we must marry ourselves to the *British* fleet and nation."

<sup>&</sup>lt;sup>2</sup> Spain hoped to find compensation for Louisiana by interposing France as a barrier between the United States and her other American possessions. Talleyrand, the French minister who managed the negotiations, had played upon this string. "The Americans," he urged, "are devoured by pride and ambition," and "mean at any cost to rule alone in the whole continent. . . The only means of putting an end to their ambition is to shut them up within the limits Nature seems to have traced for them [east of the Missis-

and, with characteristic abruptness, forced upon the American negotiators not merely the patch of ground they asked for at the river's mouth, but the whole western half of the great river valley,—which they had not particularly wanted.

Monroe had been authorized to offer, if necessary, as part of the purchase price for New Orleans, a guarantee to France of our support for her perpetual possession of the western half of the valley. Madison, who drew these instructions, sincerely believed at that time that we had no use for territory beyond the Mississippi, and that any American community formed there must inevitably become a separate nation politically. The heart of the American people, however, was immediately fired by the grand prospect of expansion opened before us; and Jefferson wrote a few weeks later: "Objections are raising to the eastward [among leaders of New England Federalism] to the vast extent of our territory, and propositions are made to exchange Louisiana, or a part of it, for the Floridas. But, as I have said, we shall get the Floridas without [from Spain], and I would not give one inch of the waters of the Mississippi to any foreign power."

260. Three Constitutional questions came into prominence in connection with Jefferson's treaty.

a. Power to acquire territory is not among the powers of government enumerated in the Constitution. According to the "strict construction" theory, the purchase of Louisiana was unconstitutional. Jefferson wanted an amendment to confirm the purchase:

sippi]... Spain, therefore, cannot too quickly engage the aid of a preponderating power, yielding to it a small part of her immense dominions in order to preserve the rest... France [mistress of Louisiana] will be to her a wall of brass, impenetrable forever to the combined efforts of England and America." And again, he urged, under Bonaparte's instructions,—"Spain will do a wise and great act if it calls France to the defence of its other colonies by ceding Louisiana." Finally, a specific pledge never to alienate the province to America became part of the price France paid.

<sup>&</sup>lt;sup>1</sup> The opposition by the little coterie of Federalist leaders, and their jealous dread of the West, proved once more that they were rightly distrusted by the nation, and that the Jeffersonian Republicans, with whatever follies, were "the safest guardians of the country, because they believed in its future and strove to make it greater."

"The executive," he wrote, "in seizing the fugitive occurrence which so much advances the good of their country, have done an act beyond the Constitution. The legislature . . . risking themselves like faithful servants, must ratify and pay for it, and [then] throw themselves on the country" for an amendment, which should be also "an act of indemnity."

But he found no one among his friends willing to risk the precious prize by the delay incident to an attempt at amendment. Such a move, it was urged, would imply that the purchase was not fully ratified; and meanwhile Napoleon might again change his mind. So that plan was dropped. In the debates in Congress, Republican members adopted frankly the doctrine of "implied powers." The right to acquire territory must exist, they argued, (1) as a result of the right to make treaties, and (2) especially of the power to make war and peace. On this basis they voted to ratify the treaty and made the necessary appropriations to carry it into effect.

b. Were the inhabitants entitled to civil and political rights? New Orleans and its vicinity contained a population of 50,000.2 The treaty had promised that the inhabitants of the district should be "incorporated in the Union of the United States," and admitted, as soon as possible, to all the rights of citizens. The Federalists (adopting the state sovereignty doctrine) based their opposition to the treaty mainly on this provision. It meant, they said, the admission of a new member to "the partnership of States," and this was not permissible "except by the consent of all the old partners."

The Republicans themselves hesitated to carry out the promise of statehood to a foreign population bitterly aggrieved, as it was, at transfer to American rule. In the spring of 1804 Congress divided the newly acquired region into two parts. The larger northern part (almost uninhabited), styled the "District of Louisiana," was attached to Indiana Territory (§ 184, close). The southern part was created "The Territory

<sup>2</sup> Nearly half these were slaves.

<sup>1</sup> Some of them appealed even to the "general welfare" clause.

of New Orleans;" but the government was intrusted to a governor, council, and judges all appointed by the President, with provision for jury trial only in capital cases. This was a denial, to a highly civilized and densely settled district, of all right of self-government.1 It seemed strangely out of place at the hand of Jeffersonians. It was questioned in the older States, as unconstitutional, and it caused loud outerv in New Orleans. Its constitutionality was defended on the ground that the guarantees in the Constitution applied only to citizens of the States, not of "territory belonging to the United States."2 But the question of conflict with the purchase treaty was a more delicate matter; and a year later the Territory of New Orleans was given the usual Territorial government (§§ 182, 184), similar to that of Indiana and Mississippi.3 In 1811, after a bitter struggle in Congress,4 it came into the Union as the State of Louisiana.

c. The treaty promised certain exemptions from tariffs to French and Spanish ships in Louisiana ports for twelve years. The Constitution requires that "all duties shall be uniform throughout the United States." Was there a conflict between these provisions?

The answer depends upon the meaning of "United States" in the Constitutional clause quoted. That term, territorially, has two meanings. To-day we give it commonly the larger sense in which it signifies all the land under the government

<sup>&</sup>lt;sup>1</sup> It was the first, or provisional, type of territorial government, used elsewhere only while a territory was barren of people.

<sup>&</sup>lt;sup>2</sup> See note to c below.

<sup>&</sup>lt;sup>8</sup> When Tennessee was admitted as a State, the rest of the national domain southwest of the Ohio had been organized as the Territory of Mississippi.

<sup>&</sup>lt;sup>4</sup> The New England Federalists, in 1811, resisted the admission of Louisiana furiously, because it seemed to confirm their fear of permanent transfer of political power to the South. Josiah Quincy, their leader in Congress, affirmed: "I am compelled to declare it as my deliberate opinion that, if this bill passes, the bonds of this union are, virtually, dissolved; that the States which compose it are free from their moral obligations, and that, as it will be the right of all, so it will be the duty of some, to prepare, definitely, for a separation: amicably, if they can; violently, if they must. . . ."

of the American nation, — States, Territories, and unorganized Domain. But the Constitution, certainly in some places, and probably in all, uses the term to signify only the territory within the States. Territory, not within a State, was not referred to as part of the United States, but as "belonging to the United States" (Art. IV). In this sense, New Orleans was not, in 1803–1810, a port of the United States.

For such "territory" Congress is authorized to make "all needful rules and regulations." Had it the right, then, to limit jury trial for the inhabitants of Louisiana in 1804? The prevailing opinion seems to be that it has this power over Territories,—though the Supreme Court decisions are conflicting, and have usually been established on either side by a bare majority of the Court. Congress cannot, in legislating for Territories, violate any of the express prohibitions upon its own power. For instance, it cannot establish a particular church in a Territory, because the prohibition in the first amendment is a limitation upon the power of Congress in all cases whatsoever. But those rights and privileges which are secured in the bill of rights to "citizens" apply, it is quite possible to hold, only to citizens residing in some State; and in that case Congress is not bound to extend them to inhabitants of "Territories" unless it sees fit.<sup>2</sup>

Exercise. — For consideration: (1) Can Congress constitutionally continue indefinitely to govern Hawaii as a Territory, without admitting

<sup>&</sup>lt;sup>1</sup> Almost identical questions have arisen since, in connection with the acquisition of Florida and the Philippines. In the Florida case, the Supreme Court held that the ports of that newly acquired territory were not ports of the United States, and that the revenue laws of the United States did not apply there unless expressly extended by act of Congress. In the other case, the Court upheld a tariff between the "insular possessions" and the rest of the "United States" (§ 439).

<sup>&</sup>lt;sup>2</sup> Gouverneur Morris, appealed to by his Federalist friends as to the bearing of the Constitution upon the power of Congress to acquire and govern Louisiana, replied frankly that he had no intention, in the Philadelphia Convention, of limiting our power to acquire territory. "I knew then, as well as I know now, that all North America must at length be annexed to us" (!) But, he adds, "I always thought, when we should acquire Canada (?) and Louisiana, it would be proper to govern them as provinces, and allow them no vote in our councils. In wording the third section of the fourth Article, I went as far as circumstances would permit to establish the exclusion." [To make possible such exclusion, he meant, probably.] Writings, III, 185, 192.

her as a State? (2) Could Hawaii be deprived by Congress of all share in her own government, even after having been permitted such a share for a while?

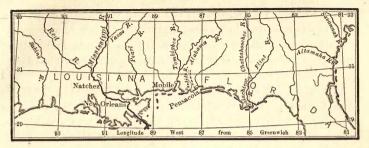
[For discussion with books open.]

261. Boundaries: West Florida and Texas. — France sold us Louisiana (1) "with the same extent it now has in the hands of Spain," (2) that it had when France possessed it, and (3) such as it should be according to subsequent treaties between Spain and other powers. These three descriptions were absurd. It is impossible to make the middle definition agree with the two others. Plainly the first definition was the important one, because that was the Louisiana which France was buying, and the only Louisiana she could sell.

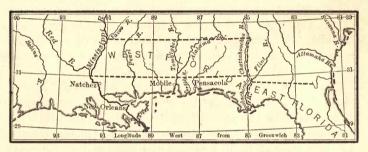
Under France, before 1763, Louisiana had included a strip of Gulf coast east of the river mouth. But when France ceded Louisiana to Spain (1763), England had already secured that strip and was governing it as "West Florida" (from the Iberville, or eastern mouth of the Mississippi, to the Appalachicola). Louisiana then comprised (1) the vast valley west of the Mississippi, and (2) the island of New Orleans, bounded on the east by the Iberville. In 1783, Spain recovered both Louisiana (from France) and West Florida (from England). But she did not reunite them. She kept the two provinces under these names and under separate governments; and in 1800 she ceded back to France only the one she then called Louisiana. France could not sell us Louisiana "with the extent it had when France possessed it" formerly, because she had not bought it back in that extent.

But out of this ambiguity arose one of the most discreditable episodes in our history. Our negotiators had been instructed to get West Florida if possible; and now, taking advantage of the vague wording of the treaty, they set up the doctrine that they had done so under the name of Louisiana. Livingstone urged the government to use "the favorable moment" to take possession, "even though a little force should be necessary." Jefferson seems to have approved the idea. John Randolph, the spokesman for the administration in Con-

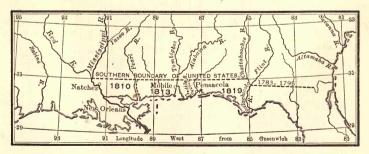
<sup>&</sup>lt;sup>1</sup> The treaty of 1763 between Spain and England had made this boundary absolutely definite.



FRENCH LOUISIANA AND SPANISH FLORIDA, 1756.
(With dividing line at the Perdido.)



ENGLISH WEST FLORIDA, 1763-1783. (From the Mississippi to the Appalachicola.)



SPANISH AND AMERICAN WEST FLORIDA, 1783-1819.

(The figures show date of acquisition by the United States.)

gress, declared we had bought the mouth of "the Mobile with its widely extended branches; and there is not now a single stream of note rising within the United States and falling into the Gulf . . . which is not entirely our own, the Appalachicola excepted."

But when Napoleon sent Laussat to America in 1803, to take formal possession of Louisiana from Spain, in order to transfer it to the United States, that officer was specifically instructed that the eastern boundary was the Mississippi and the Iberville (the eastern boundary of the island of New Orleans). He so told Jefferson, and we received the transfer with this understanding, and without protest. None the less, a few weeks later, Congress created West Florida a revenue district and annexed it to the Territory of Mississippi. This "Mobile Act" was never put in force. Spain's protest was so unanswerable that Jefferson was driven into discreditable evasions in trying to explain his position.

Thus the matter slumbered six years. In 1808 Napoleon seized Spain, and soon the Spanish colonies in America, one by one, became independent states.\(^1\) In West Florida this movement was managed by Americans who had migrated across the Iberville and formed settlements between that river and the Perdido. In July, 1810, they demanded from the Spanish governor a remodeling of the government. For a while they acted in harmony with him; but soon they issued a declaration of independence, and applied to the United States for annexation. October 27, President Madison ordered the American governor at New Orleans to take military possession as far as to the Perdido. This district was then added to the Territory of New Orleans.

Madison tried to justify this robbery of a friendly power by a pretended fear that England might seize the territory if we did not (a convenient pretext used by our government more than once since to cover land grabs); but, unhappily, recent research proves beyond dispute that the whole ris-

<sup>&</sup>lt;sup>1</sup> Modern History, §§ 367, 393 note.

ing had been inspired from New Orleans in accordance with instructions from Washington (Amer. Hist. Association Reports for 1911). In ordering military annexation, Madison had proclaimed that the ownership of the district would "not cease to be a subject for fair and friendly negotiation with Spain"; but, in 1812, it was incorporated finally into the Union as part of the new State of Louisiana. The opening of the War of 1812 with England was made the occasion for seizing from Spain the rest of West Florida, which was then annexed to the Territory of Mississippi.

As settlement poured into the Mississippi Territory, West Florida certainly became worth far more to us than it was to Spain. It lay, a narrow strip, between us and our natural coast line; it held the mouths of our rivers and the harbors of our commerce; while to Spain it meant nothing except the chance to limit our power. If the two countries had been individuals, Spain would have been morally bound to sell at a fair price; but any court would have defended her title if, immorally, she insisted upon annoying her neighbor by keeping possession. Between two nations, as matters go, it was inevitable that we should get the district,— if not by fair bargaining, then by open force. The unfortunate thing is that the actual procedure was such a needless and inextricable mixture of violence and deceit. Says Henry Adams, "History cannot tell by what single title the United States holds West Florida."

The boundary between Louisiana and Mexico had never been defined. Napoleon's instructions to Laussat placed the dividing line at the Rio Grande. If that was correct, we had bought Texas. But Spain protested that the proper boundary was the Sabine. The question was complicated; we cared little about it at the time; the territory was a wilderness, without White inhabitants except at a few Spanish missions; and in 1819 we surrendered all claim to Texas as part of the price we paid for East Florida, which we were then buying from Spain.

262. Explorations: Claims to Oregon. — Jefferson had long manifested a scientific interest in "delineating the arteries of the continent." In 1783 he had urged George Rogers Clark to explore the West to the Pacific; and three years later, while in France, he had persuaded Ledyard, an American trav-

<sup>&</sup>lt;sup>1</sup> For a hundred years all government maps showed the disputed district as included in the Louisiana Purchase. Honesty and historical accuracy are both advanced by the abandonment of that misrepresentation since 1903.

eler, to attempt to reach the Pacific coast of America by way of Siberia and the ocean. There must be a great river, Jefferson argued, flowing from the western mountains into the Pacific, rising near the head waters of the Missouri. The explorer could ascend this stream and descend the Missouri to St. Louis.

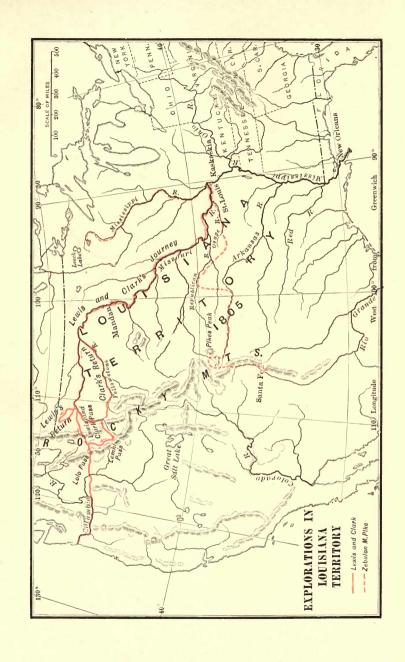
Ledyard was turned back by the jealous Russian officials. But in 1792 Captain Gray of Boston, in his ship Columbia, discovered the mouth of the prophesied river, and named it for his vessel. This was our first basis for future claim to the Oregon country. As soon as Jefferson became President, he secured from Congress an appropriation for an exploring expedition to that country, to be led by Merriwether Lewis (Jefferson's private secretary) and Captain William Clark (a brother of George Rogers Clark). Before the expedition was ready, the purchase of Louisiana made much of the territory to be explored our own, and gave us possessions contiguous to the unoccupied and almost unclaimed Oregon district.

Lewis and Clark set out from St. Louis with thirty-five men, in the spring of 1804. Sixteen hundred miles up the Missouri, near the modern Bismarck, they wintered among the Mandan Indians. The next spring, guided by the "Bird Woman" with her papoose on her back, they continued up the river to the watershed, and followed streams down the western slope until they found a mighty river. When they reached its mouth in November, four thousand miles from St. Louis, this river proved to be Captain Gray's Columbia. This exploration was the second basis for American claim to Oregon; and the scientific observations, maps, and journals of the expedition revealed a vast region never before known to White men.

In 1811 Astoria was founded on the south bank of the Columbia, by John Jacob Astor, as a station for the fur trade; this occupation by American citizens made a third basis for our claim to the country.<sup>1</sup>

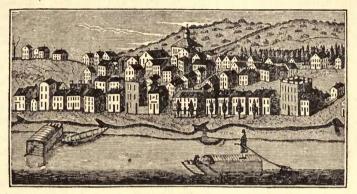
 $<sup>^1</sup>$  When we sought to establish our claim, a few years later (§ 276), our government tried to strengthen its case by holding that Oregon was part of the

the more in 1 7/2 and named it Cale in the his ship. Lewis and Clarke explaned it in 13 Occupation by John Jacob agter as a fur trade of the us the third claim to aregon ()



In 1805 Jefferson again made a part of the small army useful in the interests of science and of peaceful expansion. Lieutenant Zebulon Pike, with a small company, traced the Mississippi from St. Louis practically to its source. Afterward he explored the Arkansas and Red rivers; and, in tracing the upper waters of these streams, he discovered the mountain now known as Pike's Peak.

263. Western Settlement from 1800 to 1810 continued steadily, but without marked increase, under conditions similar to those of the Revolutionary period — except that Indian



CINCINNATI IN 1810.
(From Howe's Historical Collections of Ohio.)

peril had greatly lessened. Settlement came in successive waves. Backwoodsmen opened small clearings, which, after a few years, were bought out and enlarged by pioneer farmers, who, in turn, soon followed the backwoods hunters farther west, selling out these first homes to a more permanent set of farmers with more capital.

The "backwoodsmen" were usually "squatters." The "farmers" secured title from the Federal government. After 1800, land could be

Louisiana Purchase. The western boundary of Louisiana was vague; but on no possible ground could Louisiana be argued to have ever extended beyond the Rocky Mountains. But only recently have our government maps abandoned the unjustifiable pretense. bought in 160-acre lots at two dollars an acre, with payment down of only one fourth the price,—the rest to be paid over a period of four years, "out of the profits of the crops." In the ten years before 1800, less than a million acres of public land had been sold to settlers by the government; but, in the next twenty years, sales averaged a million acres a year, and the lines of would-be purchasers before western land offices suggested the phrase, "doing a land-office business."

Between 1800 and 1810, Ohio grew ninefold, — from 45,000 to 406,000; while 24,000 people pressed on into the southern districts of Indiana, and half that many penetrated even into southern Illinois. Even the older communities south of the Ohio, — Kentucky and Tennessee, — doubled their numbers, rising to two thirds of a million. In 1811, 1200 flatboats passed the rapids of the Ohio with cargoes of bacon, beef, and flour, bound down river; and the West had found a way to market large parts of its corn and wheat "on the hoof." Each fall, immense droves of cattle and hogs were driven over the wagon roads to the eastern cities, finding subsistence as they moved — sometimes as many as 4000 hogs in one drove.

264. The Promise of the Steamboat. — With the acquisitions of the vast western territory came the invention which was to make it accessible. This was the application of steam power to locomotion by water. (By land, the application was to come considerably later, § 290.) The Watts stationary steam engine had been in use in England for several years, and in 1800 there were four or five such engines in America. As early as 1789, John Fitch, a poor man without education but with wonderful inventive genius, built a ferryboat with paddles driven by an engine of his own construction, and ran it up as well as down the river at Philadelphia for some months. In spite of this remarkable success, Fitch could not raise money to improve or continue his experiment; and after trying his fortune vainly in the West, where such motive power was so much needed, he put an end to his life, in disgust and despair, in a Kentucky tavern (1798). During these same years, Philadelphia had another neglected genius, Oliver Evans, who likewise built a steam engine suited for locomotion; but again the inventor failed to secure money to finance the undertaking to practical success.

More fortunate was Robert Fulton, who secured money backing from Chancellor Livingstone of New York.<sup>1</sup> Amid popular indifference and jeers, Fulton, in 1807, launched the Clermont, furnished with an engine imported from England, and made a trial trip from New York to Albany (150 miles) in 32 hours. The next year a regular line of steamboats plied between the two cities; and men were beginning to plan for them elsewhere. It was seen that their use on western waters would revolutionize settlement and freight carriage; but then came a brief interruption to all this progress, in the War of 1812 (§ 266 ff.).

265. Internal Improvements. — Jefferson strove valiantly not to "make waste paper of the Constitution by construction"; but he came, in his second administration, to favor amendments such as would have greatly enlarged the sphere of government action; and, lacking the amendments, he reluctantly yielded to pressure and to necessity, and acted sometimes under the doctrine of implied powers which he had once denounced.

The government improved a harbor by raising a sunken gunboat which imperiled the entrance; and this precedent led to the removal of further obstructions. The building of dry-docks, to protect the unused national navy, was extended to the construction of public wharves. And, though Jefferson had looked with critical eye upon the construction of a first Federal lighthouse, <sup>2</sup> in Washington's time, he now quietly approved large appropriations for the exceedingly useful coast survey, inaugurated in 1806. During the last year of his administration, \$100,000 were expended for such purposes.

The excuse for Federal expenditure on harbor improvement was that it was paid for out of the tonnage tax collected from vessels that used the harbor. But, what harbors were to eastern communities, roads would be to the people of the west. Why should not the nation build such roads and pay for them

<sup>&</sup>lt;sup>1</sup> In 1803 Fulton had tried to interest Napoleon, but had been repulsed as a faker.

<sup>2 &</sup>quot;The utility of the thing has sanctioned the infraction," said Jefferson, later.

out of the sale of the public lands,—to which they would give value? This was the guise under which the question of "internal improvements" first appeared.

When Ohio was admitted as a State (1802), on the suggestion of Gallatin, Congress promised that one twentieth of the proceeds of the remaining national domain within her bounds should be used, under national direction, in building roads from navigable streams east of the mountains to the Ohio river, and afterward on roads within the State.¹ But lands sold slowly, and in 1806 Congress agreed to advance \$30,000 (to be repaid out of the future land sales); and a survey was begun for "The National Road," or Cumberland Road, from Fort Cumberland in Maryland (on the Potomac) to Wheeling in western Virginia (on the upper Ohio).

In his second inaugural Jefferson called attention to the rapid decrease of the debt, and to the fact that only a few millions more could be taken up in the next few years (the rest not being due). He then suggested that, instead of decreasing the revenue tariffs "on luxuries," the surplus revenue, by a proper amendment to the Constitution, might be re-divided among the States in the form of national application to "rivers, canals, roads, arts, manufactures, education, and other great objects."

Soon after, he wrote to Gallatin that he was impatient "to begin upon canals, roads, colleges, etc." And, in great detail, and with much eloquence, the message to Congress in December, 1806, urged (with suggestion of a necessary amendment) a national university and a system of internal improvements to cement the union between the States. During the following year, Congress, without reference to the need of an amendment, asked the executive to submit a plan for roads and canals; and this led to Gallatin's famous report of 1808. That paper sketched a comprehensive system of communication at national expense, the construction to be spread over a period of ten years, with an estimate of \$2,000,000 a year: (1) canals through Cape Cod, New Jersey, and other projections

<sup>&</sup>lt;sup>1</sup> The strict constructionists excused the measure as a bargain between the United States and Ohio. Ohio, said Gallatin, could hardly be expected to acquiesce in the nation's retaining title to the vast public domain within the State without some such sop. The consent of each State through which the road was to pass, too, was sought and obtained.

were to create a shorter and safer inside coast route; (2) a turnpike was to run from Maine to Georgia; and (3) turnpikes were to join four eastern rivers with streams beyond the mountains. But at this moment national revenue fell away, because of the embargo (§ 266), and for some years all such projects were lost in war clouds.

Meantime, especially after 1809, almost alone of the States, Pennsylvania had been acting for herself. In the next six years, that State spent \$2,000,000 (and private corporations with State encouragement spent twice as much more) in creating a good system of turnpikes (a total of 1000 miles, with good bridges) joining the various parts of the commonwealth and forming good connection between the eastern waters and Pittsburg on the Ohio.

For Further Reading on Divisions I and II.—The best compact survey is in Channing's Jeffersonian System, chs. i, ii, v-xi. The great authority, whom even Professor Channing follows in the main, is Henry Adams' History of the United States, I-IV.

# III. WAR WITH ENGLAND

266. The Situation: Commercial War, 1806–1812.—After brief truce, the European war began again in 1803, and the commercial clauses of the Jay treaty expired soon after. Napoleon was soon master of the continent, with all the coast line from Italy to Denmark; while his sole antagonist, England, ruled supreme on the sea.¹ The only neutral power with any shipping interests was the United States. That shipping fattened on its monopoly; but each of the mighty combatants strove to force it into an ally, and to prevent it aiding his foe. English "Order in Council" followed French "Decree"; and whatever American shipping the one did not declare subject to capture, the other did; while our own government lacked decision to take sides, or power to defend its citizens.

The story is not a pleasant one. It is a tale of outrageous robbery by both European powers, and of American vacillation

and disgrace. Jefferson and Madison, great in peace, were not suited for emergencies of this kind. Well-meaning, gentle, trustful, not particularly decisive, they were buffeted pitifully back and forth between the arrogance and indifference of English Pitt and Canning, and the duplicity and insolent greed of French Napoleon and Talleyrand. If war is ever justifiable for any provocation short of armed invasion, we had abundant cause to fight both robbers or either, at any time between 1806 and 1810. Our government shilly-shallied, in impotent indecision, until the energetic part of the nation rose wrathfully to demand that we fight some one at once to win back self-respect. Then we chose the wrong time and, apparently, the wrong foe.1 Unfortunately, too, justifiable or not, our choice of a foe arrayed us on the side of the European despot against the only hope for European freedom.<sup>2</sup> To complicate the picture further, that section of the country immediately interested — the section whose ships were being confiscated and sailors impressed did not want war at any time, - certainly not with England, —and talked freely of preferring secession from the Union.3

¹ Says Professor A. B. Hart (Foundations of American Foreign Policy, 27): "The United States waited till the European system . . . was on the point of falling to pieces of its own weight, and then made war on the power which, on the whole, had done us the least harm." To the same effect, and with more carefully chosen words, Professor Channing says (Jeffersonian System, 200): "One may say that both parties were justified in seeking to distress their enemy by cutting off neutral trade . . . as a war measure. . . The intention of the English government seems to have been to treat the neutral fairly, to give him ample warning, and to mitigate his losses by permitting him to seek another destination for his cargo. The French administration of the decrees was peculiarly harsh and unjust. . . . In short the French seem to have acted with the least consideration for the rights of neutrals; but the English confiscated so many more neutral vessels, owing to the activity and strength of their cruisers and privateers, that the greater hostility was aroused against the British."

<sup>&</sup>lt;sup>2</sup> The rise of Napoleon had reversed the position of England and France, as compared with that of 1793 (§§ 225, 230).

<sup>&</sup>lt;sup>8</sup> In 1790, before the wars of the French Revolution began, 550 English merchant ships entered American harbors. In 1799, when the first series of wars closed, the number had sunk to 100. *Meantime, New England shipping had increased fivefold*. During the second series of wars,—until we ourselves

Jefferson's second administration spent its chief energy in trying to maintain a policy of commercial non-intercourse with the warring powers, in order to compel them to respect our neutral rights. In 1807, to make the policy effective, Congress decreed an embargo upon all American shipping bound for foreign ports—and no time limit was specified in the law. This was not a measure preparatory to war: it was war in commercial form.

The embargo did cause great distress among workingmen and commercial classes in England, but these classes then had no voice in the English government. The landed aristocracy, which did control the government, in death grapple with Napoleon, hardened its heart to the suffering of other Englishmen as an inevitable incident of the great war, and stubbornly refused to make concessions to America. Meanwhile, the embargo caused hardly less distress at home; and the outcry from the sailors out of work, shippers whose vessels lay idle, and farmers whose produce rotted unsold, could not long be ignored by Congress. In New England juries refused to convict for violation of the embargo on the plainest evidence, and public opinion made it impossible to enforce the law. It was repealed, as a failure, in the closing days of Jefferson's presidency. Its chief result had been a revival of the Federalist party in New England.

267. Decision for War. — Jefferson had wished his lieutenant, Madison, to succeed him, and in 1808 Madison was elected by a vote of three to one. Backed by the "Old Republicans," he tried still to preserve peace by slight modifications of Jeffer-

became engaged, — American shipping continued to absorb the former English carrying trade with the world. Between 1803 and 1812, England seized a thousand American merchantmen, — many of them very properly, for violations of recognized principles of international law, and France captured more than half that number, — the greater part treacherously, after inviting them into continental harbors by special proclamation. But New England was willing to submit to all this, and to the impressment of her seamen, rather than lose her golden harvest of the seas.

son's policy; but a younger, more aggressive wing of the party called loudly for war. These "War Hawks," or Young Republicans, led by Henry Clay of Kentucky and John C. Calhoun of South Carolina, finally brought Madison to their side. The choice of England as a foe, rather than France, was easily reached. Napoleon promised to repeal his decrees (though he did not, and did not intend to); and since England refused to repeal her "orders" until France should actually perform the promise, the United States declared war (June, 1812).

For three generations Americans held a tradition that we fought the War of 1812 in defense of "sailors' rights" against impressment. This is not a fair statement. Even after war was determined upon, during the last of 1811 and the first half of 1812, neither the government nor newspapers mentioned impressments as a cause (even when we were inventing false causes, —charging English encouragement of Indians on our frontier). Says Henry Adams: "When this grievance [impressment] was finally taken up, it was an afterthought, when the original cause failed to unite and arouse the people. If England had yielded to our commercial demands, nothing would then have been said of impressments.... This worst of American grievances took its proper place as a political maneuver." Madison's special message to Congress recommending a declaration of war named impressments first among our provocations; but never before had our government intimated to England that she must give up this practice or fight.<sup>2</sup>

Curiously enough, just before our declaration of war, too close for the fact to become known in America, England did repeal absolutely all her objection-

<sup>&</sup>lt;sup>1</sup> It was charged that Madison yielded to secure necessary War Hawk support for his reëlection in 1812. Dislike for the war had strengthened the Federalists, but Madison received 128 votes (from South and West) to 89 for his Federalist rival.

<sup>&</sup>lt;sup>2</sup> § 231. For examples of French impressment of Americans, see Channing's Jeffersonian System, 187. The student will do well to read in that volume pages 184-188; or, for the full treatment of impressments, pages 184-194. The Chesapeake-Leopard affair may be made a subject for special report. Observe that New England Federalists were willing even to justify English search of an American war vessel for deserters,—which was a very different thing from search of a mere private merchant vessel.

268. The War.¹—The War Hawks expected to end the war in one glorious campaign of conquest. Said Clay in Congress, "I am not for stopping at Quebec, but I would take the whole continent." But the country, as a whole, showed amazing indifference; and New England, in particular, persisted in looking upon the struggle as "Mr. Madison's war." A rich nation of eight million people could have put 300,000 men into the field (at the ratio of Northern effort in 1865); but at no time (not even when our territory was invaded) did we have one tenth that force for effective service, and, most of the time, the numbers were a half smaller still,—spite of bounties and other lavish inducements offered by the government.

Even more discouraging were the finances. The Government imposed an excise and stamp duty (hateful to Republican principles) and direct taxes; but the States were delinquent in payment. When the Government tried to borrow, its bonds had to be sold at ruinous discount. During the three years, the debt mounted frightfully; and, toward the close, the treasury was practically bankrupt. In a few weeks more, this condition alone, unless changed, would have compelled the Government to sue for peace.

In the first campaigns, the militia distrusted its incapable officers and behaved badly on several occasions. <sup>2</sup> In 1814, just as England, freed from the pressure of European war, prepared to push matters in America, more efficient American officers came to the front, and we regained our northern frontier in two or three creditable engagements, like the *Battle of the Thames* (October, 1813) and *Lundy's Lane* (July, 1814). Then, in 1815, after peace had been signed, but before the fact was known in America, Andrew Jackson, with four thousand western riflemen (deadly marksmen all), lying behind cotton bales at *New Orleans*, beat off a

able orders against our commerce; and a few weeks later we removed a real grievance England had against us by a law to prevent employing fraudulently naturalized foreign sailors in American vessels. The story is one of blunder and confusion from end to end. Even so, an Atlantic cable would have made war impossible.

<sup>&</sup>lt;sup>1</sup> An excellent statement of military problems is given in Hinsdale's *How to Study and Teach History*, 246–247. The diplomatic victory of the American negotiators in the treaty of peace is a more flattering story, and is well worth a special report. Cf. especially Adams' *History of the United States*, if accessible.

<sup>&</sup>lt;sup>2</sup> For an instance, see McMaster, IV, 12-20. For a notable exception to the general run of American reverses, Perry's splendidly earned victory on Lake Erie in 1813 may be made a subject for special report.

stubborn attack of five thousand splendid but poorly handled English veterans <sup>1</sup> with a slaughter of two thousand.

On sea, America did win renown. True, no injury to England's power was inflicted. England had a thousand warships, two hundred of them larger than any one of our seventeen vessels; and, before the end of the war, every American warship was sunk or blocked up in harbor. But, meantime, in numerous ship duels between well-matched antagonists, the Americans had amazed the world by a series of remarkable victories, and, at last, won even from England the reluctant admission that, ship for ship and gun for gun, we outsailed and outfought them on their chosen element. England lost only thirteen ships; but the mortification in that country was wholesome, and there was less talk, thereafter, of Americans as "degenerate" Englishmen. Says Henry Adams of the American victors: "Decatur and Hull . . . were aware that the serious work on their hands had little to do with England's power, but much to do with her manners."

Moreover, a really serious injury to England's remaining merchant marine was inflicted by the multitudes of American privateers which snapped up ships even in sight of the English coast. In all, there were over eight hundred captures of this sort; and shipping insurance in England rose to double the point ever reached before in all her wars with her neighbors.

The Treaty of Ghent (Dec. 14, 1814), which closed the war, restored the old boundaries and left all other questions unsettled; but the return of peace in Europe, in 1814, had removed the occasions of trouble.<sup>2</sup>

### IV. NEW ENGLAND AND THE UNION, 1800-1815

269. The "Plots" of 1803 and 1809. — From 1800 to 1815, New England's attitude toward the Union was always dis-

<sup>&</sup>lt;sup>1</sup> From the English army which had withstood Napoleon's best soldiers in the "Peninsular campaigns."

One disgraceful episode of the war calls for mention. In 1813 an American raid burned Toronto (then York), the capital of Lower Canada. A British force off our eastern coast retaliated by a raid against our Capital. Five thousand troops marched triumphantly through fifty miles of well-populated country, drove a large body of militia before them in shameful rout, and laid the public buildings of Washington in ashes. A few days later, an attack upon Baltimore was repulsed by the militia. This was the occasion for the poem, "The Star-spangled Banner," by Francis Scott Key, a prisoner at the time on a British vessel in view of the attack.

<sup>&</sup>lt;sup>2</sup> For the exceedingly important Indian warfare and results, see § 272, b.

graceful and sometimes treasonable. In 1803–1804, when the Louisiana Purchase seemed to foreshadow an increase of political weight to the South, the Essex Junto, a group of the chief leaders of New England Federalism, sought refuge in a definite plot for secession. But Hamilton, who had been counted on to bring in New York, frowned on the project; and in New England itself, at this moment, the leaders found little popular sympathy. Thus this first Federalist plot never got further than closet conferences and private correspondence.

The embargo (§ 266) prepared the mass of the population for desperate measures, and the years 1808–1809 saw a popular

John Quincy Adams broke with the Federalists soon after this time, and some years later he declared in much detail his knowledge of this plot, of which he strongly disapproved, adding, "The plan was so far matured that it had been proposed to an individual to allow himself, when the time was ripe, to be placed at the head of the military movements." And William Plummer, a New England Congressman, declared that he knew at the time of this plot for a separate confederacy: "Their intention, they said, was to establish their new government under the authority and protection of the State governments; that, having secured the election of a Governor and majority of a legislature in a State in favor of separation, the legislature would repeal the law authorizing the people to elect Representatives to Congress, and the legislature decline electing Senators, and gradually withdraw the State from the Union. . . ."

<sup>1</sup> So called because most of the group lived in Essex County, near Boston.

<sup>&</sup>lt;sup>2</sup> He agreed that the "disease of democracy" was serious enough, but he did not believe disunion would afford a remedy.

<sup>&</sup>lt;sup>8</sup> Pickering (formerly Washington's Secretary of War) wrote, December 24, 1803: "Although the end of our Revolutionary labors and expectations is disappointment . . . I will not yet despair: I will rather anticipate a new confederacy"; and to Cabot, January 29, 1804, after expressing fear of Jefferson (cf. § 229): "How long we shall enjoy even this security, God only knows; and must we with folded hands wait the result, or timely think of other protection. . . . The principles of our Revolution point to the remedy, — a separation. That this can be accomplished, and without spilling one drop of blood, I have little doubt"; and March 4, to Rufus King: "If a separation should be deemed proper, the five New England States, New York, and New Jersey would naturally be united. . . . I do not know one reflecting New Englander who is not anxious for the Great Event at which I have glanced."

movement for nullification. December 27, 1808, a Bath town meeting called on the General Court of Massachusetts "to take immediate steps for relieving the people, either by themselves alone or in concert with the other commercial States." The meeting then appointed a "committee of safety., to correspond . . . and give immediate alarm, so that a regular meeting may be called whenever any infringement of their [Bath's] rights shall be committed by any person or persons under color and pretence of authority derived from any officer of the United States." Other towns took similar action. Then the action spread to the State governments. Governor Trumbull of Connecticut, when called upon by the Secretary of War to assist in appointing officers for enforcing the Embargo Act, declined to serve, declaring the law "unconstitutional, . . . interfering with the State sovereignties, and subversive to the rights . . . of citizens"; and in his address to the Connecticut legislature (February 23, 1809) he placed himself on the precise ground of the Kentucky Resolutions of '99:

"Whenever our national legislature is led to overleap the prescribed bounds of their constitutional powers, on the State legislatures, in great emergencies, devolves the arduous task,—it is their right, it becomes their duty,—to interpose their protecting shield between the rights and liberties of the people and the assumed power of the General government."

The legislature of Massachusetts, acting on this same principle, prescribed fine and imprisonment for officers of the Union who should try to enforce the law in that State; but open conflict was avoided because the governor wisely vetoed the Act. Then the repeal of the embargo closed this second period of agitation.<sup>1</sup>

270. Treasonable Attitude, 1812-1815. — The third distinct period of New England opposition was longer and more

<sup>&</sup>lt;sup>1</sup> In short, commercialism was stronger than loyalty; and from 1789 to 1815 any suggestion of interference with commercial profits was as sure to call out prompt threats of disunion or nullification from New England, as suggestions of interference with slavery did at the South at a later date.

serious. It ran through the three years of foreign war. For 1812–1813, a few details must suffice. (1) By unlawful and treasonable, but highly profitable, trade, New England merchants and farmers fed the British army in Canada. (2) New England Federalist representatives in Congress, with the full approval of their constituents, used every effort to defeat the bills to fill up the ranks of the depleted army. When a bill was under consideration to permit minors over eighteen to enlist, Quincy of Massachusetts exclaimed:

"It must be never forgotten... that these United States form a political association of independent sovereignties.... Pass this bill, and if the legislatures of the injured States do not come down on your recruiting officers with the old laws against kidnapping and man stealing, they are false to themselves... and their country."

(3) The militia refused to obey the call of the President. In 1812 Madison, as authorized by Congress, called on the State governors to order out the militia to repel expected invasion of their own coasts. The governor of Massachusetts declared that neither invasion nor insurrection existed (Constitution, Art. I, sec. 8); and the Supreme Court of the State assured him that it belonged to him, rather than to President and Congress, to decide whether the summons was constitutional. Then Vermont recalled her militia from service.

The closing year of the war saw a more definite movement for disunion, after the successive defeats of Napoleon seemed to assure England's victory in Europe. The first step was to have town meetings petition the Massachusetts General Court to secure a separate peace for that State.<sup>2</sup> The legislature re-

<sup>&</sup>lt;sup>1</sup>Cf. § 129. This illicit trade is pictured graphically in McMaster, IV, 65-66. The British general wrote to the English war minister, "Two thirds of the army in Canada are at this moment eating beef provided by American contractors."

<sup>&</sup>lt;sup>2</sup> As early as June 29, 1812, a Gloucester meeting voted: "If a destruction of our commerce and fisheries are the terms on which a confederation of the States (!) is to be supported, the Union will be to us a thread, and the sooner it is severed, the better. . . . We view the salvation of our country as placed in the hands of the commercial States, and to them we pledge our lives, our

ferred such addresses to a special committee, which advised a convention of New England States. The legislature, however, deferred the matter until the next General Court, which would "come from the people still more fully possessed of their views and wishes." The election returned a strong majority committed to a New England Convention. That legislature then issued its call and appointed delegates. Connecticut and Rhode Island joined the movement, and New Hampshire and Vermont were represented at the meeting in irregular fashion, by delegates chosen in county meetings.

Extreme Federalist leaders made no secret of their hope that the Convention would at once begin the formation of a new confederacy of northern States. Gouverneur Morris, now one of the worst of the group. wrote exultantly to a member of Congress: "I care nothing more for your actings and doings. Your decrees of conscriptions and your levy of contributions are alike indifferent to one whose eyes are fixed on a star in the East, which he believes to be the dayspring of freedom and glory. The 'traitors and madmen' assembled at Hartford will. I believe, if not too tame and timid, be hailed hereafter as the patriots and sages of their day." Pickering, with equal delight, wrote, "I do not expect to see a single representative from the Eastern States in the next Congress"; and he advised the Massachusetts government to seize the Federal customhouses and revenues within her borders at once, and prepare for her own defense against either England or the United States. Another of the same treasonable group of leaders, advising instant action, wrote: "Words are exhausted. We have [already] said more than was said by all the public bodies in the United States prior to the Declaration of Inde-

fortunes, and everything we hold dear in time [not against England; then against Mr. Madison?]; and to our State government we look immediately in a confident reliance on the God of Armies." In January, 1813, an Essex county address to the Massachusetts legislature ran: "We remember the resistance of our fathers to oppressions which dwindle into insignificance compared to those we are called on to endure [at the hands of the United States government, this means]... and we pledge to you... our lives and property in support of whatever measure the dignities and liberties of this free, sovereign, and independent State may seem to your wisdom to demand." A typical address from Amherst in January of 1814 (Noah Webster presiding) pledged to the Massachusetts legislature the support of the town in any measures the legislature should see fit to adopt to restore peace, "either alone or in conjunction with neighboring States."

# Centinel Nautical Memorands.

PORT OF BOSTON-1814.

SECOND PILLAR

Of a new FEDERAL EDIFICE reared.

LEGISLATURE OF CONNECTICUT.

MARTYOND. RDV. 7. The joint Committee of the Legislature of this State to whom was referred the cognimulation from the Governor of Massachiusetts, have reported at much length and with great ability on the subjects connected with the objects of their mission. In conclusion the Committee, say, "In what mapper the multiplied evils which we

They therefore recommend, that Seven Delments where the properties are the present that the bighest moment, and deserves the greatest opiniders.

The documents tensimited by this Excellency the Governor of Massachuserts, present, in the opinion of the Committee, an eligible method of comming the wisdom of New-Magland, in devising, on full consultation, a proper course to be adopted, consistent with our obligations to the United States."

They therefore recommend, that Seven Del-

They therefore recommend, that Seven Delegates from this State he appointed to meet the Delegates from the Commonwealth of Massachusetts, and of any other of the New-England States, at Hartford on the 15th December, to confer with them on the subjects proposed by a Resolution of said Germsonweath, and upon any other subjects which may come before them, for the garpose of devieing and recommending such, measures for the safety and welfare of those States, as may, consist with our obligations as members of the national Union. This report hall been adopted in both Houses, and the following persons have been anopticed Delegates:

been appointed Delegates:—
His Honor CHAUNCEY GOODRICE,
Hon. JAMES HILLHOUSE,
Hen. JOHN THRAUSPELJ,
Hen. ZEPHANIAH SWIFF,
Hon. NATHANEL SWITH,
Hon. CALVIN GODDARD,
Hon. BOGER M. SHERMAN.

# THIRD PHILAR RAISED. LEGISLATURE OF MHODE-ISLAND.

PROVIDENCE, NOV. 5. On Tuesday the Logislature of this State convened in this town. His Excellency Governor Jourse the same day sent them a measage, containing an oble, independent and intelligent development of the situation of the National and State affairs, and communicated to them the Important Resolutions and Communications of the Guernor and Legislature of Massochusetts, on the subject

Moynay, Niv. 7, or. hand those from Tabinatown-Left there on Strutiley last, and spoke, in the river, the English stops which had here carried into Climden, from whence she had multi-her earness in the night, while the Scritish aquadrum, was before the place. The Hopeanew the Alban Sh Kipg's sch. as she came between Franklin and Grorge's Island.— Morelay forenous, saw a smell privateer each close under Rober's Island, standing off; supposed to be the Lamenburg. When the Hope left Thomassafa, the milita were flocking to Candary from all quarters

entrementary. When the Hope left Thomashina, the militia mere flooking to Canden from all quarters Toh, ur. (below), shoop Polly, Sleyer, from Waldshorf, with wood. Di Sauday evening, off Cape-Ann, bleering friesh and attemy, was haired from a stoop, the people on hoard of which and they did not know where dury were, being strangers, and requested a pilet to navigate her in. She perwed to be the Jeffers and purket, (late Porcythe) of sed from Providence for N. Tork, earge sait, in penagonion of S Englishmen, having how applaced on Tuesday lant, off the Jedith, by the Minerya privateer, and ordered for Halfian. Capt. Greyer as requested to take churge of the vessels, and get her into the first port, and he norordbugh bendgit her in here, tagether with the prise-rew. On the survival of the two research in the harbour, he Englishmen took to thair hoat, and went ashore on one of the intents.

Privateer Mammorn's Cruize.

Perford, Nov. 7. On Monday arrived performer Mammont, Opti. Franklin, from a cruise. Booklet speaking and boarding a number of Russian, Freech, Sveedin and Portuguese vergeds, als made the fed-lowing British prises —June 26, 1814, along Farmor, a recepture. 18th 17, brig Britannia, with lumber, Sc. buyet he? 20th, sole? Brothers, with 8th, pit prisoners on board her, and redered her to St. Johns 24 h, brig Chains and brig Ana-Millin, both label, and being them, and redered her to St. Johns 24 h, brig Chains and brig Ana-Millin, both in ballant, and being them, and redered her to St. Johns 24 h, brig Chain, brig Alian, ballant, and being them, and performent 20th, brig Alian, ballant, and being them to personers. 20th, brig Ana, 24, brig Garah, flour, toke out 60 bbla and, butth her. 3th brig Alian, brig Alian, from V. I. for England, sarger, sun, and performed in 18th, brig B sha, with timbur, put 3 pissmers on beard and grave her up. 36th, brig St-dimen-Toplant, fruit, Ec. given up to prisoners. 27th, galant Good-list, hour and Rrittin purventment store, which were thrown on verboard, and resemble given up. 8-pt. 13th, sole? Rapid, Sh. brig Alian, With timbur, put 3 pissmers and gave her up to prisoners. 18th, ache Thomas, link, wire thrown on verboard, and resemble given up. 8-pt. 13th, sole? Rapid, Sh. brig Aliant, Ort 6th, hip Mentor, 18 digital for do. carps hale goods, trush them out, and gave her up to prisoners. The neutrals were permitted to proceed another delivered.

PHOTOGRAPHIC REPRODUCTION OF PARTS OF TWO COLUMNS OF THE Centinel FOR NOVEMBER 9, 1814.

(In the original there is an intervening column of less interest.)

pendence." The Boston Centinel (September 12) announced that the old Union was practically dissolved; and, November 9, with plain reference to the Boston Chronicle's famous illustration of 1788 [page 327], it signified the successful formation of a new confederacy, in its announcement that Connecticut and Rhode Island had followed Massachusetts in choosing delegates to the Hartford Convention.

December 15, the Hartford Convention began its month-long secret session. For some reason (probably in order to secure greater unanimity in some of the States), it did not take radical action. It talked State sovereignty and nullification; it blustered and threatened; it demanded, as an ultimatum, amendments to the Constitution (which would have rendered the Government impotent in a crisis), and the immediate surrender to the States of control over their own troops and taxes (which would have been a virtual dissolution of union). It then adjourned, to give time for negotiation with the Government, having provided for a new convention, to be held a little later.

<sup>&</sup>lt;sup>1</sup> January 15, 1815, the *Boston Gazette* advised Madison to get a faster horse than he had when he fled from Washington before the British raid. "He must be able to escape at a greater rate than forty miles a day, or the swift vengeance of New England will overtake the wretched miscreant in his flight."

<sup>2&</sup>quot;In cases of deliberate, dangerous, and palpable infractions of the Constitution [by Congress] affecting the sovereignty of a State and the liberties of the people, it is not only the right but the duty of such a State to interpose its authority for their protection. . . . When emergencies arise which are either beyond the reach of the judicial tribunals, or too pressing to admit of the delay incident to their forms, States, which have no common umpire, must be their own judges and execute their own decisions. . . . It will be proper for the several States to await [the action of President and Congress on pending measures] and so to use their power, according to the character these measures shall finally assume, as effectually to protect their own sovereignty and the rights and liberties of their citizens." Cf. Kentucky Resolutions of 1798–1799. The guarded "final report" is printed in MacDonald's Select Documents, 199–207.

<sup>8</sup> Henry Adams says of the Convention that it "was itself a violation of the Constitution [Art. I, sec. 10, par. 3]. The final report does not propose secession; but every proposition in it looks to that end. . . . The next and easy step of sequestrating taxes was one to which the State [Massachusetts]

The unexpected announcement of peace brought the whole movement to an ignominious collapse. The new spirit of nationalism, which at once swept over the country (§ 271), discredited the Hartford Convention, buried the Federalist party, and drove the old New England leaders from public life. The rest of their years they spent in explaining to an indifferent world that they had not meant anything anyway.¹ The peculiar meanness of the disunion movement of 1814, as compared with other like movements in our history, lies in the fact that it was a stab in the back to the Nation already engaged in desperate foreign war.

For Further Reading on Divisions III and IV. — To attempt to untangle the complicated story of our foreign relations leading to the war is hardly worth while, except for the special student of diplomatic history. McMaster's account of the whole war period (Vol. IV) is exceedingly readable, but very diffuse. Henry Adams continues the great authority, but is altogether too extended a treatment for the young student. Adams's New England Federalism is a valuable collection of documents bearing on the disunion movements from 1803 to 1815. Babcock's Rise of American Nationality (early chapters) contains the best brief account.

stood pledged, in the event of a refusal by President and Congress to surrender them [voluntarily]. After such an act, the establishment of a New England Confederacy could hardly be a matter of choice."

<sup>1</sup> An admirable summary of the movement, desirable reading for every student, may be found in Theodore Roosevelt's *Gouverneur Morris*, 352-361. On the results of the war, see § 271, below.

Just Grain.

171 436 335

### CHAPTER XII

## A NEW AMERICANISM, 1815-1829

271. Meaning of the Period. — The war had originated in blunder. It had cost two hundred millions of dollars and thirty thousand lives (besides that incalculable waste and agony that always goes with war). It had been conducted discreditably. And it was ended without settling — or even mentioning — the questions that caused it. Still it proved distinctly worth while, in the new impulse it gave to Americanism and Nationality.

a. The long course of contemptuous treatment by both England and France (brought home unforgetably by the war) freed us at last from "colonialism," and forced us into lasting independence of thought and feeling. The popular imagination quickly forgot failures and shames, and found material for self-glorification even in the campaigns. For a while there had seemed serious danger of humiliating curtailment of our frontier. All the more buoyantly, at the boast,—"Not an inch of territory ceded or lost,"—the spirits of the people rebounded into extravagant self-confidence. Once more we had "whipped England." During the years that followed, this exuberant Americanism was a mighty factor (1) in eager occupation of our own wild territory, (2) in attempts to extend our bounds, and (3) in warning Europe to keep hands off this hemisphere.

b. The war had brought even the Old Republicans to enact stamp duties, excises, and "force bills"; <sup>2</sup> and it had placed in control, for years to come, the Young Republicans, even more

<sup>&</sup>lt;sup>1</sup> Name the two other factors which have been referred to as contributing to this result.

<sup>&</sup>lt;sup>2</sup> Congress gave Jefferson despotic authority to enforce the embargo.

committed to "broad construction." After the war, this new impulse to Nationality, unhampered by constitutional scruples, expressed itself (1) in internal improvements, to bind more closely the parts of the Union; (2) in protective tariffs, to render the Nation economically, as well as politically, independent of Europe; and (3) in a new National Bank, to finance the government; while (4) the same sentiment supported the Supreme Court in a remarkable series of decisions extending the constitutional powers of the government.

These seven movements, intimately interrelated, are the important features of the period from the war to the rise of Jacksonian Democracy. Two years of the period belong to the close of Madison's administration. Eight years make up the administrations of Monroe, Madison's Secretary of State and political heir. The last four years (John Quincy Adams' administration) mark the introduction of new issues and the break-up of the era.

### I. GROWTH OF THE WEST

272. Three Factors explain the marvelous westward movement of population that characterized the period. (1) The home seekers were furnished by a rapid increase in immigration from Europe, together with an impulse at home (yet more important) to escape the demoralized industries of the North and the impoverished plantations of the South. (2) The war extinguished Indian title to vast territory previously closed to settlement, and the Government soon adopted a land policy more liberal even than before, so providing the homes.\(^1\)
(3) Development in steam navigation and the construction of roads and canals afforded new facilities to transport the home seekers to the land of new homes.

<sup>&</sup>lt;sup>1</sup> The credit system (§ 263) had not worked well. Optimistic pioneers bought large amounts of land and found themselves unable to make the later payments. In 1820 Congress abolished the plan, but began to offer 80-acre lots at \$1.25 an acre. One hundred dollars would now secure full title to a farm. Settlers who had previously made some payments on the credit plan were given title to as many acres as they had paid for at this new rate.

a. Immigration from Europe had been fairly uniform from the Revolution to the War of 1812, — some four or five thousand a year. In 1817 the number of immigrants rose at a bound to 22,000; and the fifteen years, 1815–1830, brought us altogether a half-million, — most of them to find their way at once to new lands in the West.

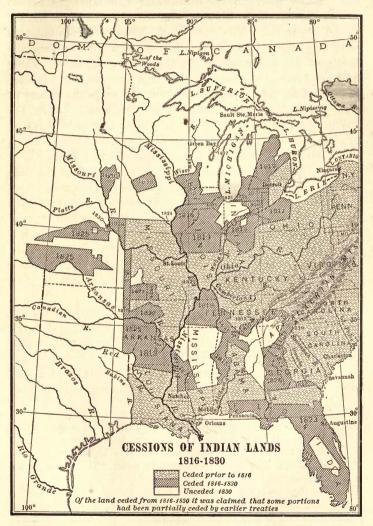
This immigration was mainly from Ireland and Germany, with a large English element. The next sixteen years brought more than twice as many; and then the Irish famine of 1846–1847 (*Modern History*, § 544) sent us a million from Ireland alone in four years (§ 343).

This westward stream of people was tremendously augmented by a movement which seemed to threaten the older States with depopulation. Return of peace in Europe put an end to New England's monopoly of the world's carrying trade; and at the same time the new manufactures, which had been built up while the war shut out English goods, were exposed to ruinous foreign competition (§ 279 a). In the South, the great planters had been declining in wealth for a generation; and the six years of embargo and war, with no market for tobacco or cotton. had hastened their ruin.1 "Bad times" always turn attention to western farms; and whole populations in seaboard districts were seized now with "the Ohio fever." "Old America seems to be breaking up and moving westward," wrote Morris Birkbeck in 1817, while journeying on the National Road. "We are seldom out of sight, as we travel this grand track toward the Ohio, of family groups behind or before us." 2

b. The Indian campaigns of the War of 1812 were to have weighty consequences. Just before war with England began, Tecumthe, a notable organizer and patriot, united all the tribes of the West into a formidable confederacy to resist White advance. General Harrison attacked and defeated Tecumthe's forces at Tippecanoe, a tributary of the Wabash

<sup>&</sup>lt;sup>1</sup> Jefferson and Monroe were almost in a state of poverty before their death, and Madison's fortune was seriously reduced.

<sup>&</sup>lt;sup>2</sup> A European observer, himself seeking a home in the west. A graphic account of the westward movement is given in McMaster, I, 381 ff.



THIS MAP, WITH PERMISSION, IS SLIGHTLY SIMPLIFIED FROM THAT OF DR. FREDERICK J. TURNER IN HIS NEW WEST.

river (November, 1811), while that chieftain was absent among the Southern Indians. In 1812 the struggle merged in the larger war. The Battle of the Thames (§ 268) takes its chief importance from the death there of Tecumthe; and the Battle of Horseshoe Bend (in the winter of 1814), where Andrew Jackson crushed the Southern Indians, was far more significant for American development than was the victory at New Orleans. When conflict was over, treaties with the Indians opened to White settlement—as new provinces won by arms—much of Georgia, most of Alabama and Mississippi, all of Missouri, and half of Indiana, Illinois, and Michigan.

c. In 1811 the steamboat Orleans was launched on the Ohio at Pittsburg; but there was no marked development of steam navigation on western waters until after the war (§ 264). Then quickly the steamboat became the chief means of travel. In 1820 sixty such vessels plied on the Ohio and Mississippi, and some of them were finding their way up the muddy waters of the Missouri, between herds of grazing buffalo. It took five days to go from St. Louis to New Orleans, and two weeks to return.

Still it was long before the steamboat replaced wholly flatboat and raft (§ 184). For many years, indeed, such craft continued to increase; and flatboatmen, raftsmen, and steamer deck hands constituted, as Dr. Turner says, "a turbulent and reckless population, living on the country through which they passed, fighting and drinking in true 'half-horse, half-alligator' style."<sup>1</sup>

A steamboat could be built anywhere on the banks of a river, out of timber sawn on the spot. At first, engine and boilers had to be transported from the East; but soon they began to be manufactured at Pittsburg, whence they could be shipped by water. The woods on the banks supplied fuel.

Some of the vessels were veritable "floating palaces" for that day,—"fairy structures of Oriental gorgeousness and splendor," exclaims

<sup>1&</sup>quot; Mark Twain" who shared this picturesque "river life," has preserved it best in literature.

one exultant Westerner, "rushing down the Mississippi as on the wings of the wind, or plowing up between the forests and walking against the mighty current as things of life; bearing speculators, merchants, dandies, fine ladies . . . with pianos, novels, cards, dice, and flirting, and love making, and drinking; and, on the deck, three hundred fellows, perhaps, who have seen alligators and fear neither gunpowder nor whisky."

Flatboat life made a somber contrast to this picture. Each boat was manned by a crew of six to twelve men. A journey from Louisville to New Orleans took six months. Many boats did not go so far. Whenever the cargo was sold out, the boat itself was broken up and sold for lumber; and the crew returned home by steamer, instead of on foot as in 1800. In 1830 a traveler on the Mississippi saw ten or twelve such boats at every village he passed.

For a time, almost the sole route from the seaboard to the West was the Ohio—after that stream had been reached either by the recent Pennsylvania turnpike to Pittsburg (§ 265) or by the National Road to Wheeling. But soon several new roads were added.

- (1) Planters abandoned the worn-out tobacco lands of Virginia and North Carolina for the "cotton belt,"—a broad sweep of black alluvial soil¹ running through South Carolina, Georgia, Alabama, and Mississippi, between the coast and the pine barrens of the foothills. To even the more distant parts of this region they found comparatively easy access by land, through central Georgia, with their caravans of slaves and goods. Thus the Lower South² came into American history, soon to take to itself the leadership in Southern politics so long held by Virginia.
- (2) The wagon road from Virginia into central Kentucky was improved, and each year it bore a large immigration to

<sup>&</sup>lt;sup>1</sup> The name "black belt," applied to this district, refers sometimes to the soil, but more especially to the concentration of Negro population there.

<sup>&</sup>lt;sup>2</sup> Dr. Turner suggests graphically the contrast between the migrations into Northwest and Southwest: here, the pioneer farmer, bearing family and household goods in a canvas-covered wagon; there, the aristocratic, gloved planter, in family carriage, attended by servants, packs of hunting dogs, and train of slaves, their nightly camp fires lighting up the wilderness.

that State. Part of this colonization passed on across the lower Ohio into southern Indiana and Illinois, or across the Mississippi into Missouri; and another part moved through Tennessee down the bank of the Mississippi to the cotton belt, to meet the stream of immigration there from the East.

This double movement (as Dr. Turner reminds us), with many other features of Western life, is illustrated by the families of Abraham Lincoln and Jefferson Davis. The two boys were born near one another in Kentucky in 1809 and 1808. The Davis family soon moved on to Louisiana and then to Mississippi, had its part under Jackson in the War of 1812, and became typical planters of the black belt. In 1810 Thomas Lincoln, a rather shiftless carpenter, rafted his family across the Ohio, with his kit of tools and several hundred gallons of whisky, to settle in southern Indiana. For a year the family shelter was a "three-faced camp" (a shed of poles open on one side except for hanging skins or canvas); and for some years more the home was a one-room log cabin without floor or window.

When Abraham Lincoln was a raw-boned youth of six feet four, with blue shinbones showing between the tops of his socks and the bottom of his trousers, the family removed again, to Illinois. Abraham, now twenty-one, after clearing a piece of land for his father, set up for himself. He had had very few weeks of schooling; but he had been fond of practicing himself in speaking and writing clearly and forcefully, and he knew well five or six good books—the only books of any sort that had chanced in his way. After this date, he walked six miles and back one evening to borrow an English grammar, and was overjoyed at finding it. He was scrupulously honest and fair in all dealings, and intellectually honest with himself,—and champion wrestler among the neighborhood bullies. He made a flatboat voyage to New Orleans; clerked in a country store, where he was the best story-teller among the loose-mouthed loafers who gathered there; studied law, and went into politics,—finally to meet his childhood neighbor, Jefferson Davis, in new relations.

(3) Toward the close of the period, a yet more important road was opened. Men of speculative minds had long seen the possibility of water communication between the Atlantic and the Lakes, through American territory, by way of the Hudson and a canal along the Mohawk valley. Gallatin's plan of 1808 (§ 265) included such a canal at national expense, and in 1817 a Congressional appropriation for internal improvements, with

this as one object, failed only because of Madison's unexpected veto (§ 278). National aid proving a delusion, *DeWitt Clinton*, governor of New York, persuaded the State to take up the work. In 1825, after eight years of splendid effort, the *Erie canal* was completed,—350 miles in length from Albany to Lake Erie.

. Ten years later, steamers  $^1$  began to run from Buffalo to Chicago. At last  $New\ England$  had a fit route to the West.

DeWitt Clinton had been jeered as a dreamer of dreams; and, in truth. the engineering difficulties for that day, and the cost for the State, meant more effort than does the Panama Canal to the United States to-day. The ditch was forty feet wide. It had eighty-one locks, to overcome a grade of seven hundred feet. Before the end, the cost of seven millions appalled the most enthusiastic champions of the scheme: but cost and upkeep have been more than met from the first by the tolls (half a million dollars the first year, and twice that annually before 1830), while the added prosperity to the State outran even Clinton's hope. Farm produce in the western counties doubled in value; land trebled; freight from New York to Buffalo fell from \$120 to \$20 a ton. In one year the twenty vessels on Lake Erie became two hundred eighteen. The forests of the western part of the State were converted into lumber, staves, and pearlash, and their place was taken by farms and thriving villages. New York City, the port for all this district, doubled its population between 1820 and 1830, taking Philadelphia's place as the leading American city, and securing more than half the total import trade of the United States.

(4) Pennsylvania found that her recent expense for good roads by land counted for little against New York's water communication with the West, and in 1826 she began her own system of canals from the Susquehanna to Pittsburg and Lake Erie. This doubled the value of farm produce in the eastern Ohio valley. In central Ohio, wheat rose from 25 or 37 cents (according to the year) to 50 or 75 cents.

The success of the Erie and Pennsylvania canals overstimulated canal building, and the universal rage for internal improvements resulted in many other unwise efforts during the next fifteen years. In particular, the new States entered upon an orgy of road building far beyond their needs or means.

<sup>&</sup>lt;sup>1</sup> Walk-in-the-Water was launched on Lake Erie in 1818, but steamboats did not ply regularly to Chicago until after 1835.

With less than a half million people, Illinois bonded herself for fourteen million dollars for such improvements.<sup>1</sup> Between 1825 and 1840 nearly five thousand miles of canals were constructed in America,—of which four fifths were either needless or were replaced soon by the railroad (§ 290).

Accordingly, this era was the period of the creation of State debts. From the adoption of the Constitution to 1820 the country had known practically nothing of this sort. In 1820 State debts were under thirteen millions. In 1830 they had doubled. In 1835 they were sixty-six millions, and in 1840 two hundred millions. Most of this enormous indebtedness, far exceeding State and Continental indebtedness for the Revolution, had been incurred by new and poor States, and represented European capital loaned to them. When the crisis of 1837 came (§ 310), the people awoke suddenly to consciousness of their folly and to a knowledge that vast sums had been wasted or stolen by careless and corrupt management. In the popular rage and despair, several States repudiated their obligations to bondholders, though some of them afterward redeemed their honor in full or in part.

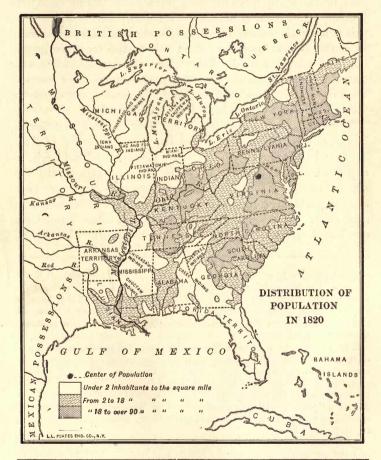
273. Growth of a "New" West.—Such are the causes which partly explain the marvelous western growth. Between the admission of Ohio and that of Louisiana there had been an interval of ten years. Now in six years six States came in: Indiana, in 1816; Mississippi, 1817; Illinois, 1818; Alabama, 1819; Maine, 1820; and Missouri, 1821. During the next decade the western States grew at the rate of from a hundred to a hundred and fifty per cent, while Massachusetts and Virginia remained almost stationary, sinking to the third and eighth places. Ohio alone, in 1830, had a million people,—more than Massachusetts and Connecticut together. The center of population in 1830 was 125 miles west of Baltimore (§ 246); and the Mississippi valley contained more than three and a half millions of our total population of thirteen millions, while a million more, in the back districts of the older States, really belonged to this western movement. New England's total population was only two million.

<sup>&</sup>lt;sup>1</sup> Morse's Lincoln (1, 53 ff.) has a quaint description of this movement.

<sup>&</sup>lt;sup>2</sup> State constitutions, in the years that followed, often forbade state enterprise of this sort. This was one reason why the railroads, then just developing, were allowed to fall into private hands. Cf. § 290, close.

<sup>&</sup>lt;sup>8</sup> Kentucky and Tennessee were the only western States with a smaller ratio of growth, and they had a large increase.

and she had gained only half a million in the last decade (even including the growing "frontier" State of Maine), while the Mississippi valley States had gained a million and a half. Indiana, alone, in the decade from 1810 to 1820, grew from 24,000 to 147,000 l<sup>1</sup>



<sup>&</sup>lt;sup>1</sup> In 1830 Chicago and Milwaukee were still mere fur-trading stations. Cleveland harbor was beginning to take on a commercial air, largely because of a canal into interior waterways. Pittsburg, with 12,000 people, was dingy

Throughout the period, Virginia held first place as mother State for the new commonwealths both north and south of the Ohio.¹ The first immigration to the Lower South, like that into Kentucky in Revolutionary days, came mainly from the yeoman class, without slaves, or with only one or two. But this democratic society of small farmers was soon forced back from the fat lands of the cotton belt to the foothills by the influx of aristocratic planters. There the small farmers continued to make the bulk of the population, much as in western Pennsylvania or North Carolina, raising, mainly, not cotton or tobacco for export, but wheat, corn, and live stock.

New England was populating her own frontier counties in Maine, and also, in good measure, the western districts of New York and the Lake region of Ohio. Her sons did not begin to come in large numbers into the great central valley until the close of this period. So far as they did come, they were from her western farming communities, democratic, not Federalist, in sympathy. They kept much of the old Puritan seriousness and moral earnestness, mingled with a radicalism like that of

with coal smoke from its iron mills. Cincinnati, or "Porkopolis," in the center of a rich farming country, had 25,000 people, and took to itself the name "Queen City of the West." St. Louis, the point of exchange between the fur trade of the upper Mississippi and the Missouri, on the north, and the steamboat trade from New Orleans, boasted 6000. New Orleans remained without much change.

Except for these towns, and a few smaller places, the population of the new districts (outside the Black belt), still lived in log cabins and reproduced the economic development of early Kentucky and Tennessee. From a great highway, like the National Road (§ 278), cheaper but helpful "State Roads" and private turnpikes began to radiate. In the absence of stone, Ohio and Illinois devised a "plank road"—long a favorite in the West—made by placing side by side, on a prepared level surface of earth, heavy planks from the trees cut on the "right of way."

<sup>1</sup> Dr. Turner has some interesting figures to demonstrate the preponderance of Southern immigration. Of the Illinois legislature in 1833, he tells us, 58 members were from the South, 19 from the Middle States, and only 4 from New England. As late as 1850, two thirds the population of Indiana was Southern in origin. Indeed, the "Hoosier" element was, originally, wholly from North Carolina.

original Puritans of the Roger Williams type. They were reformers and "come-outers" in religion and politics and society. Temperance movements, Mormonism, Abolitionism, Bible societies, Spiritualism, Antimasonry, schools and colleges, when such things came in the West, all found their chief support in this small element of the population.

#### II. FOREIGN RELATIONS

274. Boundaries: Disarmament on the Lake Frontier. — From Waterloo to the Crimean War (1815-1854), Europe had no general war. This made it easier for the United States to withdraw from European entanglements, and, with one great exception (§ 277), our foreign questions were concerned mainly with unsettled boundaries. The Treaty of 1783 had drawn our northern boundary from the Lake of the Woods "due west" to the Mississippi. But Pike's exploration (§ 262, close) had made clear that the Mississippi rose almost "due south" of that lake. Moreover, the line between the Louisiana Province and the British Possessions had never been determined, before or after our purchase. The Treaty of Ghent referred the matter to inquiry by a mixed commission; and the "Convention of 1818" between England and the United States fixed the boundary at the 49th parallel from the Lake of the Woods to the "Stony Mountains."

A more important "Convention" the preceding year had introduced an innovation in international practice and a vast gain for humanity. The two nations agreed that neither should keep armed vessels (except revenue cutters) on the Great Lakes. This humane and sensible arrangement is the nearest approach to disarmament yet reached by international agreement. For the century since, in striking contrast to the constant threat of all European frontiers, however petty, with their frowning fortresses crowded with hostile-minded soldiery, Canada and the United States have smiled in constant friendliness across the peaceful waters that unite our lands.<sup>2</sup>

 $<sup>^1\,\</sup>mathrm{A}$  name for an international agreement effected by an exchange of "notes" rather than by a formal "treaty."

<sup>&</sup>lt;sup>2</sup> The efforts of cheap Jingo politicians to make capital by attempting to undo this step in human progress, and the greed of shipbuilders on the Lakes which puts forward like envious attempts upon the well-being of mankind, should be sternly rebuked by every right-thinking man and woman. Unhap-

275. The Northwestern Fisheries in British waters we had lost claim to during the war. The Convention of 1818 practically renewed to us England's former concession (§ 162) of the privilege of taking fish, and drying them on the shore, on any unsettled portions of the coast of Labrador and most of the Nova Scotia coast, with the provision that we should not take fish within three miles of any other "coast, bays, . . . or harbors" of British America. Much misunderstanding has arisen since over this wording. We have insisted upon drawing the three-mile line along all the curves of the coast: while England has maintained that it should be drawn from headland to headland, when not more than six miles apart, so making a "bay or harbor."

276. Oregon Claimed. — Our basis for claiming Oregon has been stated (§ 262). Both Russia and Spain claimed the region because of adjacent possessions, the one in Alaska, the other in California. More serious were England's claims. Like all the claimants, England had territory adjacent to this "no man's land"; like the United States, she needed, through that land, an opening on the Pacific from her inland territory; and she had other claims corresponding closely to our own. leave out of account the ancient discovery by Captain Cook, Vancouver had explored the coast in an English vessel in 1792 (just before Gray sailed into the mouth of the Columbia), barely missing the mouth of the river. (2) The year following, Alexander McKenzie, in the employ of the Hudson Bay Company, reached the region overland from Canada. Then (3) during the War of 1812, Hudson Bay officers seized Astoria. had not been returned by the Treaty of Peace. Hence (4) England now had possession.

But in the negotiations of 1818, John Quincy Adams (Monroe's Secretary of State) put forward emphatic claims to

pily, the United States has asked, and received, from Canada, permission to abrogate the arrangement so far as to keep training vessels on the Lakes; and though no direct harm has or will result, this action has undoubtedly made the great Convention somewhat less sacred in all eyes.

<sup>&</sup>lt;sup>1</sup> Oregon meant then an indefinite territory between Spanish and Russian possessions on the Pacific coast. No bounds to any one of the three regions had been drawn. Russia claimed specifically to the 51st parallel.

the whole Oregon district. The "Convention" postponed settlement of the question, leaving the territory open for ten years to occupation by both parties "without prejudice to the claims of either." Then, in the Florida treaty of 1819–1821, Adams secured from Spain a waiver of any claim she might have had north of the 42d parallel. This "quitclaim" was construed by us as a recognition from Spain that Oregon belonged to the United States.

Thus the matter rested. In 1828 the agreement with England for joint occupation was renewed, subject to a year's notice by either country. But the debates in our Congress had shown a preponderance of opinion that we could never occupy so inaccessible and "barren" a region, and ought not to if we could. There were enthusiastic Westerners, however, whose robust faith foresaw (with our great Secretary) that in a few years Oregon would be nearer Washington than St. Louis had been a generation earlier, and that it was to make our indispensable gateway to the Western ocean and the lands of the Orient, — "the long-sought road to India." Said Benton of Missouri, in an impassioned oration, reproaching Eastern indifference, "It is time that Western men had some share in the destinies of this Republic."

- 3 277. The Monroe Doctrine. In 1821–1823 two foreign perils called forth from the Administration the proclamation of the new policy, America for Americans.
- (1) In 1821 the Tsar of Russia forbade citizens of other powers even to approach within a hundred miles of the Pacific coast, on the American side, north of the 51st parallel. Russia had no settlements within hundreds of miles of that line; and this proclamation was practically an attempt to reserve new American territory for future Russian colonization. Moreover, it would have turned the Bering Sea, with its invaluable fisheries, into a Russian lake, absolutely closed to all other peoples. The idea was peculiarly abhorrent, both because of Russia's exclusive commercial policy (typified in the proc-

<sup>&</sup>lt;sup>1</sup> On these debates, see Turner's Rise of the New West, 128-133, or McMaster, V, 25-26. For a similar debate, at the renewal of the agreement in 1825, see McMaster, V, 481-482.

Iamation), and because the Tsar was the head of the despotic "Holy Alliance," which at just this time was planning to extend its political system to South America and Mexico.

(2) That plan was itself the second peril. In 1821 the United States recognized the independence of the revolted Spanish American States and appointed diplomatic agents to their governments. But the "league of despots," known as the Holy Alliance, having crushed an attempt at a republic in Spain itself, now planned to reduce the former American colonies of Spain to their old subjection.¹

Alone in Europe, England stood forth in determined opposition; and Canning, minister for Foreign Affairs, made four separate friendly suggestions to our minister in England that the two English-speaking powers join hands to forbid the project. President Monroe (and his unofficial advisers, Madison and Jefferson<sup>2</sup>) wished to accept this offer for allied action; but John Quincy Adams insisted strenuously that the United States must "not come in as a cockboat in the wake of the British man-of-war," and carried the Cabinet and Monroe with him in his plan for independent action.

Meantime, Canning had acted, and, in his proud boast, "called the New World into existence, to redress the balance of the Old." His firm statement that England would resist the proposed attack upon the revolted American States put an abrupt close to the idea of intervention. But though the declaration by the Administration in the United States came later, it has had a greater permanent significance. Monroe, in his message to Congress (really a notice to European powers), December 2, 1823, adopted certain paragraphs written by Adams, since famous as the Monroe Doctrine:—

<sup>&</sup>lt;sup>1</sup> For a brief outline of all this story see Modern History, §§ 395-398.

<sup>&</sup>lt;sup>2</sup> Jefferson thought the matter "the most momentous since the Declaration of Independence." England's mighty weight—the only real peril to an independent American system—could now be brought to the side of freedom; and the fact would "emancipate the continent at a stroke." The same result was attained, in the end, by separate action by the two countries.

[1] With special reference to Russia and Oregon,—"the American continents... are howeforth not to be considered as subjects for future colonization by any European powers." [2] With regard to the proposed "intervention" by the Holy Alliance.—"The political system of the allied powers is essentially different from that of America.1... We owe it... to those amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere, as dangerous to our peace and safety.2... With the existing colonies... of any European power we... shall not interfere.3 But with the Governments... whose independence we have... acknowledged, we could not view any interposition, for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as a manifestation of an unfriendly disposition toward the United States."

In justification of this position, the message proclaimed also that we intended not to meddle with European affairs.<sup>4</sup> We claimed primacy on this hemisphere; we would protect our weaker neighbors from European intrusion or molestation; but we would leave the  $\Theta$ ld Werld without interference from us.

The message was thoroughly effective. England hailed it as making absolutely secure her policy of preventing European intervention in America; and the Tsar agreed to move north 250 miles, and to accept the line of 54° 40′ for the southern boundary of Russian Alaska.

<sup>&</sup>lt;sup>1</sup> This statement regarding the despotic character of the powers united in the Holy Alliance has, of course, little logical bearing upon any intervention in America to-day by the constitutional monarchies or republics of Europe.

<sup>&</sup>lt;sup>2</sup> This (like the final sentence quoted below) is the diplomatic way of saying that we should be justified in regarding such action as a declaration of war.

<sup>&</sup>lt;sup>3</sup> We would not, then, object to England's hold on Canada, or to any just claim she could show to Oregon at that time; but we would oppose any attempt on her part to seize part of Mexico as a war indemnity, in case she should have war with that country, and, logically, we would interpose to prevent war itself, unless, in our opinion, justifiable.

<sup>&</sup>lt;sup>4</sup> To conform to this position, which Adams so strongly urged, Monroe modified certain expressions in the message, previously decided upon, which might have implied a possibility of interference by us in the intervention of the Holy Alliance in Spain itself, and in the Greek war for independence.

The thought of this famous message was not novel. Part of it is found in Washington's utterances, and the best of it had been stated repeatedly by Jefferson (§ 253). But the practical application, in 1823, gave it a new significance. From an academic question, it was suddenly lifted into a question of practical international politics.

In form, to be sure, the message was merely an expression of opinion by the President. No other branch of the government was asked even to express approval. But the cordial response of the nation, on this and all subsequent occasions, has made the Monroe Doctrine, in truth, the American Doctrine. The only real danger to its permanence is that we so act as to inspire our weaker American brethren with fear that we mean to use its high morality as a shield under cover of which we may ourselves plunder them at will. If it ever becomes probable that the sheep dog wards off the wolves that he himself may have a fuller meal, his function will not long endure.

#### III. NATIONAL POLICIES

278. Internal Improvements.—The Western communities, rising rapidly to political influence, clamored for national aid for roads and canals. To the Cumberland Road (§ 265) the government was already committed. Only twenty miles had been fully completed at the close of the war; but, in 1816, it received an appropriation of \$300,000, followed by others as fast as they could be used. By 1820, with a cost of a million and a half, it reached Wheeling, on the upper Ohio waters. Thence, at a total cost of nearly seven millions 2 (carried by thirty-four appropriations from Congress), it was pushed on to Columbus, Indianapolis, and finally to Vandalia (then capital of Illinois).

<sup>&</sup>lt;sup>1</sup> Unhappily, at the moment the Monroe Doctrine was put forth, the United States was hoping eagerly for an opportunity to annex Cuba (special report), while the rising slave power in our government sought to keep that unfortunate island from becoming independent, lest it might free its Negroes, as the other Spanish-American States had done.

<sup>&</sup>lt;sup>2</sup>The cost east of Ohio exceeded twice the original "five per cent fund" from Ohio lands. The road was a true national undertaking,—though the fiction of merely "advancing funds" was long maintained, to dodge constitutional objections.

From the lower waters of the Potomac almost to the Mississippi, crossing six States, this noble highway with its white milestones spanned the continent in a long band with few slight bends. The eastern part was formed of crushed stone on a thoroughly prepared foundation; the west-



THE NATIONAL ROAD.

ern portion was macadamized. It bridged streams on magnificent stone arches, and cut through lines of hills on easy grades. In 1856 (after railroads had superseded such means of transit in importance) Congress turned the road over to the various States in which it lay.

For a time the energies set free by peace seemed to promise other vast routes of communication at government expense,—especially as the difficulty of transporting troops and supplies over unimproved roads had just been felt so keenly. The national revenues (with renewal of importations) rose at a leap from 11 to 47 millions. Madison's administration adopted a larger standing army and navy, and the annual expenditure was placed now at 27 millions; but a large surplus was rolling up. The Message to Congress in December, 1816, renewed Jefferson's suggestion of a constitutional amendment to permit the use of this surplus in a "comprehensive system of roads and canals . . . such as will have the effect of drawing more closely together every part of our country" and of increasing "the share of every part in the common stock of national prosperity."

A committee, to which this part of the Message was referred, ignored the suggestion for amendment, and recommended the immediate adoption of a plan for internal improvements copied from Gallatin's report of 1808. Before this report came up for action, the principle was settled in connection with Calhoun's "Bonus Bill." An Act establishing a new National

Bank¹ secured to the United States a "bonus" of \$1,500,000 (for the special privileges of the charter), besides certain shares in future dividends. (Calhoun's bill pledged these funds to the construction of roads and canals. To the bitter disappointment of the Young Republicans, on the last day of his term, Madison vetoed the bill, in a message which set forth at length the old Jeffersonian doctrine of strict construction. He expressed warm sympathy with the purpose of the Act, but insisted upon the necessity of the slow process of constitutional amendment.

Calhoun was still in the nationalistic stage of his development, and he urged his bill on broad grounds. "Let it never be forgotten . . . that [the extent of our republic] exposes us to the greatest of all calamities, next to the loss of liberty itself (and even to that, in its consequences),—disunion. We are greatly and rapidly—I was about to say, fearfully—growing. This is our pride and our danger; our weakness and our strength. . . . We are under the most imperious obligation to counteract every tendency to disunion. . . . If we permit a low, sordid, selfish sectional spirit to take possession of this House, this happy scene will vanish. We will divide; and, in consequence, will follow misery and despotism." Whatever impeded intercourse between different parts of the country, he urged forcefully, weakened union. "Let us conquer space. . . . The mails and the press are the nerves of the body politic." He wished the Westerner to be able to read the news of Boston "still moist from the press."

Calhoun sought for constitutional authority in the clauses of the Constitution relating to post roads and to the regulation of commerce between the States, and even in the general-welfare clause. Merely as a matter of logic, Madison's veto overwhelmed this reasoning. To "establish" post roads, the President argued, meant only to designate, not to build. To regulate commerce against State discriminations did not mean to create commerce by national encouragement. And the general-welfare argument he had no difficulty in consigning to ignominy (§ 204).

For a time, national aid languished. President Monroe, in his inaugural and in his one veto, took ground akin to Madi-

<sup>&</sup>lt;sup>1</sup> The charter of the First Bank expired in 1811, and Republican opposition had prevented a renewal at that time. But, in 1816, the new Nationalism disregarded former scruples. The bill, championed especially by Calhoun and Clay, received almost a solid vote, and was approved by Madison. This last fact made his veto of the Bonus Bill (below) the more surprising.

son's. The enraged Congress retorted with a remarkable series of resolutions condemning the President's position; but it did not care to challenge more vetoes, or to make trial of the dubious process of amendment.

The accession of John Quincy Adams marked a change of front by the executive. In 1807 Adams had moved in Congress the resolution which called out Gallatin's Report; and now his inaugural announced internal improvements as a cardinal policy. His first Message urged Congress to multiply roads, endow a National University, and establish an astronomical observatory—"a lighthouse of the skies." But Congress just then was less enthusiastic. It was broken into bitter factions, most of them hostile to the President; and many States had by this time begun improvements of their own, and did not wish to help pay for competing lines of communication elsewhere. Still Adams' four years show appropriations for such purposes totaling \$2,310,000,—more than three times the amount for Monroe's eight years.

279. Protective Tariffs. — From 1807 to 1815 the embargo and the war had prevented the importation of European manufactures. This condition afforded an artificial "protection" for home manufactures. We had to use up our own raw cotton, wool, and iron, or let them go unused; and we had to supply our own clothing, fabrics, tools, and machinery, or do without.

The new demand was met mainly in New England, where much capital and labor, formerly engaged in shipping, was temporarily unemployed. In 1807 New England cotton mills had only 8000 spindles in use (§ 248); in 1809 the number was 80,000; and, by the close of the war, 500,000, employing 100,000 workers. Woolen and iron manufactures had not grown quite so rapidly; but they also were well under way. The total capital invested was about a hundred million dollars, — two fifths of it in the cotton industry.

Plainly, this manufacturing industry, developed by unnatural conditions, could not sustain itself against restored competition. We could let it die, and permit the capital and labor to find

1800 - 1824 - 1876

their way back into other industries (after some period of greater or less demoralization); or we could now "protect" it from foreign competition by law. To do this, we would place high tariffs on foreign goods such as we manufactured.

If we adopted this policy of "protection," we should continue to pay more for the articles than if we let them come in, untaxed, from the Old World, where their cost was lower. But, it was urged, we should have more diversified industries, larger city populations, and so more of a home market for our raw materials and for foodstuffs, — and, after a time, even cheaper manufactures (when we should come to do the work efficiently and cheaply), because of the absence of ocean freights.

The question of "protection" was not new. Earlier tariffs had been framed to carry "incidental protection" (§ 219); and Hamilton's famous Report on Manufactures had argued for a protective tariff. But all such requests had been for taxation in order to create manufactures. It was more effective to call upon Congress to preserve industries into which a national war had driven citizens. Moreover, the war had given special point to Calhoun's patriotic argument that economic independence was essential to real political independence.

Against the eloquence of Calhoun and Clay, John Randolph raised his voice in almost solitary protest, in behalf of the "consumer." With keen insight, he warned the agricultural masses that they were to pay the bills, and that, in the discussion of future rates, they would never be able to make their needs and opinions felt in Congress as could the small body of interested and influential capitalists. "Alert, vigilant, enterprising, active, the manufacturing interests are collected . . . ready to associate at a moment's notice for any purpose of general interest to their body. . . . Nay, they are always assembled. They are always on the Rialto; and Shylock and Antonio meet every day, as friends, and compare notes. And they possess, in trick and intelligence, what, in the goodness of God to them, the others can never have."

The sentiment for protection was victorious; and, against steadily increasing opposition, it carried three great tariff bills with steadily increasing rates.

a. The Tariff of 1816 was enacted by a two-thirds vote as an avowed protective measure. Revenue had become the incident. Imported cottons and woolens were taxed twenty-five per cent,

and manufactured iron slightly more. But these rates proved too low for their purpose. English warehouses were horribly overstocked with the accumulations of the years during which the markets of the world had been closed to them; and now these goods were dumped upon America at sacrifice prices. Moreover, in 1819, came the first world-wide industrial depression. In America, the manufacturing interests ascribed this to insufficient "protection," and began to clamor for more.

After the first three years, the rate was to be twenty per cent, and the law is often called a twenty per cent tariff; but that rate never went into effect. A law of 1818 made permanent the twenty-five per cent rate.

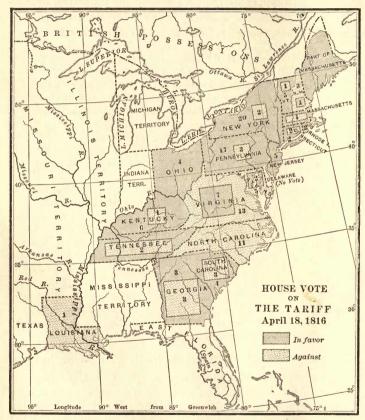
Moreover, on cheap grades of cloth the rate was really much higher, disguised by the device of a "minimum-price" clause. That is, the bill provided that, for purposes of taxation, no cotton cloth should be valued at less than 25 cents a yard. If the cloth was really worth only 13 cents, the tariff was still  $6\frac{1}{2}$  cents, or, in reality, fifty per cent. This effective device for placing the chief tariff burden upon the poorest classes has been much practiced in later tariffs.

The American causes for the depression of 1819 resembled those of later "crises." (1) The promise of the tariff itself had caused over-investment in manufactures in the East; and (2) in the West there had been reckless over-investment in public lands by thousands of poor immigrants who were unduly allured by the "credit system" of sale for public lands (§§ 263, 272, b). A third cause, which intensified the evil, was the recent multiplication of "wild-cat" State banks (after the expiration of the first National Bank in 1811), which had loaned money in extravagant amounts for both forms of investment mentioned, and for more questionable speculation. When at length these banks found themselves forced to begin to call in their loans, or to close their doors, they spread panic and confusion throughout society.

b. The Tariff of 1824 found its leading champion in Clay, who now glorified the protective policy with the name, the American System. The chief opposition in debate came from Webster, who represented a commercial district in Massachusetts, and who took his stand upon absolute free-trade policy.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Webster followed the teachings of all "the Fathers," except Hamilton. The Revolution, in no small degree, was fought for the right to trade at will

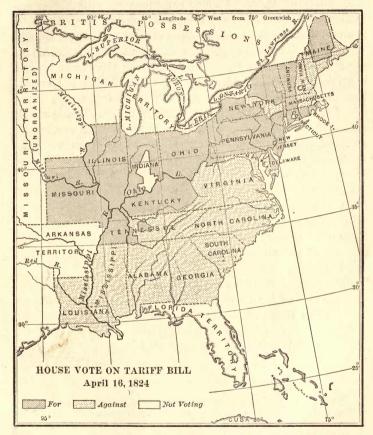
In general, New England, wavering between manufactures and a return to its old shipping interests, was divided. The South had been almost solid for protection in 1816, but now it was solid in opposition, loudly denying its constitutionality. The bill passed by bare majorities, through the union of the manu-



with the world. This fact gave a free-trade tone to our thought for a generation. By 1815, however, even Jefferson and Madison had modified their former views, and for a time inclined to protection.

<sup>1</sup> The power to tax, it was argued, was given, plainly, only to raise revenue, not to build up manufactures in one part of the country by taxing other

facturing Middle States and the agricultural West, which hoped to see a home market for its raw materials. The bill repre-



parts. Moreover, it was pointed out that a proposal to give Congress such power was defeated in the Philadelphia Convention. Protectionists replied that they based their constitutional right upon the power to regulate commerce, not on the power to tax.

<sup>1</sup> John Randolph's biting wit found entertainment in this situation: "The merchants and manufacturers of Massachusetts... repel this bill, whilst men in hunting-shirts, with deer-skin leggings and moccasins... want protection for manufactures."

sented an increase to about 33 per cent; and, under this stimulus, the capital invested in manufactures trebled in three years.

c. Tariff of 1828. Clamor continued for still higher protection, and in four years Congress enacted the "Tariff of Abominations." The measure was engineered largely by men who planned to make Jackson President, and none of the other political leaders dared oppose it on the eve of a presidential campaign. Said John Randolph, "This bill encourages manufactures of no sort but the manufacture of a President." Webster now changed sides, frankly assigning as his reason that Massachusetts had accepted protection as a settled national policy, and had invested her capital in manufactures accordingly. New England and the South had exchanged positions since the controversy of 1816.

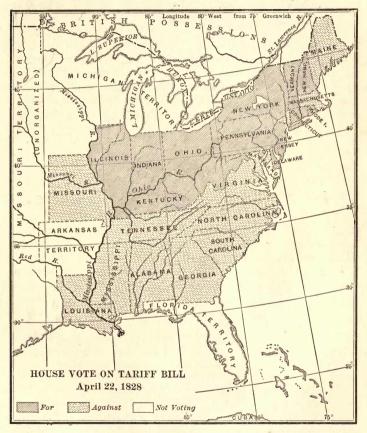
Opponents succeeded in making the bill a hotch-potch, in hope its authors would themselves refuse to swallow it, but in vain. The law raised the average of duties on taxed articles to 49 per cent, — far the highest point touched until the "wartariffs" of the sixties. It gave rise to a new nullification movement (§ 304 ff.).<sup>2</sup>

280. Judicial Decisions and Nationality. — The period (1816–1828) is famous for a series of great decisions by the Supreme Court confirming and extending the supremacy of the national government. In particular, these decisions established (1) the authority of the Federal courts to declare void State laws in conflict with a national law, or treaty, or the Constitution;

<sup>&</sup>lt;sup>1</sup> The South found that slavery shut her out from manufacturing industry, and her agricultural exports could not be sold to advantage unless the United States enjoyed a large and free commerce with other nations. The tariff threatened to shut off such trade.

<sup>&</sup>lt;sup>2</sup> EXERCISE. — Distinguish between free trade and protection. What is a revenue tariff? How will the articles taxed in such a tariff differ from those taxed in a "protective tariff"? If a large revenue is wanted, will it be secured more probably from a high tax on luxuries or a low tax on necessities? Would people pay willingly a direct tax equivalent to the indirect tax they pay on their morning coffee? In a tax on necessities, do poor or rich pay most in proportion to their wealth?

(2) the means to enforce this authority by receiving appeals from State courts even when the State itself was a party; (3) a restriction upon State legislatures by an extension of the term



"contract"; and (4) an extension of the power of Congress under the doctrine of "implied powers," especially in acquisition of territory, creating corporations, and controlling rivers and other means of interstate commerce. Some details follow, for reading in class.

a. Martin v. Hunter's Lessee (1816). Virginia had refused to permit an appeal from her highest court to the national Supreme Court, charging that the twenty-fifth section of the Judiciary Act of 1789, providing for such appeals (§ 217), was unconstitutional. The Supreme Court held the law constitutional, declaring the States and their legislatures bound by the paramount authority of the Nation.

b. Cohens v. Virginia (1821). Virginia, in her own courts, had secured judgment against a certain Cohens. Cohens claimed that he had been denied privileges due him under the national Constitution, and that the judgment, therefore, was erroneous; and he applied to the Supreme Court for a writ of error, to compel the Virginia court to permit an appeal. Chief Justice Marshall and the Court issued the writ, heard the appeal, and reversed the State court, despite the eleventh amendment, holding that, the State having begun the suit, it remained, in reality a suit by the State against an individual, not by an individual against a State (§ 218), and otherwise confirming the right of appeals from State Courts.

The two decisions (a and b, reinforced, too, by others in the same period) established beyond dispute the appellate power of the Federal Court from State Courts in any case "where the Constitution, laws, or treaties of the United States are drawn in question." In 1831, indeed, an attempt was made in Congress to repeal the section of the Judiciary Act conferring this appellate power, but the bill mustered less than a fourth of the votes.

C In the Dartmouth College case (1819), the Court declared that state legislatures could not repeal charters granted by previous legislatures, since such grants were "contracts." The decision was secured, it is generally held now, not wholly on legal reasoning, but partly by the sympathy of the Court for the noble little college, by Daniel Webster's eloquence in its behalf, and by great outside pressure. Cf. § 208, c.

(d) Gibbons v. Oyden (1824). New York had rewarded Fulton and Livingstone (§ 264) with a grant of a monopoly of the navigation of the Hudson by steam vessels for a period of years. The Supreme Court declared the grant void, as conflicting with the power of the United States to regulate commerce. Thus "commerce" in the Constitution, was widened from the mere exchange of goods to transportation by water,—and of course by land, and, in time, to communication by telegraph.

<sup>&</sup>lt;sup>1</sup> Observe, in 1863 the Supreme Court had declared unconstitutional another section of this same law of 1789,—and a section giving power to itself. Now it was in good position, after such a precedent, to declare constitutional a section of that law giving to it a more important power.

#### THE JUDICIARY

McCulloch v. Maryland (1819). A branch of the National Bank had been established in Maryland. The State banks were incensed, and the legislature tried to drive out the National Bank by taxing it ruinously. McCulloch, officer of the Bank, resisted the tax. The Maryland courts upheld it, denying the right of Congress to charter a Bank, since no such power was "enumerated" in the Constitution; but, on writ of error, (b above), the national Supreme Court (1) held the National law constitutional under the doctrine of implied powers, and (2) declared the State law void because conflicting with a National law. It was in strengthening his position for this argument that Marshall revived the idea that "The people of the United States" (in the preamble to the Constitution) meant one consolidated people. Cf. § 211.

# A

# IV. BREAK-UP OF THE ERA

281. Party replaced by Faction. — The Federalists had been galvanized into life by the embargo and the war (§ 267, note); but in 1816 they cast only 35 electoral votes, none in 1820, and in 1824 they made no nominations. The old party lines had disappeared practically by 1820. In consequence, the period

¹ Congress and President had acted previously, at times, on this doctrine; but this was the first judicial decision affirming the constitutionality of such action. Chief Justice Marshall found the power to charter a bank a "necessary and proper" power in connection with the power to raise money and use it. The language defining "necessary and proper," and explaining "implied powers," is notable. "Let the end be legitimate, let it be within the scope of the Constitution,—and all means which are appropriate, which are plainly adapted to the end, and which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional" (cf. §§ 204, b, 207, b, 217, 222, close).

A later decision (Anderson v. Dunn, 1824) used even stronger language: "There is not in the whole of that admirable instrument a grant of powers which does not draw after it others, not expressed but vital . . . not . . . independent, but auxiliary and subordinate. The idea is utopian that government can exist without leaving the exercise of discretion somewhere."

<sup>&</sup>lt;sup>2</sup> In the cases previously noticed, a State law had been voided only when in conflict with the *Constitution*. Opposition to the Bank appeared also in Kentucky and Ohio, and the Supreme Court had other opportunities in the next few years (of which it took advantage) to repeat and reinforce this doctrine. The student should read the striking story of the Ohio case in McMaster, IV, 498 ff. Review, also, § 207, a. During this period the Court declared void laws of eleven of the twenty-four States.

has been miscalled an "Era of Good Feeling." In reality, it became an era of exceeding bad feeling among factions actuated by personal aims rather than by political principles.

This became apparent in the campaign of 1824. Crawford of Georgia was nominated for the presidency by a Congressional caucus (§ 227 and note), which, however, was attended by less than a third of the members. Legislatures in the New England States nominated John Quincy Adams; and in like fashion, Clay was nominated by Kentucky and Missouri, and Andrew Jackson by Tennessee and Pennsylvania. Jackson's candidacy was a surprise and an offense to the other statesmen of the period. He was a "military hero," and, to their eyes at that time, nothing more.1 The campaign was marked by bitter personalities. Adams, whose forbidding manners kept him aloof from the multitude, was derided as an aristocrat, while Jackson was applauded as a "man of the people." Jackson had 99 votes; Adams, 84; Crawford, 41; Clay, 37. Thus (twelfth amendment) the House of Representatives had to choose between the three highest, and Adams became President. through votes thrown to him by Clay. Adams afterward appointed Clay his Secretary of State; and friends of Jackson declared that the "will of the people" had been thwarted by a "corrupt coalition between Puritan and blackleg."2

Adams was thwarted at every turn throughout his four years, and the Jackson men began at once the campaign for the next election. New party lines began to appear. Supporters of Adams and Clay, standing for internal improvements and protection, took the name of National Republicans,

<sup>&</sup>lt;sup>1</sup> Never before had a man been a candidate for that office without long and distinguished service behind him. Moreover, a sort of succession had been established. Until after the twelfth amendment the Vice President had been considered the natural heir; after that time, the Secretary of State. Madison had succeeded Jefferson; Monroe, Madison; Adams was next in line.

<sup>&</sup>lt;sup>2</sup> It was thought, unjustly, that Adams and Clay had bargained. The quoted phrase was John Randolph's. Clay challenged Randolph, and a duel was fought without injury to any one. Honor thus appeared, pleasant social relations were restored between the two.

to signify their centralizing tendencies; while Jackson men emphasized their claim to a truer democracy by the name Democratic Republicans, or, a little later, Democrats.

282. Reaction against Nationalism.—In the years just following the War of 1812, Nationalism had seemed triumphant in every part of the Union. But so vital a change could not become permanent at a stroke; and by 1820 reaction appeared, (1) in intensified sectionalism and (2) in a revival of State sovereignty. These elements of disunion were now most active in the South; and the two main causes were (1) dread of economic loss through protective tariffs, and (2) fear for the institution of slavery.

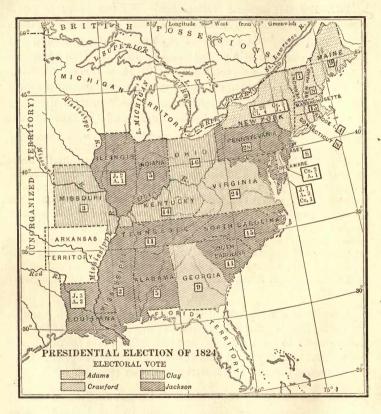
After 1820, the tendency to State sovereignty manifested itself also in widespread denunciation of the great nationalistic decisions of the Supreme Court (§ 280). Southern political writers, in particular, piled pamphlet upon pamphlet of strenuous criticism; and nearly half the State governments protested or resisted some judicial decree. Ohio collected by force an unconstitutional tax from the National Bank, and held it six years (§ 280, e, note). Virginia made formal protest against the doctrine of the Court in Cohens v. Virginia. And Georgia nullified a treaty made by the Federal government with the Southern Indians within her borders, and threatened war if the treaty (backed by Supreme Court decisions) were enforced.

Assertion of State sovereignty has always been a refuge for a minority feeling itself aggrieved by a national policy. The effect of the protective tariffs in calling out this sort of response in the South (already referred to) will be treated later (§ 304 ff.). The development of sectionalism was hastened by a contest over slavery (§ 283).

283. The Missouri Compromise. — From the first, a careful balance had been maintained between free and slave States

<sup>1&</sup>quot; Georgia and State sovereignty" should be a subject for a special report, though the teacher may prefer to defer it until it may include the continuation in Jackson's period. On the whole subject of State hostility to the Federal judiciary, see Turner's New West, 299-305, or, more fully, McMaster, V, 412 ff. Details for Georgia are given in Dr. Phillipps' article in the American Historical Association Reports for 1901, vol. II.

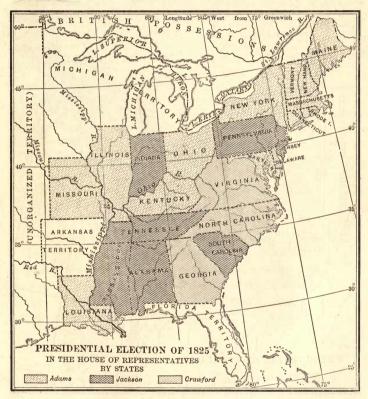
in admitting new commonwealths. Vermont offset Kentucky; Ohio, Tennessee (§ 224). Louisiana (1812) made the number of free and slave States just equal; but the free States grew



so much faster in population that by 1820 (under the three-fifths rule) they had the larger number of representatives in the lower House of Congress by a fourth. The South grew increasingly sensitive over this situation; and, on the other hand, a tide of antislavery feeling was rising in the North.

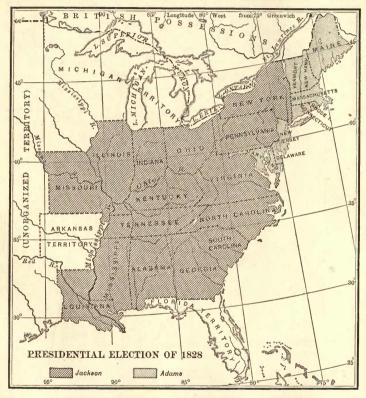
Missouri had been settled mainly through Kentucky, with

many slaveholders among its people. In 1819 a bill for its admission to the Union came before Congress. The proposed State lay north of the line of the Ohio, which, with Mason and Dixon's line, divided free and slave territory east of the



Mississippi. The North roused itself to insist on maintaining that same line west of the river, and meetings and legislative resolutions protested against admission with slavery. The South protested quite as vehemently against any restriction upon the wishes and rights of the Missouri people. The House of Representatives, by a majority of one vote, added

an amendment to the bill, prohibiting slavery in the proposed State. The Senate struck out this "Tallmadge amendment," and the bill failed for that session. No one yet denied the constitutional power of Congress to forbid or regulate slavery



in the *Territories*, but many Northerners, even, denied the right of Congress to impose restrictions upon a new *State*—so as to make it less "sovereign" than older States.

At the next session of Congress, the Maine district of

<sup>&</sup>lt;sup>1</sup> Introduced by James Tallmadge of New York.

Massachusetts was also an applicant for admission as a new State. The House passed both bills, restoring the Tallmadge amendment for Missouri. The Senate put the two bills into one (in order to coerce the North), and substituted for the Tallmadge prohibition of slavery the Missouri Compromise of 1820. Missouri was to be admitted, with permission to establish slavery, but no other slave State should be formed out of existing national domain north of the southern boundary of Missouri (36° 30').

After a sharp struggle, the House accepted this compromise. But when Missouri presented its constitution for approval, it was found to prohibit the immigration of free Negroes. This was a denial to citizens of other States rights guaranteed in the Constitution (Art. IV, sec. 1). Again Congress was in a furor. But Henry Clay arranged a minor compromise, by which the objectionable provision was modified.

(The greater part of the Louisiana Purchase was saved for Freedom, and the policy of the Northwest Ordinance was reasserted.) But sectional passions had been aroused, never again to sleep until after the Civil War. Soon Southern dissatisfaction was fanned to flame by the "tariff of abominations." But at this critical moment the election of Jackson (1828) gave hope of relief. Jackson received every electoral vote south of the Potomac and west of the Appalachians, besides those of New York and Pennsylvania. He was a Southerner by birth, and a citizen of the Southwest. He was a violent proslavery man, and he was supposed to have State sovereignty sympathies.

For Further Reading. — The closing chapters in Babcock's Rise of American Nationality (186-308) and Turner's Rise of the New West present the story of the period in the "American Nation" series. The closing volume of Henry Adams' great History is admirable for the first part of the period. McMaster is referred to frequently in the footnotes above, but, as usual, is too voluminous for general reference, though exceedingly graphic for this period. Excellent biographies (titles in Appendix) of Clay, Calhoun, Adams, and Webster should be read so far as they pertain to this period.

### CHAPTER XIII

## A NEW DEMOCRACY, 1830-1850

#### I. THE NEW SOCIETY

#### A. THE NEW WEST

284. The Revolution of 1828, marked by the election of Andrew Jackson, was as significant as was that of 1800. A new generation had come upon the stage, and, indeed, upon a new stage. Jackson's victory was the victory of the new West over the old East, and, in the East itself, the victory of a newly enfranchised and awakened labor class over the classes which had formerly dominated society and politics. It was the victory of a new radical democracy, untrained, administered by "men of the people," over the moderate democracy of Jefferson, administered by trained, leisured, and cultured "gentlemen." Once more we pause to survey a new United States,—that of the years 1830–1850.

Population was still mainly of English stock, descended from pre-Revolutionary settlers (§§ 111, 272 a). Between 1800 and 1830 it had increased from five and one third to thirteen millions, with a third, instead of a twentieth, west of the mountains. The total area and the "settled area" had each been doubled. Thirty-two cities (almost all in the North Atlantic section) had each a population of over eight thousand; and this "urban" population had begun to gain upon the rural, though it had risen, so far, only from five per cent of the whole to seven. Two million of the people were slaves and a third of a million more were free Negroes—about half this last class in the North.

The large cities in 1830 were New York (203,000), Philadelphia (167,000), Baltimore (80,000), Boston (61,000), and New Orleans, with its old population of about 46,000. The Southern cities were falling behind, relatively; and the West had not begun to grow towns in any number. Cincinnati was the only city of over three thousand people in the oldest State in the Northwest.

285. The three sections require brief description.

a. The North-Atlantic section, though still largely agricultural and commercial, had become also a manufacturing district. New England utilized the water power of her streams, by dams, for her cotton, woolen, and paper mills, — building up a new line of towns (the Fall line) at Lowell, Manchester, Lawrence, Holyoke, Fall River, etc.; while Pennsylvania, New Jersey, and New York accomplished even greater results in the same direction by the use of "stone coal" (anthracite).

The New England factory towns were at first made up largely of the old farming population, moved in from the country. At Lowell, for instance, the employees in the cotton mills were almost exclusively farmers' daughters, who, after working fourteen hours a day in a factory, had still (for one generation) physical and intellectual energy for literary clubs and social activities. In the thirties, however, these workers began to be replaced by immigrants fresh from Ireland. Then the sons and daughters of New England turned their faces westward. Especially after 1840 did they colonize the northern portions of Indiana and Illinois, making, also, in the early day, the chief element in the frontier commonwealths of Michigan, Wisconsin, Iowa, and Minnesota.

b. The South had become stationary in politics and industry, and it grew only by slow degrees in population. The retarding influence of slavery upon economic development was plain to unprejudiced observers; but existing industries (tobacco and cotton) were based chiefly on that institution, and the South had begun to cherish it more blindly than in

<sup>&</sup>lt;sup>1</sup> Lucy Larcom's A New England Girlhood pictures this society. I have also heard it described vividly by a valued friend, an old lady of strong character and fine culture, and of valued service to public education in a progressive State, who was herself a Lowell factory girl in the forties. At 4:30 A.M. the bell summoned the workers from their beds. At five they must be within the mills, and the gates were closed. With a half hour later, for breakfast, and forty-five minutes for "dinner," the labor continued till 7 P.M. The manufacturing company provided plain lodgings and arrangements for cheap board at \$1.50 per week. Skillful workers (paid by the piece) might earn that and possibly as much more. Churches and lectures and all the town's social activities arranged their meetings late enough in the evening to be attended by these eager working girls. The girls wrote, edited, and published a periodical of considerable literary merit.

earlier years. Society was stratified as it no longer was in other parts of the country.

- (1) At the top were some six thousand families (25,000 or 30,000 people) of large planters, with numerous slaves, - sometimes a thousand to one owner. This aristocracy furnished the South's representation in the National government and almost all the higher State officials. (2) A hundred and thirty thousand families (650,000 people) owned perhaps from one to four slaves each. These small slaveholders, with about as many more non-slaveholding but well-to-do farmers, made up the yeomanry of the South, from whom were to come her famous soldiery. This class often differed from the aristocracy in political motives and aims: but it lacked leaders, and it had no organization from State to State. (3) The "poor whites," without other property than a miserable cabin and a rough clearing, outnumbered the veomanry two to one.1 This class made the political following of the rich planters. (4) The 180,000 free Negroes were subject to oppressive legal restrictions, and had, of course, no political rights. They could not serve on juries; nor were they allowed to move from place to place at will, or to receive any education.
- (c) The New West of the Mississippi valley gave two more States to the Union in the decade following 1830, and doubled its population—while the country as a whole added only a third. Ohio added 70 per cent; Indiana, 100 per cent; Illinois trebled in numbers; and Michigan multiplied her 32,000 people by seven.<sup>2</sup>

The student must beware of classing the Mississippi of 1830 as "Southern," or Illinois as "Northern." Those terms then applied, in society and politics, only to the divisions of the Atlantic States. The country had three sections, — North, South, and West.

During the next twenty years, however, the difference between the two systems of labor, free and slave, in its northern and southern portions split the West also into two sections, — which then merged with the corresponding Atlantic sections. In 1850 there were only two sections to the Union, — a North and a South.

<sup>1</sup> These two classes are sometimes confused.

<sup>&</sup>lt;sup>2</sup> Arkansas was admitted in 1836, and Michigan in 1837. What is indicated by the varying increase in the four States named? The student should here review, for western society and growth, §§ 166, 185, 263, and especially 272, 273.

The Westerners of 1830 were developing a new American type—to remain the dominant one for two generations: tall, gaunt men, adventurous and resolute, of masterful temper, daunted by no emergency. For a time, like their Southern ancestry, they lacked the education of books, and were easily subject to unreasoning prejudices. They were sometimes given, too, to fits of listless idleness, though capable, on occasion, of fierce energy and terrible intensity. Happily, the New England immigration of the thirties and forties infused a leaven of steadfast habits, regular industry, and high idealism.

286. One Source of American Democracy.—The West was democratic and self-confident. It believed in the worth of the common man, and in his capacity. Its chief habits of mind were a rude and wholesome optimism and an impatience of the claims of authority. With ardent patriotism it revered the old names of American history; but in practice it repudiated the political ideals of Winthrop and Washington, Hamilton and Adams.

Already the West had become "the most American part of America." Here, in its especial home, the new nation thrilled most keenly with the flush of assured success. Here it showed best its raw youth, unpolished, but sound at heart; crude, ungainly, lacking the poise and repose and dignity of older societies, but buoyantly self-assured, throbbing with rude vigor, grappling unconcernedly with impossible tasks, getting them done somehow, and dreaming overnight of vaster ones for the morrow. Some small embarrassment it felt for its temporary ignorance of books and art; but it exulted boastfully in its mastery of nature and its daring social experiments, and it appealed, with sure faith, to the future to add the refinements and graces of life.

All this boastfulness provoked natural criticism; but it was the well-justified "American propensity to look forward to the future" for whatever it lacked in the present that particularly amused the many supercilious and superficial English travelers of the day. These prejudice-blinded gentlemen

delighted in portraying, with microscopic detail, skin-deep blemishes of American society; but they failed utterly to see the most amazing spectacle of all history spread before their eyes:—a nation in the making; occupying and subduing a rebellious continent; felling forests, plowing prairies, clearing the rivers, hewing out roads; founding farms and towns and commonwealths; solving off-hand grave economic problems, wastefully sometimes, but effectively for the purpose; and inventing and working out, on a gigantic scale, new and progressive principles of society and government. "You can't write books," carped the visitor. "We're busy just now," shouted the West over its shoulder, "but just wait till we get this bridge built, those prairies farmed, that new constitution framed."

In 1820, Sidney Smith closed his tirade in the Edinburgh Review with the famous passage: "Who, in the four quarters of the globe, reads an American book? or goes to an American play? or looks at an American painting or statue? . . . What new substances have their chemists discovered? . . . Who drinks out of American glasses? or eats from American plates? . . . or sleeps in American blankets?" To this charge. which the next twenty years were to make stupendously ridiculous, the North American Review replied with the customary defense. - the appeal to the future. This resulted in more ridicule. "Others," laughed the English reviewer, "claim honor because of things done by a long line of ancestors: an American glories in the achievements of a distant posterity. . . . Others appeal to history; an American appeals to prophecy. . . . If a traveller complains of the inns and hints a dislike for sleeping four in a bed, he . . . is told to wait a hundred years and see the superiority of American inns over British. If Shakspere, Milton, Newton, are mentioned, he is told again, 'Wait till we have cleared our land, till we have idle time, wait till 1900, and then see how much nobler our poets and profounder our philosophers and longer our telescopes, than any your decrepit old hemisphere will produce." That the retort might not seem so amusing "in 1900" never occurred to the English humorist, -or that there was quite as much sense in taking pride in descendants (whom we will have some share in fashioning) as in ancestors, who have only fashioned us.1

<sup>&</sup>lt;sup>1</sup> Almost the only European visitor who appreciated the magnificent scene in America was the Frenchman, Tocqueville (§ 198, note). Even Charles

# B. THE AWAKENING OF LABOR, 1825-1837.

287. The Second Factor in Democratic Progress. — The laboring classes, organized in "mechanics' associations," had been largely responsible for the growth toward democracy in Revolutionary days, and indeed for the Revolution itself. This fact, together with the too common tendency to ignore our debt, has been noted. Still deeper is our debt to labor regarding the social and political movements summed up under the name Jacksonian Democracy. That upheaval has been commonly explained almost exclusively, on the political side, by reference to the farmers of the West with leaders like Clay and Jackson, and, on the social side, by reference to a humanitarian movement in the higher circles of Eastern society with leaders like Horace Mann. These were real causes. But it is now proven that underlying them, and vitalizing them, was a mightier force, —the labor movement of the day, organized in "trade associations" and "Trades' Unions."

Conclusive and voluminous evidence of this fact is collected in the recent *Documentary History of American Industrial Society.*<sup>2</sup> This publication compels a radical recasting of the traditional history of American progress during the middle half of the nineteenth century. Henceforth, history must portray the development of the democratic free school (in place of "pauper schools"), the preëmption and homestead features of our public land policy, even the political agitation for manhood suffrage,

Dickens, whom America loved, saw chiefly the spittoons and the hurry at lunch counters (*Martin Chuzzlewit* and *American Notes*). Englishmen paid dearly for this flippant blindness by the rancor stirred in American hearts, which unhappily persisted long after England frankly confessed her error and tried to atone.

One anecdote by Tocqueville to illustrate the new jovial democracy of the "common people" should be familiar to all students for its deeper meanings. In a crowded assembly certain dignitaries were trying to force a way through. "Make way there," they cried, "we are the representatives of the people." "Make way yourselves," came back the retort, "We are the people."

<sup>&</sup>lt;sup>1</sup> These associations were political only; not industrial.

<sup>&</sup>lt;sup>2</sup> Ten octavo volumes (some 4000 pages) edited by John R. Commons, in association with four other scholars, and completed in 1910. The work should be accessible in every high school library. Volumes V and VI (edited by Dr. Commons and Helen L. Sumner), Labor Movements from 1820 to 1840, are especially valuable; and the two following volumes hardly less so. The passages quoted in fine print in the following paragraphs, unless otherwise indicated, come from Vol. V, pp. 55–62 and 195–197.

and still more the general movement for the recognition of human rights as superior to property rights, as all due primarily to the long-forgotten labor unions of the late twenties and the thirties.<sup>1</sup>

288. Retrograde Conditions. — So long as labor had remained almost wholly agricultural, there had been little opportunity for organization in order to raise wages and improve conditions. And there had been little need. The presence of free land at the door gave farm laborers a better leverage. Moreover, under the "domestic system," strikes had been infrequent even in manufacturing industries and in the trades. Each "master" worked side by side with his journeymen and apprentices, sharing all their hard conditions; and each of the employees expected in time to become employer and "master." Hours of labor, it is true, were excessive, and wages were low; but this was mainly because, in the dearth of machinery, labor produced little surplus wealth. There had been no sharp division between capital and labor, and no distinct and permanent labor class.

But between 1800 and 1825, these conditions changed rapidly,—and not to the advantage of the workers. The mass of hired labor shifted from agriculture to the trades and manufactures. The growth of cities (in which these industries more and more were concentrated) crowded the poorer population into squalid and unwholesome tenements, under conditions of destitution, disease, vice, and crime,—against which neither science nor law had begun to guard. The growth of machinery multiplied wealth, but left the increase almost wholly in the hands of a new capitalist class, made up of large manufacturers, speculators, and "money kings." Wages had risen nominally; but really they had fallen, because they had risen less rapidly, by far, than prices. Child labor was a terrible abuse, as yet unchecked by law. Hours of toil remained ruinously long.

<sup>&</sup>lt;sup>1</sup> Ordinarily, a text-book is not the place to emphasize novel views. But in this all-important matter, it seems imperative to present this obligation of America (now thoroughly proven) in stronger and truer perspective than was possible to any general work before the appearance of the epoch-making *Documentary History*.

In the trades (such as carpentry) men worked generally from sunrise to sunset, or even "from dark to dark," and the new factory system ground even the children with a monotonous toil of from thirteen to fifteen hours a day. Meanwhile the old leverage of free land was lost. Land in the vicinity of the Eastern centers of population was no longer "free." The public domain in the West did afford refuge to individuals of self-reliance, and of some little capital; but to the average workman in the East, especially with a family, it seemed inaccessible from distance and expense, and still more from those legal uncertainties which were soon to be removed by our preëmption and homestead laws (§§ 317, 367, 376).

Professor Richard T. Ely wrote many years ago (Labor Movement in America, 49): "The length of actual labor [in 1832] in . . . the Eagle Mill at Griswold (Connecticut) was fifteen hours and ten minutes. The regulations at Patterson, New Jersey, required women and children to be at work at half-past four in the morning. . . . Operatives were taxed by the companies for the support of religion. . . . Women and children were urged on by the use of the cowhide."

We know now that such conditions were not exceptional: they were the rule. In the Massachusetts legislature of 1825, a committee on education tabulated replies from the mayor and aldermen of all Massachusetts factory towns regarding hours of labor for children and their opportunities for schooling. The report seems never to have been published. No doubt the replies were as favorable as shame, or local pride, could make them; but no town claimed less than eleven hours of steady work per day for children (from six to seventeen years old), and only two reported so short a day. The usual "sun to sun" day was frankly reported in many cases; and in others it was glossed by such phrases as "all day," "twelve hours," or "thirteen hours." Seekunk reported that its child operatives "work twelve hours; Some may get eight weeks' Schoolg." Waltham failed to state the hours of labor, but said "As much oppy for Schoolg as can be expected" (!) Bellingham honestly reported, "Work twelve hours pr day. No oppy for School except by employe substitutes." [For this long labor day meant every day in the year, save Sundays, be it remembered, except in a few places where conditions made it more profitable to close the factories for some eight weeks of the winter.] Southbridge reported "Average twelve hours. These children are better off than their neighbors" (!) Boston said concisely, "No Schoolg." Fall River, with unconscious irony, stated, "Work all day. There are good public and

private S. and a free Sunday School." The committee's very cautious and timid summary reads: "It appears that the time of employment is generally twelve or thirteen hours each day, excepting the Sabbath, which leaves little time for daily instruction (!) Regard is paid to the instruction of these Juvenile laborers as opportunity permits, but some further legislative provisions may hereafter become necessary, that the children who at a future day are to become proprietors of these establishments, or at least greatly to influence their affairs, may not be subjected to too great devotion to pecuniary interest at the risk of more than an equivalent injury in the neglect of intellectual improvement."

It is interesting to compare with this cowardly glossing of horrible conditions the temperate but comprehensive statement by "Many Operatives" in the *Mechanics' Free Press* for August 21, 1830, regarding children in the Philadelphia factories:—

"It is a well-known fact that the principal part of the helps in cotton factories consist of boys and girls, we may safely say from six to seventeen years of age, and [i.e. who] are confined to steady employment during the longest days of the year, from daylight until dark, allowing at the outside one hour and a half per day [for meals] . . . and that too with a small sum that is hardly sufficient to support nature, while [the employers] on the other hand are rolling in wealth off the vitals of these poor children. We noticed the observation of our Pawtucket friend in your number of June 19, lamenting the grievances of the children employed in those factories. We think his observation very correct, with regard to their being brought up as ignorant as Arabs of the Desert; for we are confident that not more than one-sixth of the boys and girls employed in such factories are capable of reading or writing their own name. We have known many instances where parents who are capable of giving their children a triffing education, one at a time, [have been] deprived of that opportunity by their employers' threats that if they did take one child from their employ, a short time, for school, such family must leave the employment . . . and we have even known such threats put in execution. . . , "1

<sup>1</sup> The communication expresses indignation at the retort of an employer that legislation to shorten the factory day "would be an infringement on the rights of the people," and queries significantly "whether this individual, or the number employed by him, is the people." The writers were overconscious of their lack of fluent expression: "We see the evil that follows the system of long labor much better than we can express it; but we hope our weak endeavors may not prove ineffectual. We must acknowledge our inability prevents us from expressing our sentiment fluently, at present, but we hope to appear again in a more correct manner."

In 1832, in consequence of these and like complaints, there met at Boston a convention of New England Mechanics and Workingmen, which organized an Association with provision for local branches in any manufacturing village, and with a detailed constitution. Members, except farmers, pledged themselves to work not more than ten hours a day (except for extra pay). A committee on education reported at length. Various "fair specimens of the general state of things" are enumerated. Then the summary continues:—

"The children . . . employed in manufactories constitute about two fifths of the whole number of persons employed. . . . On a general average the vouth and children . . . are compelled to labor at least thirteen and a half, perhaps fourteen, hours per day, factory time. And in addition to this, there are about twenty or twenty-five minutes added. by reason of that time being slower than the true solar time [work began by the sun time, appearance of light, and closed by the factory clock, at eight], thus making a day of labor to consist of at least fourteen hours, winter and summer, out of which is allowed, on an average not to exceed one hour for rest and refreshment. Your committee also learn that in general no child can be taken from a Cotton Mill, to be placed at school, for any length of time, however short, without certain loss of employ. . . . Nor are parents, having a number of children in a mill, allowed to withdraw one or more without withdrawing the whole, for which reason, as such children are generally the offspring of parents whose poverty has made them entirely dependent on the will of their employers, they are very seldom taken from the mills to be placed in school. . . . It is with regret that your committee are absolutely forced to the conclusion that the only opportunities allowed to children generally, employed in manufactories, to obtain an education, are on the Sabbath and after half-past 8 o'clock of the evening of other days. [Lowell is noted as an "honorable" exception, since there no children are admitted to the mills under twelve years of age. ] Your committee cannot, therefore, without the violation of a solemn trust, withhold their unanimous opinion that the opportunities allowed to children employed in manufactories to obtain an education suitable to the character of

<sup>&</sup>lt;sup>1</sup> For instance, Hope Factory (Rhode Island) is stated to "ring the first bell at ten minutes before the *break of day*, the second bell ten minutes after the first, in five minutes after which all hands are to be at their labor. The time for shutting the gates at night, as signal for labor to cease, is eight o'clock by the factory time, which is from twenty to twenty-five minutes behind the true time. And the only respite from labor during the day is twenty-five minutes at breakfast, and the same number at dinner."

American freeman, and to the wives and mothers of such, are altogether inadequate to the purpose; that the evils complained of are unjust and cruel; and are no less than the sacrifice of the dearest interests of thousands of the rising generation to the cupidity and avarice of their employers. And they can see no other result in prospect... from such practices, than generation on generation reared up in profound ignorance, and the final prostration of their liberties at the shrine of a powerful aristocracy." The committee concludes by recommending as follows:—

"Resolved, that a committee of vigilance be appointed in each State represented in this convention, whose duty it shall be to collect and publish facts respecting the condition of laboring men, women, and children, and abuses practiced on them by their employers; that it shall also be the duty of said committees, as soon as may be, to get up memorials to the Legislatures of their respective States, praying for the regulation of the hours of labor, according to the standard adopted by this Association, and for wholesome regulations with regard to the education of children and youth employed in manufactories."

289. "Unions," Strikes, and Politics. - Labor "unions" appeared in America before 1800, but chiefly as "benevolent." or "mutual insurance," associations. Soon after 1800, the newspapers notice "combinations of capitalists" to raise prices. In imitation, the labor combinations began to "strike" in order to raise wages. Between 1802 and 1807, New York, Philadelphia, Boston, and Baltimore each had one or more such strikes. At first, the leaders were promptly arrested, and punished sternly by the courts, for "conspiracy" - under the odious principles of the English Common Law. But in Baltimore, in 1807, the striking tailors threatened to tar and feather any lawyer who should take part in a prosecution; and none was undertaken. Then, in 1825, a New York jury destroyed the terror of such trials for a time by awarding a fine of "one dollar" for the "crime" of "conspiring to raise wages."

Advanced thinkers, like William Ellery Channing or Horace Mann, saw and said that the labor question was the question of human welfare. In general, however, the "respectable classes" still regarded all labor unions as iniquitous and revolutionary; and in Boston a "combination" of merchants

publicly announced that their "union" had pledged itself to drive the shipwrights, caulkers, and gravers of that city to abandon "unions" or to starve, and that they had subscribed \$20,000 for the purpose. The press was bitterly hostile; and not till 1842 did the courts of any State recognize for laborers the same rights of organization and collective bargaining as were then possessed without question by employers. In that year the Massachusetts supreme court, in the celebrated Journeymen Bootmakers' Case, first upheld the legality of labor organizations to maintain advanced wages "by rules binding solely on members."

In 1825 George Henry Evans and Frederick W. Evans (recent English immigrants) began at New York the publication of the Workingman's Advocate, the first labor paper in America; and in 1827 appeared the Mechanics' Free Press at Philadelphia (§ 288). From 1825, too, dates a rapid multiplication of "unions" and a twelve-year period of strenuous labor war. In every large city the various trades succeeded in organizing. At first, each "trade-association" was local; and one trade had no connection with another of the same city. But in 1828 a more significant movement began, with the organization in Philadelphia of the "Mechanics' Union of Trade-Associations," — a federation of the various trade-associations of the city.¹ Here, for the first time, was a definite labor-class movement. Said the Mechanics' Free Press of its first meeting:—

"This is the first time that workingmen have attempted in public meeting to inquire whether they possess, as individuals or as a class, any right to say by whom they shall be governed."

In 1833 this advanced form of federation 2 spread rapidly.

<sup>&</sup>lt;sup>1</sup> This Union of Trades grew out of general labor sympathy for the carpenter journeymen in an unsuccessful strike for a ten-hour day.

<sup>&</sup>lt;sup>2</sup> Terms have shifted. The appropriate name, Trades' Union, has been corrupted into "trade-union" for the name of the association of workers in one trade; and consequently the more general union has had to seek new names,—such as Trades' Assembly, or Trades' Council.

New York had its General Trades' Union in that year and the like was soon true of the remaining large cities. Such a federation held considerable authority over the several local unions which composed it. It usually maintained a Trades' Union hall, with courses of public lectures and a labor paper, and it took an active part in supporting strikes (when approved by it) from the general treasury and by public meetings.

In 1834 came the third stage in labor organization (and the final stage for this period). The various city Trades' Unions organized a national federation. This "republic of labor" held conventions in 1834, 1835, 1836, and 1837; but the organization was imperfect, and in 1837 it was ingulfed, with the rest of the labor movement, for that time, in the industrial depression that followed the panic (§ 313).

290. Political Action. — Recent extension of the franchise had made voters out of the mechanics (§ 299); and, from the first, the labor organizations turned to political activity. On August 11, 1828, the Philadelphia Trades' Union, at a public meeting, recommended

"to the Mechanics and Working Men of the city to support such men only for the City Councils and State Legislature, as shall have pledged themselves . . . to support the interests and claims of the Working Classes."

It proceeded to arrange for a delegate convention to form a ticket for the coming elections, "without regard to party politics." In October, the "Delegates of the Working Men" sent a circular letter to fourteen candidates for the legislature (for which seven members were to be chosen) "to obtain your views in relation to the following subjects:—

- "First. An equal and general system of Education.
- "Second. The banking system, and all other exclusive monopolies (§ 309).

<sup>&</sup>lt;sup>1</sup> Growing out of a successful carpenters' strike for higher wages, a contest in which the carpenters had been supported actively by other trades.

<sup>&</sup>lt;sup>2</sup> Comparison with § 450 will bring out the difference between this early federation and the present "American Federation of Labor."

"Third. Lotteries, whether a total abolishment of them is not essential to the moral as well as to the pecuniary interest of society." <sup>1</sup>

Attempts at wider organization followed in various places. In 1830 the Syracuse convention organized the Workingman's Party for New York. Its candidate for governor received only 3000 votes; but in New York City the party elected Ely Moore (president of the New York Trades' Union) to Congress for two terms (1832, 1834), and three labor candidates were chosen to the legislature. In 1831 the New England Association of Farmers, Mechanics, and Other Workingmen held a convention in Boston which declared for

"the organization of the whole laboring population" in order to revise "our social and political system," hoping "to imbue... our offspring with... abhorrence for the usurpations of aristocracy... so... that they shall dedicate their lives to a completion of the work which their ancestors commenced in their struggle for national, and their sires have continued in their contest for personal, independence."

And in 1834, in far-away eastern Tennessee, a similar labor party brought the tailor *Andrew Johnson* into public life as alderman in a mountain village.

The larger political parties began eagerly to bid for the labor vote; and helped, bit by bit, to enact much of its program into law. In New York, one wing of the rising Democratic Party (under the name of *Loco-Focos*, or the "Equal Rights Party") was particularly friendly, and, in 1835, it absorbed bodily the Workingman's Party, which had thrown itself heartily into the support of Jackson against the "money power"

¹ The circular continues: "Upon the important subject of Education we wish most distinctly to understand whether you do, or do not, consider it essential to the welfare of the rising generation, That an open school, and competent teachers, for every child in the State, from the lowest branch of an infant school to the lecture rooms of practical science, should be established, and those to superintend them to be chosen by the people. . . If your views should be in accordance with the interests of those we represent, we request you to allow us to place your name on our Ticket."

<sup>&</sup>lt;sup>2</sup> The Loco-Focos, like the Workingman's Party, opposed all special privileges and monopolies, like the United States Bank (§ 309).

(§§ 309, 340). Soon after the labor organizations in other States were lost in the fully developed Democratic Party. For some years that party remained in large degree a workingman's party. When it surrendered to the Slave Power, the remnants of the labor forces made a leading element in the various Liberty and Free Soil parties (§§ 338, 345 ff.); but the movement for a distinct labor organization did not revive until after the Civil War.

291. Aims of Labor. - This early labor movement was not a factory movement, though it felt much sympathy for the helpless women and children in the factories. It was essentially a mechanics' movement. The division of feeling at first was not between employer and employee, but rather between workers and the idle rich or the unproductive speculator. growth of a new speculative system in business (as, for instance, in the building trade with the rapid growth of cities), made master and journeymen alike feel themselves the victims of what is now called "sweating." At first, many mechanics' unions admitted the bosses; 1 and a convention of the New York Workingman's Party in 1830 permitted employers to remain, but gave five minutes to "persons not living by some useful occupation, such as bankers, brokers, rich men," etc., to withdraw. As Frances Wright, the woman labor-agitator of the day, said of the whole movement: "It is labor rising up against idleness, industry against money, justice against law and privilege."

The strikes of the period aimed: (1) to raise wages; (2) to secure what we now call the "closed shop" (i.e. to compel the employment of union labor only, to the exclusion of nonunion men, known even then as "rats" and "scabs"); and (3), especially, to shorten the working-day to ten hours. But, in its political action, the Workingman's Party turned away from these problems, vital as they were, to broader social reforms. The Philadelphia queries of legislative candidates (§ 290)

<sup>1</sup> Later, the bosses allied themselves naturally with capital.

are typical. The only three tests there proposed were the attitude toward education (nobly defined), toward monopolies, and toward lotteries. Other matters which pressed to the front for legislative action at other times were: abolition of imprisonment for debt; exemption of a laboring man's home and tools from execution for debt, and a more liberal policy by the nation in turning its public domain into homes. The last of these can best be treated later (§ 367). The "closed-shop" principle failed, for the time, with the failure of the unions, in the panic of 1837. Some of the other aims demand larger notice here (§§ 292–293).

292. The ten-hour day was finally secured, — in part by strikes, in part by political pressure. Philadelphia had been the scene of particularly strenuous strikes to replace the "sun-to-sun" day with a "six-to-six" day.<sup>2</sup> These failed, in the main; but monster petitions poured

<sup>&</sup>lt;sup>1</sup> In 1830 the Evans brothers carried at the head of every issue of their Workingman's Advocate—which was now rechristened Young America—their version of "The Twelve Demands of Labor:—

<sup>&</sup>quot;First. The right of man to the soil: 'Vote yourself a farm.'

<sup>&</sup>quot;Second. Down with monopolies, especially the United States Bank.

<sup>&</sup>quot;Third. Freedom of public lands.

<sup>&</sup>quot;Fourth. Homesteads made inalienable.

<sup>&</sup>quot;Fifth. Abolition of all laws for collection of debts.

<sup>&</sup>quot;Sixth. A general bankrupt law.

<sup>&</sup>quot;Seventh. A lien of the laborer upon his own work for his wages.

<sup>&</sup>quot;Eighth. Abolition of imprisonment for debt.

<sup>&</sup>quot;Ninth. Equal rights for women with men in all respects.

"Tenth. Abolition of chattel slavery and of wages slavery.

<sup>&</sup>quot;Eleventh. Limitation of ownership of land to 160 acres per person [with provision for division of estates at death of owners until this condition should be secured].

<sup>&</sup>quot;Twelfth. Mails to run on the Sabbath."

Eight of the twelve have been fully adopted, in the sense in which they were then understood. Even the eleventh came near adoption in the constitution of Wisconsin. The eleventh and the first were peculiar to a small wing of the labor party, led by the Evanses, who held doctrines regarding land closely akin to the later "Single Tax" movement.

<sup>&</sup>lt;sup>2</sup> This moderate demand was long resisted by the capitalist class, as though to grant it would subvert all social order. When the carpenter journeymen of Philadelphia first organized to secure a ten-hour day (in 1827), the em-

upon the city government to adopt the shorter day for workingmen employed for the city, and, June 4, 1835, the city council yielded assent. Private concerns slowly followed. In Baltimore, the same year, a general strike established the ten-hour day for all business, public and private. But, in the Boston district, three great strikes for this object were crushed by irresistible combinations of capitalists pledged publicly to force their employees to keep the old "dawn-to-dark" day. Success there, and in many other centers, came about 1850, through the example of the Federal Government. Van Buren had been closely associated with the New York Loco-Focos (§ 290); and the National Convention of Trades' Unions in 1836 had brought all possible pressure to bear upon him, during his campaign, for Government action. Accordingly, in 1840, as President, Van Buren issued a notable order directing a ten-hour day in the navy yards and in all "public establishments" of the Government. (Cf. § 314, note.)

293. Free Schools. — Foremost in the demands of labor was placed the free school, supported by public taxes and controlled by the public will. In New England, in some measure, the principle was already accepted, — though even there the public schools were less efficient than the private ones. In Pennsylvania the constitution of 1790 declared, "The legislature shall provide schools in which the poor may be taught gratis." The result was, that (outside Philadelphia, Pittsburg, and Lancaster) all public schools in Pennsylvania were pauper schools, — cheap private enterprises, in which poor children might be "educated" in return for funds appropriated by the

ployers united in an address to the public complaining of the attempt to "deprive employers of about one-fifth part of their usual time"; viewing "with regret the formation of a society that has a tendency to subvert good order, and coerce or mislead those who have been industriously pursuing their avocation and honestly maintaining their families"; resolving, not to "employ any Journeyman who will not give his time and labor as usual; in as much as we believe the present mode has not been, and is not now, oppressive to the workmen" (Doc. Hist. Am. Industrial Society, V, 81).

The journeymen replied with an appeal for public sympathy, setting forth the reasonableness of their demands and closing: "Citizens of Philadelphia, to you we appeal; with you rests the ultimate success or failure of our cause. Will you not assist us? Remember we are men... and say will you combine with our employers to force us to be slaves" (Ib. 83).

commissioners of the counties. In this State and in New York, labor insisted strenuously upon the public free school, in contrast to a pauper school. The documents are too long and many to be even indicated; but they are noble reading even to-day. In February, 1830, a committee of the Philadelphia Mechanics' Union reported to a meeting of "the friends of general and equal education" a long and remarkable statement on conditions in Pennsylvania, with a draft of a bill to correct the evils. Three evenings were devoted by the meeting to discussion of the report, after which it was unanimously adopted. The report was widely copied in labor papers. It protests against the absence of all schools in many districts, the pauper character of such as exist, their limited instruction, and the absence of any attempt to supply a "judicious infant training" for children under five. Their own bill, the committee claim, will extend schools throughout the whole commonwealth; will place them "immediately under the control and suffrage of the people"; and "its benefits and privileges will not, as at present, be limited, as an act of charity, to the poor alone, but will extend equally and of right to all classes, and be supported at the expense of all."1

¹ One paragraph of the report runs: "In a republic, the people constitute the government, and by wielding its powers in accordance with the dictates, either of their intelligence or their ignorance, of their judgment or their caprices, are the makers and the rulers of their own good or evil destiny.

. . . It appears, therefore . . . that there can be no real liberty without a wide diffusion of real intelligence . . . and that education, instead of being limited as in our public poor schools, to a simple acquaintance with words and cyphers, should tend as far as possible, to the production of a just disposition, virtuous habits, and a rational self-governing character."

The capitalistic press of the day adopted toward all this a tone of condescension and reproof which to-day has an amusing sound. More of education was already attainable by the poor in America than anywhere else, it was insisted; much more could never be expected. "The peasant must labor during those hours of the day which his wealthy neighbor can give to abstract culture: otherwise the earth would not yield enough for the subsistence of all." And again, "Education... must be the work of individuals.... If a government concern, nothing could prevent it from becoming a political job" (still one of the most effective cries against extension of public control

In the following July, a Philadelphia city convention of the Workingman's Party issued a long address to the workingmen of the State, urging united political action to abolish: (1) the "foul blot" of imprisonment for debt; (2) "the granting of special favors in charters and monopolies, by which the profits arising from any branch of trade are taken from the community and given to favorites"; (3) lotteries; (4) the compulsory militia system. But more than half the whole space is given to a plea for extending and improving the system of public education. Indeed, that part of the address which points out a specific program of reform begins with the words, "The main pillar of our system is general education." After protesting against the "pauper" idea so prominent in the elementary schools of the day, and urging, through some pages, the earnest cooperation of all workers in the "glorious work of intellectual emancipation" of their children by the establishment of a broad State system, there follows the significant paragraph, "It may perhaps be owing to the non-existence of this desirable object that we have to complain of other evils affecting the interests of the workingman. . . . " And, after dealing with some of those other evils, the address returns at its conclusion to the supreme matter of public education: "Education is alone the banner on which our civil and religious liberty can be inscribed, never to be effaced."

in other fields). Moreover, the projects were reviled as "Agrarianism," "an arbitrary division of property"; and one editor deplores the taking away from "the more thriving members" of the working classes "one of their chief incitements to industry,—the hope of earning the means of educating their children." This would offer a "premium for comparative idleness." Indeed, it is hard to find any of the hoary arguments, still furbished anew against every democratic proposal, which was not worn threadbare in opposition to a free-school system in the thirties.

<sup>1&</sup>quot;There are at present," says the address, "not less than 200 lottery offices in Philadelphia, and as many, if not more, persons engaged in hawking tickets." And special complaint is directed at these "itinerant venders" who "assail the poor man at his labor, enter the abode of the needy, and, by holding out false promises of wealth, induce him to hazard his little all in the demoralizing system."

#### LABOR AND FREE SCHOOLS

It was to a people so awakened that *Horace Mann* began to appeal in behalf of educational reform. In 1837 he secured a State Board of Education in Massachusetts, and (in 1839) the establishment of the first Normal School in America, and so began to lift the elementary schools of the Bay State from the abyss into which they had slipped. Other eastern commonwealths followed with similar legislation. Meantime, the democratic West had already set up its ideal of a comprehensive system of free public education, such as the workingmen of the East desired.

Elementary schools in the Northwestern States had some encouragement from the land grant in the Survey Ordinance of 1785 (§ 183); and "universities" were founded early to save the national grant for "higher institutions of learning." It was natural, therefore, for those States to return to the noble Puritan vision of a complete State system, and to try to link those two extremes by public "high schools." The first constitution of Indiana (1816) declared it the duty of future legislatures to establish "a general system of education, ascending in a regular gradation from township schools to a State University,—wherein tuition shall be gratis and equally open to all."

In practice, however, even in the West, private academies, on the New England model, but of inferior grade, made the chief link between elementary schools and college for two generations more. And even the elementary schools had their most vivid existence on paper. Ohio, in 1825, made the first legislative attempt at adequate public taxation for common schools for a whole State; but the law was not then put actually into operation. Indeed, early laws for school taxation in various states were permissive only, leaving the application to the will of local units; and the land endowments were often wasted or lost. Still, by 1840, public schools were frequent enough in the North and Northwest so that the poor boy with ambition and energy and self-denial could usually get at least "a common school education"; but they were not yet so numerous or aggressive as to intrude in any great degree on the attention of the indifferent.

<sup>&</sup>lt;sup>1</sup> In 1831 Boston established an English High School alongside its old Latin School. The new school, however, was not intended to fit for college, and, like other New England "high schools" of the next decades, it was not part of a "State system."

294. Human Rights v. Property Rights.—As Professor Commons forcefully observes, the workingman of the thirties did not ask mere equality before the law: he asked to be given preference over property. He asked, as a right, that property of the wealthy should pay for educating his children. He asked not only that his person should no longer be seized for debt, but that most of his little property (homestead and means of livelihood) should be exempt. And instead of equality with other creditors, he asked that his wages should have a first claim.

No wonder that many good people of the time called such demands "agrarian" and communistic. The makers of the Constitution had said that the main end of government was to protect property; and even to-day many such good people. with much of our legal system, think only in terms of property and look on wages and labor as merely one kind of property, no better, at least, than other kinds. But, more or less consciously, our average modern thought and practice have shifted. Our viewpoint, like that of the workingman of the thirties, has come to be that of man, not that of property. It is seen that wages, as property, differ from the profits of the capitalist. The one may add to the graces and pleasures of life for a few: the other means life itself, and the maintenance of a decent standard of life, for the majority of men, - the very basis of our common society. Human welfare and the claims of property are not always one and the same thing. The law of the past had exalted the rights of property. The primitive custom of attaching the body of a debtor as a slave had been softened only to the hardly less cruel practice of confining him as the prisoner of the State. In his attack on this hoary abuse, the workingman found ready aid from other classes. And by degrees his claims (then first put forward) for exemption of his home, his chattels, and even his wages

<sup>&</sup>lt;sup>1</sup> Doc. History Am. Industrial Society. V, Introduction. Much of this and the following paragraph is paraphrased from the statements there.

have become fundamental principles of our jurisprudence. This means that we agree, in principle, to subordinate property rights to human rights at least "when the home, the family, and the minimum of subsistence are at stake." This profound and wholesome revolution we owe to the labor movement of the thirties.

# C. MORAL AND SOCIAL AWAKENING

295. The Flowering in Literature (Third Factor for Democratic Growth. - One manifestation of the new American energy was a marvelous outburst in literature. From Revolutionary days, America had held high place in political oratory; but, until 1830, this nobly practical art was our only distinction in letters. From 1812 to 1830, leadership in oratory had been held by the great trio, Webster, Calhoun, and Clay, who, with Edward Everett added, were to continue its masters twenty years more. Between 1812 and 1830, too, had appeared the early work of Arving, Cooper, and Bryant; but the first real flowering of American letters came just after 1830. Between that date and 1845, began the public career of Emerson, Hawthorne, Holmes, Longfellow, Lowell, Poe, and Whittier) in the literature of creative imagination and spiritual power; of Bancroft, Prescott, Palfrey, and Sparks in historical composition; of Kent and Story in legal commentary; of Audubon, Agassiz, Dana, and Asa Gray in science. Noah Webster's Dictionary was published in 1828; ten years later, the Smithsonian Institution was founded; and, midway between, appeared the first penny daily, the New York Sun.

None of the writers or scholars just mentioned belonged south of the Potomac or west of the mountains. This remarkable bloom of literature was confined to the North Atlantic section, and almost wholly to the New England district. It soon found, however, as eager an appreciation in wide areas of the West as in New England itself. And, in both sections, this intellectual awakening was both a cause and result of the progress in Democracy.

The finest part of this great literary movement was rooted in a New England religious awakening. Between 1815 and 1830. Unitarianism, organized by Channing, had deeply modified New England thought. Unitarianism was an intellectual revolt against the somber and rigid doctrines of the prevalent Calvinistic Congregationalism. It placed hope of salvation not in the dogma of the atonement, but in conduct; it asserted, in opposition to the doctrine of total depravity, that there was essential good in every man, with possibilities of infinite development: it taught, not that man's fate was predestined, but that he was himself master of his fate. At first it was as sternly logical as Calvinism itself; but the Emersonian "Transcendentalists" of the thirties placed emphasis upon its cheering affirmations rather than its denials, and gave the movement a joyous moral enthusiasm. The old Congregationalism had been the fast ally of aristocratic Federalism: Unitarianism was an expression of a democratic age. Differ as they might in characteristics, Emerson and Andrew Jackson belonged fundamentally to the same era, - the serene prophet of the spiritual worth and dignity of each soul, and the passionate apostle of political and social equality.

Unitarianism never counted large in numbers; but nearly all the famous names catalogued above were connected with it, and it early captured Harvard. Gradually, it permeated and transformed Calvinistic Congregationalism. A less rigidly intellectual revolt against Calvinism,—more emotional than Unitarianism and equally optimistic and democratic,—gave rise to *Universalism* and to a great growth of the *Methodist* churches and of various new sects. Before this combined attack, between 1815 and 1830, the Congregational church was disestablished in New England (§ 297).

"Higher education," of course, received a marked impulse. The early colleges grew toward better standards, and many excellent small colleges began to flourish,—Amherst, Bowdoin,

<sup>&</sup>lt;sup>1</sup> Said Emerson of this "theological thaw," "Tis a whole population of ladies and gentlemen out in search of a religion."

Dartmouth, <sup>1</sup> Hobart, Williams, in the East, with numerous ambitious imitators in the newer States. In 1830 Oberlin (Ohio) even opened its doors to women. It was twenty years before another institution of equal rank took this stand; but special seminaries for girls soon appeared in large numbers.

296. The new intellectual ferment of the thirties and forties transformed society. Exact and profound scholarship was still lacking; but an aspiration for knowledge, a hunger for culture, a splendid idealism, became characteristic of American life,—to remain dominant in our society until "fattened out," for a time, after 1875, by a gross material prosperity.

During that long era, to welcome "high thinking" at the price of "plain living" was instinctive in an almost unbelievably large portion of the people.

English authors of a new sort of genius — Carlyle, Browning, William Morris — as well as English scientists with new teachings, like Darwin and Huxley, reached appreciative audiences in America sooner than at home.<sup>2</sup> Many an English book, afterward recognized as epoch making, found its way into far western villages, and into the hands of eager young men and women there who had never worn evening dress or eaten a course dinner, long before it penetrated to even the "reading set" at Oxford University.<sup>3</sup> The North American Review and the Atlantic Monthly (periodicals of fine literary character and scholarly tone) could be seen in isolated farmhouses on western prairies. The village sewing society eschewed gossip to listen to one of their number reading aloud while the others plied the needle. Each village had its lyceum,

<sup>&</sup>lt;sup>1</sup> Dartmouth was founded in colonial times; but, like some other early colleges of its class, its marked growth in usefulness belongs to this period.

<sup>&</sup>lt;sup>2</sup> Carlyle's long-delayed income from his books came first from reprints in America, managed by Emerson.

<sup>&</sup>lt;sup>8</sup> Before 1862, W. D. Howells, a young newspaper writer in a raw Western town, counted Browning and Thackeray among his favorite authors; but Walter Besant mentions in his *Autobiography* that these authors were not then known to his set at Cambridge University.

for the winter evenings, with literary programs,—readings, declamations, and debates—crude and quaint enough, sometimes, but better than "refined vaudeville." Such villages, too, aspired to frequent courses of lectures,—with such eastern celebrities as Holmes and Everett on the program; and the proceeds of the lectures were used commonly to start a village library.¹ Twice, on such lecture tours, Emerson penetrated beyond the Mississippi, greeted in barn-like "halls" by hard-handed men and women, seated on wooden benches, but with eager faces agleam with keen intellectual delight.

The nearest approach in all history to this intellectual ferment in a "populace" was that — far inferior in quantity and quality — to be seen in the idle Athenian multitudes who hung on the lips of Socrates; or, perhaps in the more conservative Scotch of the eighteenth century, when the poverty-stricken hills of Scotland were sending forth schoolmasters over the whole globe wherever English was spoken.

A caricature picturing a gaunt New England housewife on hands and knees to scrub, but pushing before her a stand holding an open copy of Emerson to which her eyes were glued, might have been applied, with no more exaggeration, to show the strenuous struggle for culture in many a modest home in Kansas or Minnesota. Ambitious boys, barefoot and in threadworn coats, thronged the little colleges, not for four years of a good time, but with genuine passion to break into the fairy realm of knowledge; and their hard-earned dimes that did not have to go for plain food went for books.<sup>2</sup>

¹ In 1859 Edward Everett lectured at St. Cloud, a new, straggling village of a hundred houses, in Minnesota. The one-room schoolhouse in which he spoke was promptly named the Everett School; and receipts from the "entertainment" were appropriated for a library which was kept for years in a private home. After the Civil War, a Woman's Aid Society, which had been earning money to send dainties and medicines to sick soldiers, continued its meetings and used its money to enlarge this choice collection of books. There, as a boy, the writer made first acquaintance with Carlyle, Marcus Aurelius, standard histories of that day, such as Prescott's *Philip II* and Motley's *Rise of the Dutch Republic*, and the novels of Scott, George Eliot, and Thackeray. This experience was typical. The few books, purchased by real book love a were not yet buried in a mass of the commonplace.

<sup>&</sup>lt;sup>2</sup>In 1846 a . , of eighteen started for Knox College, at Galesburg, Illinois. By working as a farm hand (he harvested two weeks for a Virgil and a Latin Dictionary), and by teaching school for a few months (and "boarding round")

wowedor.

297. Social Reform. — The intellectual and moral ferment of the time overflowed in manifold attempts at new forms of social organization and at various Utopias set off from ordinary society. New England Transcendentalists tried a coöperative society at Brook Farm (1841), with which Emerson and Hawthorne were connected.¹ Robert Owen, who had already attempted a model industrial town in Scotland, founded New Harmony in Indiana, where labor and property were to be in common.² Scores of like communities were soon established in different parts of the West; and the old communistic societies of the "Shakers" spread rapidly. Said Emerson, with genial recognition of the humorous side of the upheaval, "Not a man you meet but has a draft of a new community in his pocket."

Peculiar among these movements was Mormonism, with its institution of polygamy. Mormonism was founded at Palmyra (New York), in 1829, by Joseph Smith, who claimed to be a prophet and to have discovered the inspired Book of Mormon. Soon the "Latter-Day Saints" removed to Ohio; then to Missouri; and, driven thence by popular hatred, to Illinois, where, in 1841, they established at Nauvoo a "Holy City" of ten thousand people, industrious and prosperous, ruled by Smith after the fashion of an ancient Hebrew "Judge." Three years later, a mob from surrounding towns broke up the settlement and murdered Smith.

at eight dollars a month, he had saved up ten dollars. He walked first to Chicago, the nearest town, for supplies; but the unaccustomed temptation of the display in a bookstore window lured him within, and most of his capital went for a few books, which would seem old-fashioned, indeed, to the boys of to-day. The remaining cash bought only a pair of shoes and an Indian-blanket coat (with great stripes about the bottom). To save the precious shoes, he then walked the two hundred miles to Galesburg barefoot. His first day there, he built a fence for the President's cow pasture, to earn money for text-books, and found a place to work for his board through the college year. This man became one of the notable builders of a Western commonwealth.

<sup>&</sup>lt;sup>1</sup> Hawthorne's *Blithedale Romance* satirized the movement, and caricatured some of the participants.

<sup>&</sup>lt;sup>2</sup> Owen's leadership gave the name *Owenism* to the many American attempts at communism in this period. Spite of these failures, his influence was marked in spreading faith in human brotherhood and in arousing the men who were to lead the social reforms of the next generation.

Then, under the youthful Brigham Young, the persecuted Mormons sought refuge in Utah, vaguely supposed to be a part of Mexico, but remote from any organized government and sheltered from "civilization" by the desert and the Rockies. Here their industry made the cactus sands to bloom, and they remained in peace until invaded by the rush of gold-seekers to California after '49.

More effective than these semi-monastic reforms were a multitude of movements for social betterment within the existing community. Massachusetts founded the first public hospital for the insane; and Dorothy Dix spent a noble life in spreading such institutions in other States. Special schools for the deaf and the blind were instituted. State provision for the separation of juvenile delinquents from hardened criminals was begun: and for the criminals themselves more rational and wholesome prison life was attempted. Temperance societies began in Boston in 1824; and, in 1846, Maine adopted the first State-wide prohibition law. The thirties saw the beginning of a long agitation for "Woman's Rights," including coeducation, equality with men in property rights,1 and the right to vote. The Abolition movement rose and spread, and soon this agitation against slavery became the chief manifestation of this great wave of moral earnestness. The last two reforms, like others noted in § 290, were earnestly championed by the Workingman's Party.

298. Mechanical invention began now to revolutionize industry and life. From the inauguration of Washington to the War of 1812, patents for new inventions averaged less than eighty a year. From 1812 to 1820, they rose to nearly two hundred a year, and in 1830 the number was 544. Twenty years later,

<sup>&</sup>lt;sup>1</sup>The legal position of woman was everywhere in America still regulated by the medieval common law. An unmarried woman's earnings and "property" were not hers (any more than a slave's were his), but belonged legally to her father. A married woman's property (unless protected by express legal settlement) was her husband's, and, in many degrading respects, she was herself his chattel. The movement to reform this barbarous condition, by specific changes in the statute law, began in this period.

the thousand mark was passed, and in 1860, the number was nearly 5000.1

The inventions marked by these patents saved time or tended to make life more comfortable and attractive. A few cases only can be mentioned. Axes, scythes, and other edged tools, formerly imported, were manufactured at home. The McCormick reaper (to be drawn by horses) appeared in 1834, multiplying the farmer's efficiency in the harvest field by twenty, and (with the general introduction of threshing machines) making possible the utilization of vast grain lands in the Northwest, Planing mills created a new industry in wood. Colt's "revolver" (1835) replaced the one-shot pistol. Iron cookstoves began to rival the fireplace. Friction matches (invented in England in 1827) reduced the friction of life. Illuminating gas for city streets improved city morals. In 1838, the English Great Western, with screw propeller and with coal to heat its boilers, established steam navigation across the Atlantic, - though the bulk of ocean freight continued long to be carried in American sailing ships. The same year saw the invention of the steam hammer and the successful application of anthracite coal to smelling iron.2 In 1841 the anæsthetic value of ether (an incomparable boon to suffering humanity) was discovered separately by Dr. Morton and Dr. Jackson. The magnetic telegraph, first invented in 1835, was made effective in 1844. The sewing machine was patented in 1846; the next year saw the first rotary printing press. In 1841 Americans had their full revenge for earlier British disdain, when a member of the English cabinet, in response to questions, declared in Parliament, "I apprehend that a majority of the really new inventions [lately introduced into England] have originated abroad, especially in America."

The Railway deserves a fuller account. Tramways (lines of wooden rails for cars drawn by horses, for short distances) came into use in some American cities about 1807. As early as 1811, John Stevens began twenty years of fruitless efforts to

<sup>&</sup>lt;sup>1</sup> Special report: The United States Patent Law.

<sup>&</sup>lt;sup>2</sup> From about 1820, "stone-coal" had been in use for heating dwellings in eastern cities, and it had begun to be used as fuel to create steam power for manufactures. Indeed, attempts were made to market Lehigh coal as early as Washington's administration; but success had to wait for the disappearance of wood and the appearance of canal transportation.

Pittsburg was already the center of iron manufactures for the West. Now its neighborhood to both anthracite and iron made it a center of this great industry for the whole country.

interest capital in his dream of a steam railway. In 1814, in England, George Stephenson completed a locomotive, which found employment in hauling coal on short tracks; but no railway of consequence for passenger traffic was opened there until about 1830. After 1825, the question was much agitated in America; and July 4, 1828, the aged Charles Carrol, signer of the Declaration of Independence, drove the golden spike that marked the beginning of the Baltimore and Ohio. The same year witnessed a score of charters to projected lines; but construction was slow, from lack of experience and materials, and especially from lack of engineers to survey and construct roadbeds; and it was still thought commonly that about the only advantage for railroads over canals would lie in the freedom from interruption by ice during part of the year.

In 1830 less than thirty miles of track were in use,—and this only for "coaches" drawn by horses; but in 1840, nearly three thousand miles were in operation, and, for long thereafter, the mileage doubled each five years. By 1850, the railroad had begun to outrun settlement, forging ahead into the wilderness, "to sow with towns the prairies broad," and to create the demand for transportation which was to feed it (§ 362 and map).

It was natural to treat the railway like any other improved road or public highway, so far as conditions would permit. Some States, at first, permitted any one to run cars over a line by paying proper tolls. But, in the absence of scientific system and of telegraphic train-dispatching, so

<sup>&</sup>lt;sup>1</sup> In 1829 one of Stephenson's engines had been brought over from England; and, with this as a model, American locomotives were soon constructed successfully. The early rails were of wood, protected from wear by a covering of wrought-iron "straps," perhaps half-an inch thick, which had the awkward habit of curling up at a loosened end. The "coaches" were imitated in form from the stage coach; but finally a form more adapted to the new uses was devised. The rate of progress on the first roads rose to fifteen miles an hour, —something quite beyond previous imagination. A very full account of early railroads may be found in McMaster, V, 139 ff. Almost all public libraries contain special treatises on the subject.

many accidents occurred, that this plan was given up. 1 Then roadbed and train fell to one ownership.

It remained to decide whether that owner should be the public or a private corporation. Several States tried State ownership, as with canals (Massachusetts, Pennsylvania, Michigan, Georgia); but lines ran from State to State in such a way as to make this practically impossible. No one in that day suggested that the nation should own and operate railroads; and so these tremendously powerful forces were abandoned to private corporations.<sup>2</sup> Congress, however, has many times encouraged such corporations by immense grants of public lands along a proposed line in a "Territory," as State legislatures have done within State borders. Unhappily, such grants have often been made carelessly, if not corruptly, without proper security for adequate return to the public welfare.

Exercise. — Note the relation of the heading of this chapter to that of Chapter XII, and also especially the three forces for democratic progress mentioned under *The New Society* above.

#### II. POLITICAL NARRATIVE

#### A. CONSTITUTIONAL CHANGES

299. Manhood Suffrage (more directly exercised). — The victory of Jacksonian Democracy in the Nation had been made possible by an extension of franchise in the States. By 1821, fifteen of the twenty-four commonwealths had manhood suffrage, absolute or virtual.

Between 1792 and 1821, eleven new States had been admitted. Tennessee had an ineffective restriction on the franchise (removed in a new constitution in 1833); Ohio at first required payment of taxes as a qualification for voting; and Mississippi required either that or service in the militia. The other eight new states came in with manhood suffrage. Four of the older States also had followed in the footsteps of the progress-

<sup>1 &</sup>quot;Single-tax" reformers believe that this plan should be reintroduced under the improved conditions of to-day.

<sup>&</sup>lt;sup>2</sup> Usually known to-day as "public-service" corporations (along with city gas companies, electric lighting companies, etc.) because they can exist only by grants of right-of-way and other privileges from the public, in return for expected services to the public.

sive West. Maryland adopted manhood suffrage in 1810; Connecticut, in 1818; and, in 1821, Massachusetts and New York reduced their former qualifications to tax payment or militia service. In 1826 New York removed even this restriction; and by this time, too, the tax payment restriction had ceased to exclude seriously.

This democratic success had brought with it other constitutional changes: (1) removal of property qualifications for holding office; (2) direct popular election of governor, in place of appointment by legislatures; (3) popular election even of the State courts; and (4) abolition of test oaths, and admission of Jews and Catholics to office, and the overthrow of the church establishments in Connecticut and Massachusetts.<sup>2</sup> Social changes also followed. In Connecticut it was observed that after the democratic victory in 1818, public officials no longer wore cockaded hats, powdered hair, or knee-breeches and silk stockings.

These reforms were carried against vehement protest by the revered elder statesmen. The aged John Adams and the stalwart Webster joined in stubborn resistance in Massachusetts. In New York, Chancellor Kent pleaded with the convention not to "carry desolation through all the fabric erected by our fathers," or "put forth to the world a constitution such as will merit the scorn of the wise and tears of the patriot." In Virginia (1830), the contest was successful only in slight degree because of the opposition of Marshall, Madison, and Randolph,—three ancient foes, who now made common cause for their order, and succeeded in keeping 80,000 White citizens from the franchise till 1850.

Not only was the franchise wider; it was also used more directly. In 1800 only six of the sixteen States chose "electors" by popular vote (§ 239); in 1828 Delaware and South Carolina were the only two, out of twenty-four, not to do so, and, after the next election, Delaware abandoned choice by the legislature.

Another change suited political convenience rather than democratic principle. The "general ticket" had replaced the "district" system

<sup>&</sup>lt;sup>1</sup> The significance of this change in New York is indicated by the following fact: in the fiercely contested campaign of 1789, that State, with a population of 324,270, cast only 12,300 votes; after 1830, the proportion was seven times as large.

 $<sup>^2</sup>$   $\S$  137, 153, 154, 156, 167, 172, 185, 209, 224 may well be reviewed for statements bearing upon previous constitutions.

in choosing electors (§ 212). This method deprives the minority within each State of all representation.

Virginia made the change in 1800, to secure her solid vote to Jefferson; and Jefferson acquiesced on the ground that it was a political necessity, when Federalist States were doing the same and worse things (§ 239). He advised, however, a constitutional amendment to compel the district system; and such an amendment was agitated until 1824.

300. The "Sovereign People" and its "Tribune" (New Position of the Presidency). — The wider franchise, and its more direct exercise, placed the President in a new light, and gave him new powers. He was no longer, even in theory, merely the choice of a select coterie. Jackson's friends called him "the chosen Tribune of the People." The Nation found it easier to express its will, and to place responsibility, in one man voted for over the whole Union, than in a Congress elected by hundreds of different localities and representing local interests.<sup>2</sup>

In the break-up of the old Jeffersonian Democracy into two parties, Jacksonian Democracy finally managed to take to itself the prestige and traditions of Jefferson's name, mainly, it appears, because it stood in some measure for the old Jefferson doctrine of putting emphasis upon States Rights, while the party of Adams and Clay was emphasizing

¹ The general ticket has now come to seem, to many people, the only constitutional method. In 1892 Michigan, usually Republican, chanced to have a Democratic legislature. To save some part of the electoral vote in the coming election, this legislature enacted a law providing for choice of electors by the ancient method of districts. The matter went to the Supreme Court before the opposing party would acquiesce in the constitutionality of such a measure.

<sup>&</sup>lt;sup>2</sup> In England, at just this period, democracy was conquering hereditary executive prerogative by subordinating it to Parliament (Modern History, §§ 581, 532). In America, democracy seized executive prerogative directly by making it truly elective and so responsive to popular will.

The new importance of the Presidency was promptly reflected in the popular vote. Before 1828, even in States where electors were chosen by the people, the vote for them had been much smaller than for Congressmen or for State officers. In 1824 such States cast 352,000 votes for electors; in 1828 the same States cast three times that number. New Hampshire increased her vote from 4750 to 45,000; Connecticut doubled her vote; and the great States of Pennsylvania and Ohio showed a gain of nearly 300 per cent. Since that time the Presidential vote leads all others.

Nationalism. But Jeffersonian Democracy and Jacksonian Democracy were at opposite poles in their attitude toward government in general. The one had feared government; the other was eager to make use of it. The one taught that people must be governed as little as possible; the other, that the people might govern as much as they wished. At last democracy had found its power; and, intoxicated with that new sense, it inclined to insist not only that majorities were all-powerful, but also that they were always right. "Vox populi, vox Dei!"

Andrew Jackson dominated America for twelve years (1829–1841), for his control reached over into the administration of his successor and political heir, Van Buren. He was just the man to give standing to this new executive power, and to the principle of popular sovereignty back of it. He was of Scotch-Irish descent, and his boyhood had been passed in a North Carolina backwoods country, in bare poverty. Picking up some necessary scraps of knowledge, he removed to the newer frontier of Tennessee to practice law. He was a natural leader; and his incisiveness and aggressiveness, rather than ambition, forced him to the front. Tennessee sent him as her first Representative to Congress, —for which life at that time he seems to have been little fitted. Gallatin noticed him only for his uncouth dress and manner, —unkept hair tied in an eel-skin cue, — and Jefferson was disgusted by the "passion" that "choked his nutterance."

Soon, however, Jackson found his place as military leader and Indian fighter; and he came back to political leadership as a more imposing figure,—the natural spokesman of western democracy. "Old Hickory" remained spare in person, with the active and abstemious living of the frontier; his hair was now a silvered mane; his manner marked by a stately dignity and, toward all women, by true courtliness. Beneath this exterior, he remained as pugnacious and fearless and self-confident as ever; apt to jump to conclusions and stubborn in clinging to them; sure of his own good intentions, and, with somewhat less reason, of his good judgment; trusting his friends (not always wisely chosen) as himself; and moved by an unconscious vanity that made it easy for shrewd men to play upon him; but, withal, with sound democratic instincts, hating monopoly and distrusting commercial greed and all appeals from it for alliance with the government, and believing devotedly in the "sovereignty of the people," a sovereign who "could do no wrong."

<sup>&</sup>lt;sup>1</sup>A choice bit of contemporary satire makes him say, "It has always bin my way, when I git a notion, to stick to it till it dies a natural death; and the more folks talk agin my notions, the more I stick to 'em."

301. Growth of the Veto. — In some peculiarities, "the Reign of Andrew Jackson" owed its characteristics to the personal inclinations of the man. Thus, for a time, Cabinet meetings ceased, in favor of a group of unofficial advisors and old associates, whom the opposition press quickly dubbed "the Kitchen Cabinet." But in its bigger aspects the change was more fundamental. As the more express embodiment of the nation's will, it was natural and inevitable for Presidents to assume new power over Congress; and all strong Presidents since 1828 have felt themselves rightly endowed with authority never claimed by the earlier executives of the Union.

The most important phase of this new power has been the President's giving direction to national policy, and to Congressional legislation. The means to this end have been the President's control of patronage and his increased use of the veto. The preceding six Presidents together had vetoed nine bills (all on constitutional grounds); Jackson hailed twelve veto messages upon the astounded Congress, to influence general policy, besides using freely the "pocket veto," permitted by the Constitution (§§ 153, 156 a), but never before exercised.

Strangely enough, in the matter on which the most vetoes were spent, the President failed of his will. Jackson was opposed to "internal improvements" at national expense; and most of his vetoes, with all the pocket vetoes, were used to defeat appropriations for such purposes. He elaborated a theory that appropriations were proper only for improvements general in character, not local. But the distinction was difficult to apply; and Congress met it by attaching internal-improvement appropriations, as "riders," to the appropriation bills necessary to support the government, so as to make veto impossible. In all, more than ten millions of dollars were devoted to internal improvements in Jackson's eight years,—double the rate even of Adams' time.

302. The Spoils System. — Since Jefferson's election in 1800, removal from office had not again become a burning question.

<sup>&</sup>lt;sup>1</sup> Canals and roads were no longer built at Government expense, since railways had now replaced these means of communication in importance. Appropriations for internal improvements took the form (since maintained) of a River and Harbor Bill. Harbor improvement had become of pressing necessity, because of the increase in the size and draft of vessels.

There had been no change of party, and, until 1824, no factional contest within the dominant party. In 1820 Senator Crawford of Georgia had secured a "four-year tenure-of-office bill," providing that a great number of offices should thereafter always become vacant four years after appointment.¹ Adams, with high-minded dignity, refused to take advantage of this legal opportunity to punish adversaries and hire supporters. Instead, he reappointed all fit officials affected by the law, and made altogether only twelve removals during his term. But a weapon had been forged for less scrupulous men.

Jackson, indeed, needed no new weapon: the powers of the President under the Constitution were enough for him. His enemies were, to his mind, the nation's enemies, to be punished; and he was controlled by friends who brazenly proclaimed the doctrine, "To the victors belong the spoils of the enemy." <sup>2</sup>

The first sin of the new democracy was its wrong attitude on this matter. Jackson men from distant States hastened to the Capital to attend the inauguration and press claims to appointments. Never had Washington seen such a horde of hungry politicians.<sup>3</sup> In the preceding forty years of the government, there had been less than two hundred removals from office for all causes. In his first year, Jackson made two thousand. But this was far too moderate to content the multitude. The policy of spoils was the Nation's blunder, not merely the President's; and the Nation was to be shackled by it for more than a generation.

303. Executive, Legislature, and Spoils, in States and Local Units.—Much the same reasons that exalted President over Congress exalted also State governor and city mayor over legislature and council.

<sup>&</sup>lt;sup>1</sup> The excuse for this law was the need to prevent the growth of bureaucracy and to give opportunity for wholesome "rotation in office." In these principles, as opposed to the older idea that an officeholder had a vested property interest in his office, Jackson fully agreed.

<sup>&</sup>lt;sup>2</sup> The phrase was Senator Marcy's of New York.

<sup>8</sup> McMaster (V, 521 ff.) gives a graphic picture. There is a briefer but more caustic one in McLaughlin's Cass (136, 137): "The scrambling, punch-drinking mob which invaded Washington at the inauguration, crowding and pushing into the White House, tipping over tubs of punch and buckets of ices, standing with muddy, hobnailed shoes on the damask furniture, thrusting themselves into the nooks and corners of the executive mansion with the air of copartners, who at last had an opportunity to take account of the assets of the firm. . . . ."

The executive branch of government, of which the "Fathers" were especially jealous, began now to be magnified in America over the legislative.

Before Jackson gave new prominence to the executive veto, seven States had joined New York and Massachusetts (§153) in placing that power in their constitutions. Soon it became practically universal. Only three States at present (1912) fail to provide it in some form, — though several make it only a means to secure reconsideration by the legislature, and others permit it to be overruled by less than the customary two-thirds vote. The pocket veto, too, is almost universal. About a third of the States have made the veto still more effective in practice by authorizing the executive to veto single items of appropriation bills. This tendency is recognized as a needed reform in other States, to counteract the ease with which a committee sometimes slips into a necessary "Omnibus Bill" certain unconsidered trifles, secured by corrupt or log-rolling influences.

City governments have commonly given to their mayors a veto power corresponding to that of the State governor; and both city and State have developed the insidious poison of the spoils system.

In the early State constitutions, the legislature was exalted over all other parts of government. But by 1830, democracy had begun to realize dimly its imperfect control over representative legislatures, and to resent it; and a tendency to subordinate the legislative branch of State governments to the executive had begun. This tendency, which grew more and more marked for half a century, was manifested in other ways besides the growth of the executive veto: (1) After the Civil War, in particular, constitutions for new States and new constitutions for old States swelled in bulk, until the usual length was many times that of the Federal Constitution or of any one of the first State constitutions. This additional matter consisted largely of restrictions, direct and indirect, upon the legislature. Multitudes of matters which formerly had been left to legislative discretion were now put into the constitution, to be altered only by the process of constitutional amendment, where the people had a referendum. (2) The length of legislative sessions was usually limited by constitutional provisions. (3) In most States (all but six in 1912), the session became a biennial affair instead of annual.1

<sup>&</sup>lt;sup>1</sup> During this period of the decadence of State legislatures, public opinion, both in earnest and in semi-comic humor, seems to have looked upon each session of a legislature as a necessary evil. The close of a session usually called forth a general sigh of relief.

#### Exercise. -

- a. In what way does the constitution of your State place limitations on the legislature? What reason can you discover for each limitation? If the Exercise in § 156 has not previously been completed, it should now be finished and reviewed.
- b. The usual list of elective administrative officers, besides the governor, is as follows: lieutenant governor (who, after the fashion of the Federal Vice President, is the presiding officer of the State senate); secretary of State (little more than a keeper of public records); and or comptroller, with supervision over the expenditure of State funds and the selling or leasing of State lands, etc.; treasurer, who keeps the State funds; attorney general, the legal advisor of the governor and other executive officers, and the counsel for the State in legal action. A State Board of Education or a State Superintendent of Public Instruction (usually appointed) has general supervision over the educational interests and over the enforcement of school laws. There are usually a number of other boards or bureaus or commissions (or else single commissioners), — railway, labor, health, insurance, public works, examining boards (to license practitioners in law, medicine, pharmacy, and dentistry), with far-reaching influence over public welfare. These boards are usually appointed by the governor, subject to confirmation by two thirds the State senate.
- c. Make a table showing executive and administrative officers and boards of your State, how elected or appointed, terms of office, and salaries. Give examples of beneficent action in your State in recent years by administrative boards or officers. (One such example a week might well be called for.) What penal, reformatory, and charitable institutions are maintained in your State, and how are they governed. (Let each one be the subject of a brief "special report." The school should have the printed annual reports of such institutions in its library.)

#### B. "PROTECTION" AND "NULLIFICATION"

304. The Question Stated.—The "tariff of abominations" (§ 279) had called out prompt and vigorous protests from five State legislatures in the South, and no small talk of secession. Calhoun came forward with what he thought a milder remedy in his *Exposition* in the summer of 1828.

Calhoun was of Scotch-Irish descent and of stern Calvinistic training. He had been Secretary of War under Monroe, and Vice President with Adams, and had just been reëlected to that office. He was now a very different Calhoun from the ardent young Nationalist of 1816, who had favored internal improvements, a Bank, and protective tariffs. On each of these points he had reversed his position, to go with his section. He still loved the Union devotedly; but instead of placing emphasis now on Nationality, he placed it on the necessity of recognizing State sovereignty in order to preserve any nation at all. In 1816 he had thrust aside constitutional refinements disdainfully: in 1828 he took refuge in them and used them with rare skill and keen logic.

Calhoun's Exposition (with later elaborations) set forth: (1) the argument that the tariff was ruinous to the South; (2) that "protection" was unconstitutional; (3) that, in the case of an Act so injurious and unconstitutional, any State had a constitutional right peacefully to nullify the law within her borders, until Congress should appeal to the States—and be sustained by three fourths of them—the number necessary to amend the Constitution and therefore competent to say what was and was not constitutional; and (4) a practical method of attempting such nullification by referring it to a representative convention of the State called especially to decide upon the matter.

305. The Great Debate. — South Carolina did not press the matter at once, because she drew hope of relief from the election of Jackson. He was supposed to dislike the tariff and to sympathize with State sovereignty; and his brief inaugural declared his wish to show "a proper respect for the sovereign members of our Union." Then a few months later, the question was argued in a great debate on the floor of the Senate (January 19–29, 1830).

Senator Foote had moved a resolution to restrict somewhat the sale of public lands. The Western States thought this an improper interference with their development, if not with their constitutional rights; and there followed the most famous constitutional debate in our history, — ranging far from the original matter. Senator Hayne of South Carolina supported the doctrine of Calhoun's Exposition. Daniel Webster replied in two magnificent orations, laying bare the practical absurdity of nullification and setting forth, in more vivid terms than had ever been done before, the doctrine of American Nationality.

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"Between submission to the laws . . . and open resistance, which is . . . rebellion . . . there is no middle ground. Nullification, in operation, would be treason"; and grimly the penalty was suggested: "it is an awkward business, this dying without touching the ground." Then a brilliant picture of the manifold benefits of the Union closed with the splendid flight of eloquence which was to count in years to come for more than argument and more than armies:—

"While the Union lasts, we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that, I seek not to penetrate the veil. When my eyes shall be turned to behold, for the last time, the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union: on States dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance, rather, behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, not a single star obscured, bearing for its motto no such miserable interrogatory as, What is all this worth? Nor those other words of delusion and folly, Liberty first, and Union afterwards: but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart - Liberty and Union, now and forever, one and inseparable!"

Webster held that the Constitution made us a Nation. To strengthen this position, he argued that as one nation "we the people of the United States" had made the Constitution. Here facts were against him; but this historical part of his plea was really immaterial. The vital thing was not the theory of union held by a departed generation, but the will and needs of the throbbing present. And when Webster argued that the United States was now one Nation, and must so continue, he gave deathless form and force to a truth which, inarticulate before, had yet been growing resistless in the consciousness of the Northern and progressive part of the Union.

Says Woodrow Wilson (Division and Reunion, 44-47): "The ground which Webster took, in short, was new ground; that which Hayne occupied, old ground.... It seems impossible to deny that the argument of Hayne contained much more nearly the sentiment of 1787-89.... But Webster's position was one toward which the greater part of the nation was steadily advancing, while Hayne's position was one which the

South would presently stand quite alone in occupying. Conditions had changed in the North . . . but the conditions of the South, whether political or economic, had remained the same, and political opinion had remained stationary with them."

And Professor MacDonald (Jacksonian Democracy, 111): "Hayne argued for a theory, which, however once widely held, had been outgrown, and which could not under any circumstances be made to work. Webster argued for a theory, which, though unhistorical in the form in which he presented it, nevertheless gave the Federal government ground on which to stand. The one . . . looked to the past, the other to the present and future. Both were statesmen; both loved their country: but Hayne would call a halt, while Webster would march on."

Cf. also § 211.

306. The Conflict.—The Southern leaders arranged a Jefferson Day banquet (April 13, 1830), at which the toasts were saturated with State sovereignty and nullification doctrine. President Jackson, the guest of honor, whom the States-sovereignty men had hoped to draw to their side, challenged their sentiments boldly by proposing the toast—"Our Federal Union: it must be preserved"; and, during succeeding months, he took advantage of several semi-public opportunities to make known his determination to meet nullification with force.

Jackson, however, did recommend revision and reduction of the tariff; and a "new tariff of 1832" removed the absurd atrocities of 1828, returning to about the basis of 1824. This action, however, seemed to the South only to strengthen the principle of protection, and to afford no real relief to their section. The South Carolina Congressmen now called upon their people to decide "whether the rights and liberties which you received as a precious inheritance from an illustrious ancestry shall be surrendered tamely . . . or transmitted undiminished to your posterity." A strenuous campaign elected a legislature which by large majorities called a convention. Jackson, meanwhile, strengthened the Federal garrison at Fort Moultrie (in Charleston harbor). After five days of deliberation, the convention (November 19) by vote of 136 to 26, adopted the famous Ordinance of Nullification, declaring the

tariff laws void within South Carolina, calling upon the legislature to make necessary provision to prevent their operation, and threatening secession in case the Federal government should attempt further to enforce them.

307. The Compromise of 1833. — December 10, 1833, Jackson issued an admirable proclamation to the people of South Carolina, warning them of the peril into which they were running, and affirming his determination to enforce the laws. But to Congress, a few days before, he had recommended further revision of the tariff; and the legislature of Virginia, instigated by members of the Cabinet, stood forth now as a mediator, suggesting compromise. Nullification was to have gone into effect on February 1, 1833; but, under these conditions, leading citizens of South Carolina hastily and rather informally arranged to defer the date, in order to await the outcome of compromise measures in Congress. Clay, who felt the whole protective system endangered, joined hands with Calhoun and fathered a tariff bill acceptable to South Carolina, - providing for a horizontal reduction of the duties in the tariff of 1832, to be made gradually, so that by 1842 no rate should exceed 20 per cent. This was a return to something lower than the practice in 1816.

On March 1 both this compromise and the Force Bill (to supply the President with resources to bring the rebellious State to obedience) passed Congress, and the President took what satisfaction he could get by signing the Force Bill a few minutes sooner than the other. March 11, the South Carolina convention reassembled and rescinded the nullification ordinance, passing at the same time an empty nullification of the Force Bill.

Victory was claimed by both sides. Says MacDonald (Jacksonian Democracy, 168): "The greater victory lay with South Carolina. Alone, unaided by its co-States, it had challenged the constitutionality of a Federal policy, formally refused longer to submit to it, and prepared to

<sup>1</sup> MacDonald's Select Documents, 268-271.

resist by force of arms. In response, the President had declared that the law must be obeyed, and had taken steps to secure obedience, if necessary, by force. But before the test came, Congress had pushed through in two weeks a compromise measure which would shortly reduce duties to a revenue basis."

308. Excursus: Nullification permitted in Georgia. - Whatever victory the President might possibly have boasted in South Carolina he weakened by permitting Georgia unchallenged to defy the Supreme Court. Georgia had enacted laws regarding certain lands which United States treaties declared to be Indian lands. A missionary disregarded these pretended laws; and a Georgia court sentenced him to imprisonment for four years at hard labor. In March, 1832, the Supreme Court of the United States declared the Georgia statute void and ordered the release of the prisoner. "Well," exclaimed Jackson, "John Marshall has made his decision. Now let him enforce it." The missionary remained in prison. With the full approval of the President, Georgia nullified a treaty of the United States and a decision of the Supreme Court, at the very time that South Carolina was threatened for trying to nullify an act of Congress. In no small measure the explanation was, that in the one case Jackson hated Indians, while in the other case he hated Calhoun quite as cordially. 1 Moreover, Georgia's success humiliated only John Marshall, whom Jackson disliked: South Carolina would have humiliated the authority of the President of the United States, -who happened just then to be Andrew Jackson.

¹ Jackson had just discovered that, years before, Calhoun had tried to persuade Monroe's Cabinet to have him (Jackson) censured for exceeding his military authority (Special Report and § 298, note). Moreover, a frontiersman like Jackson was certain to sympathize with Georgia's attempts to rid her soil of the Indians. Jackson urged Congress repeatedly to remove all Indian tribes to the "Indian Territory" beyond the Mississippi. This policy was finally adopted in his second administration, giving rise to the brief "Black Hawk War" in the Northwest, and to the long-drawn-out Seminole War in the Everglades of Florida.

### C. THE GOVERNMENT AND THE BANK

309. Jackson's Challenge: — The National Bank of 1816, like its predecessor of 1791, was a huge monopoly, with special privileges not open to other individuals or corporations.¹ It had vast power also over the small State Banks and over the business of the country. True it had used this power to the advantage of the country, in ways that President Jackson was wholly unfitted to appreciate. But the Bank also had opportunities to exercise tremendous political influence. So far, apparently, it had never used these opportunities; but Jackson felt the danger vividly, and, with perfectly wholesome instinct, he distrusted the "un-American monopoly" and the intrusion of "the money power" into politics.

The Bank's charter was not to expire until 1836 (after the period for which Jackson had first been elected); but in his first message, the President called attention to that approaching event and questioned the advisability of rechartering an institution of such dubious constitutionality or utility. Clay seized the chance to array the Bank against Jackson, and persuaded the managers to ask Congress at once for a renewal of the charter. Congress was not yet in the hands of Jackson's followers, and the bill passed. Jackson vetoed it in a message that made an admirable campaign document. In the election of 1832 the foremost issue was Jackson or the Bank. The workingmen of the Eastern cities declared vehemently against monopolies (§ 290, note), and the West already hated banks and loved Jackson. The Bank did now go into politics; but Jackson was reëlected by 219 votes to 49 for Clav.

310. The Election of 1832 is marked by new party names, by the first "third party," and by new party machinery. Jackson men now called themselves Democrats. The National

<sup>&</sup>lt;sup>1</sup> Any body of men with resources sufficient to buy a prescribed amount of United States bonds can open a "national bank" under our present system. The government is not a partner in these institutions.

Republicans, complaining bitterly of Jackson's vetoes and of his dominance over Congress, took the name Whig—which in England had long indicated the party opposed to royal prerogative. The "third party" was the Anti-Masons.

The division into parties had made it advisable to agree upon candidates for President in advance of the campaign, something never contemplated by the Constitution. This, we have seen, was accomplished for a while by the Congressional caucus (§ 227 note). But at such a caucus, the members were Congressmen who had been chosen two years before, on wholly different issues. Men resented it that such uncommissioned "representatives" should presume to speak for the party on this vital matter. Moreover, the new conception of the President as the special "Representative of the Nation" (§ 300) made it imperative that the people should have more direct control in the nomination. The repute of "aristocratic King Caucus" had been dissipated finally in the campaign of 1824 (§ 281); but nomination by State legislatures was little better, and it had the special disadvantage that it represented the differing wills of localities rather than the united will of a national party.

Indeed, the same causes which discredited the Congressional caucus for the Nation had also discredited legislative caucuses for nomination of State officers; <sup>2</sup> and New York and Pennsylvania had devised *State* 

<sup>&</sup>lt;sup>1</sup> In 1826 William Morgan had published what he called the secrets of the Masonic Order. Morgan disappeared, and it was supposed that he had been abducted and perhaps murdered. An indignant movement against secret societies swept over the country; and in 1831 it had crystallized into a new political party pledged to oppose all Masons for office.

<sup>&</sup>lt;sup>2</sup> The weak points were: (1) the caucus was not commissioned for this work and so could not command support for its choice; (2) in a Democratic caucus, for instance, there was no voice from parts of the State represented at the time in the legislature by members of the other political party. From the second consideration it is plain that a minority party would find the legislative caucus especially unworkable, since its "caucus" could not claim to speak for even half the election districts of the State. A new party would find itself even less able to use the device. Such parties, therefore, were particularly active in creating the convention system for State and Nation.

Nominating Conventions made up of representatives chosen in party gatherings in the various election districts of the state. The next step was to extend this machinery to the nation. The Anti-Masons did this in 1831. The Whigs followed, and the Democrats fell into line. A second Whig convention in 1832 adopted the first National "Platform," defining the party's position on the issues of the campaign.

311. "Withdrawal of Deposits." — Jackson accepted his victory as a verdict from the sovereign people against the Bank, and hastened to destroy that institution even before its charter expired. Under his orders, the Secretary of the Treasury began to deposit the government funds, no longer with the National Bank, but in "pet" State banks.

The "Pet banks" were often weak institutions, under reckless management. Such institutions had spread rapidly in the preceding five years, while the country had been sowing the wind for another financial crash like that of 1819. A rage for investment, beyond real resources, and for alluring speculation had seized upon the optimistic nation; and such operations were being carried on largely through credit loaned by these "wild-cat" banks. The action of the Government intensified the evil. The "Pet banks" now felt able to loan more recklessly than ever, and easy borrowers speculated and overinvested more freely.

312. Distribution of the Surplus.—Another Government measure scattered the infection more widely. In 1835 the national debt was paid, and the surplus was piling up at the rate of \$35,000,000 a year. Instead of reducing taxes,<sup>2</sup> the

<sup>&</sup>lt;sup>1</sup>Two Secretaries had to be removed before the President found one rash enough so to risk public funds, and public welfare, without Congressional authority. The Senate, controlled still by the Whigs, entered upon its Journals a formal censure of the President. There followed a long and famous contest, until after many sessions, Jackson's admirers secured the majority in the Senate necessary to expunge the censure from the records.

The Bank, fatally crippled, wound up its affairs, sought a new charter under the laws of Pennsylvania, and became a State Bank.

<sup>&</sup>lt;sup>2</sup> The tariff, it was urged, must not be disturbed, since the existing law was a sacred agreement between the sections, entered into in 1833 to avoid nullification.

Government decided to divide this surplus among the States (in proportion to their Congressional representation). This money found its way, as State deposits, into State banks and into the same round of speculation.

To avoid constitutional scruples, this gift to the States was called a "deposit," or a "loan without interest." The distribution was to be made quarterly, beginning with January, 1837; but before the fourth installment was due, the "panic" had seized the country and the Treasury was trying to borrow money for necessary expenses. No call was ever made upon the States for a return of the \$28,000,000 distributed.

313. The "Specie Circular," and the "Panic," - In the final year of his administration, Jackson became alarmed at the rapid sale of public lands paid for in paper only; and the measure he took to save the Treasury from loss hastened the catastrophe. The famous "Specie Circular" ordered United States land offices thereafter to accept only gold and silver in payment for public lands (July, 1836). This was notice to the country that the vast bulk of its currency 2 was dubious in Martin Van Buren, Jackson's faithful counsellor, was elected to the Presidency that summer, in time to reap the whirlwind. In May, 1837, banks all over the country suspended specie payment or closed their doors. Gold and silver went into hiding, and bank paper depreciated in fantastic and varying degrees in different parts of the country, but everywhere ruinously. Merchants failed; factories closed down; unemployed thousands faced starvation. Incidentally, the first Labor movement was crushed out. Normal conditions were not restored for five years.

As in 1819, the "crisis" was world wide, and its causes were the general disposition of business society to invest beyond its means. The acts of Jackson's administration did not cause the crash in America: they only hastened it. It is pretty well agreed that Jackson's hostility to the

<sup>1</sup> What provision in the Constitution suggested this ratio?

<sup>&</sup>lt;sup>2</sup> State banks issued notes in that day, as they have not done since the establishment of the present national banking system (cf. § 376), and paper of different banks therefore had different values.

Bank was right, though some of his measures against it were high handed and unwise.

314. The Independent Treasury.—Van Buren saw his chance for popular favor ruined by the disaster; but he met the situation with calm good sense. His message to Congress pointed out the real causes of the panic and the slow road back to prosperity. Meantime, for the government funds, he recommended an *Independent Treasury* (independent of all banks). In 1840 this plan was adopted, though for some years the Whigs fought desperately to revive their pet scheme of a National Bank. The Government built itself great vaults at Washington and other leading cities; and for long the National funds were handled solely in these, under the direction of the Treasury Department.<sup>1</sup>

## D. PUBLIC LAND POLICY

315. Two Opposing Views and Supporting Forces. — The early stages of our land policy have been touched upon (§§ 183, 263, 272 b). About 1830 began a ten years' agitation leading to a new phase. The earlier policy had regarded the National Domain as a source of revenue: if the lands were sold at low prices, that was done only to sell more of them. By 1840 the nation had been converted to the other conception, which has since dominated our policy, — namely, that the public domain should be regarded primarily as a source of homes for the people (§§ 316, 317, 367).

The change was the fruit of a union between the West and the Labor forces in the East (assisted in some degree by the political alliance between West and South). In 1830 the sale of public lands was bringing in as much money as the tariff, and the revenue was not then needed (§ 312). The well-to-do classes in the Eastern States felt that the lands ought to be sold more slowly, so as, eventually, to produce more revenue when it should be more needed. The new States resented this position. It would hamper their development; and from the first they had, more or less clearly, stood for a different policy. They looked upon the public lands mainly as a means of developing the country, and

<sup>&</sup>lt;sup>1</sup>Recently this practice has been modified by the use of certain national banks (§ 376) as depositaries.

<sup>&</sup>lt;sup>2</sup> Cf. Foote's Resolution, referred to in § 305.

were ready even to give them away, in order to encourage rapid settlement. The workingmen of the North Atlantic section (§§ 287-290) threw their weight overwhelmingly into the same scale.<sup>1</sup>

"The organized workingmen...discovered that the reason why their wages did not rise and why their strikes were ineffective was because escape from the crowded cities of the east was shut off by land speculation. In their conventions and papers, therefore, they demanded that the public lands should no more be treated as a source of revenue to relieve tax-payers, but as an instrument of social reform to raise the wages of labor.

"And when we, in later years, refer to our wide domain and our great natural resources as reasons for high wages in this country, it is well to remember that access to these resources was secured only by agitation and by act of legislation. Not merely as a gift of nature, but mainly as a demand of democracy, have the nation's resources contributed to the elevation of labor."—Introduction to vol. V of Documentary History of American Industrial Society.

316. Proposals to cede to the States: Proceeds distributed Instead.—At the opening of the struggle, Western States were inclined to say that the East ought to have nothing whatever to do with the disposition of land in a new State; and several legislatures sent memorials to Congress urging that each State should be given all the public domain within its borders. This feeling was natural; but the plan would have destroyed all uniformity in dealing with public lands, and it would have wiped out a powerful bond of National union,—the common interest in the public domain. To head off such a measure, Clay advocated that all proceeds of public-land sales should be distributed among the States in proportion to their Congressional representation. One of his bills failed only through a pocket "veto," and the agitation was a leading cause of the more sweeping "distribution of the surplus" in 1836 (§ 312).

As early as 1828, before the West itself was fully aroused, the *Mechanics' Free Press* circulated a *memorial* for signature among its constituency, urging Congress to place "all the Public Lands, without the delay of sales, within reach of the people at large, by right of a title occupancy only," since "the present state of affairs must lead to the wealth of a few," and since "all men . . . have naturally a birth-right in the soil."

All this, however, was a mere sop, and did not touch the principles at stake.

317. The Preëmption Act of 1841. — With the return of prosperity, Clay renewed his efforts on a broader basis, and in 1841 he carried a law with three features: (1) it divided among the States (for a limited time) 90 per cent of the proceeds of the land sales; (2) it inaugurated the policy, since maintained, of giving to each new State <sup>1</sup> a liberal amount of lands to form a State fund for internal improvements; (3) it contained the famous provision which gave to the whole law its name of The Preëmption Act.

Settlers pushed on ahead of land-office sales, as squatters. Later came a public sale, wherein the land office put up each "forty" at auction. Speculators with Eastern money attended, eager to get choice pieces. The settler was sometimes outbid (losing the results of his labor upon the land and of his foresight in selecting it), or was compelled to pay much more than the minimum price of \$1.25 an acre, to which the frontier community felt that he was entitled. The preëmption law provided simple means by which the settler might "file upon" a piece of land in advance of the regular sale, and so secure the privilege of retaining it, by paying the minimum price at the proper time.

318. "Settlers' Associations" and "Squatters' Rights."—Even before the enactment of the Preëmption law, its purpose had been commonly secured by "Settlers' Associations." With the frontier instinct for rough justice even at the expense of legal forms, and with the American capacity for combination, the settlers had learned to band themselves together to maintain "settlers' rights" at these sales.

The procedure was sometimes dramatic. The Association "Captain" sat on the rude platform beside the auctioneer,—a list of settlers' claims

<sup>&</sup>lt;sup>1</sup> Similar grants were provided also for those of the older States which had not already had a liberal control over the lands within their borders. This grant was in addition to the customary grant of school lands (§§ 183 and 265), and followed out the principle of the original grant to Ohio for internal improvements.

in hand and revolver in belt, with his stalwart associates, armed, in the company about. When a piece was put up on which a squatter had made improvements, the "Captain" spoke the word "Settled,"—which was notice to outsiders that the settler must be permitted to bid it in at the minimum price without competition.

An incident of such a sale in Illinois in the thirties has been described to the writer by an eye-witness who stood, a boy, on the outskirts of the little crowd. The "Captain" was John Campbell, a black-browed Presbyterian Scot, standing six feet four. In one case an Eastern bidder failed to hear, or to respect, the gruff "Settled," and made a higher bid. With a bound from the platform, Campbell seized the offender by the waist, lifted him into the air, hurled him to the ground, and, foot on the prostrate form and cocked revolver in hand, asked significantly, — "Did we hear you speak?" Protestations of misunderstanding and earnest disclaimers followed from the frightened man. Bending forward, Campbell set him, none too gently, on his feet, admonished him solemnly, "See that it doesn't happen again"; and returned, in unruffled dignity, to the platform, where the government official had been quietly waiting. The land was then knocked down to the squatter, and the sale proceeded decorously, to general satisfaction.

Exercise.—Three great beneficent measures have been mentioned as occurring under Van Buren's Presidency—though one of them was a Whig, not an administrative, measure. Name them. Observe the influence of the labor party (to whose support Van Buren largely owed his election) in them all.

### E. DEMOCRACY ACCEPTED

319. The campaign of 1840 marks the final disappearance from American politics of all open belief in aristocracy, and the appearance of a new (democratic) plea for protection. The two parties rivaled each other in avowals of devotion to the will of the people; and the Whigs won because their clamor was the loudest; because the Democrats were discredited by the panic of '37; and, in some degree, because the new Whig argument for a protective tariff appealed to the workingmen of the Eastern cities.

The Whig candidate was William Henry Harrison, the victor of Tippecanoe. An opponent referred to him con-

temptuously as a rude frontiersman fit only to live in a logcabin and drink hard cider. The Whigs turned this slur into effective ammunition. They had no official platform, and their candidate for Vice President, Tyler, was a States-rights Democrat. But they swept the country in a "Hurrah Boys" campaign for "Tippecanoe and Tyler, too,"—the chief features being immense mass meetings in rural districts and torchlight processions in the cities, with both sorts of entertainment centering round log cabins and barrels of cider.

320. "Protection" for the Workers. — Possibly, however, in accounting in this way for Whig success, it has been customary to ignore overmuch the stand of the Whig leaders in the campaign for a revival of protection. The old demand (1816-1832) had been aristocratic — in the interest of wealth. "Protect the manufacturers," it said, "because they have to pay such high wages." The new demand, formulated by Horace Greeley and advocated by him with religious fervor in his New York Tribune, stood for social and democratic reform — in the interest of the workers. "Protect manufactures," it said, "in order that the workmen may continue to get high wages."

Greeley himself never wearied of this theme. But almost at once the bitterness of the slavery contest drew public attention away from calm consideration of any other question; and the argument was not duly sifted till a much later time (§ 420 ff.). It is significant of the age, however, that protection, which had been condemned and abandoned on the old grounds, should have come back to its throne in the forties under cover of this idealistic drapery.

321. Failure of the Whig Program. — Harrison carried twenty States to six for the Democrats, and his party secured a working majority in both Houses of Congress; but the victory was futile. Harrison died within a month of the inauguration; and Tyler opposed his veto to the Whig measures. Two bills to restore a United States Bank (in place of the Independent Treasury) failed in this way in August and September of 1841. Whig papers raised a bitter cry of Judas Iscariot; and every member of the Cabinet resigned except Daniel Webster. In like manner the veto killed two bills for an extreme protec-

tive tariff, but a third and more moderate measure received the President's approval.

The compromise of 1832 had just taken full effect, but it was now at once undone. The panic of 1837 had depleted the treasury; and, aided by the cry for revenue, the high protective "tariff of 1842" was enacted, raising the rates to about the level of 1832, — with duties on iron running as high as 79 per cent.

This tariff of 1842 produced a revenue of \$26,000,000 a year. When the Democrats returned to power, the Walker revenue tariff of 1846 was substituted. Imports such as coffees and teas and other articles of common use not produced in the United States were taxed very high, while manufactures previously protected (iron, wool, etc.) were taxed only thirty per cent. The measure was called a free-trade tariff, but it afforded a moderate degree of protection, besides nearly doubling the revenue. In 1857 rates were reduced materially for a time to a real free-trade basis.

Webster had kept his unpleasant position as secretary of State, spite of Whig indignation at Tyler, in order to complete an important negotiation with England. Soon after the settlement of the dispute regarding the St. Croix River (§ 232), another difference of opinion had arisen regarding the northern boundary of Maine farther to the west. England claimed one line, and the United States another, from different interpretations of the words of the Treaty of 1783. The King of the Netherlands, to whom as arbitrator the contention was submitted, exceeded his province by drawing a compromise line without reference to the original merits of the dispute; and the United States refused to accept the award. In 1842 the question was settled by the Webster-Ashburton Treaty, which gave each country about half the disputed territory.

322. Excursus: Anti-rent Riots and "Dorr's Rebellion."—Two radical movements in State governments belong to this period.

a. The land near the Hudson had belonged originally to large proprietors known as patroons (§ 109), and the modern holders still paid an annual "quit rent" of ten or twenty cents an acre to the descendants of the patroons. In 1839 there began a remarkable series of anti-rent riots, with much discussion in public meetings. Sheriffs and some rent payers were killed; and popular sympathy was with the agitation so far that the landlords finally gave up their claims in return for a small lump sum from the State of New York.

b. In Rhode Island the franchise had not been reformed since colonial days, - when it had sunk to the narrowest, perhaps, in any colony. No man could vote unless he owned real estate worth \$ 134 (or unless he were the oldest son of such a man); and the smallest town had as much weight in the legislature as the capital city — which contained about a third of the whole population. The people had long clamored for reform: the close oligarchy paid no attention to the cry. In 1841, unable to get action through the oligarchic legislature, a People's Party arranged, without legislative approval, for the choice of a constitutional convention by manhood suffrage. The convention was duly and peacefully elected, by the participation of the great mass of the citizens; and its constitution was duly ratified in like manner. Then the people chose Thomas Wilson Dorr, their leader in the revolution, for governor under the new constitution. The old "charter government" refused to surrender possession of the government, and was supported by President Tyler with the promise of Federal troops. The revolutionary government then vanished, and Dorr was tried for treason, and condemned to imprisonment for life at hard labor.1

Meantime the oligarchic "charter government" saw that it must give way, but it sought, successfully, to save something from the wreck. It called a constitutional convention, while hundreds of democratic leaders were in jail under martial law sentences; and though the new constitution (1842) provided for manhood suffrage for native Americans, the landed qualification for naturalized citizens was maintained (until 1882), along with many other archaic provisions, most of which still (1912) survive. The governor was given no veto; the judiciary was appointed by the senate (as were sheriffs and most local officers); and the senate itself was created on a "rotten

<sup>&</sup>lt;sup>1</sup> A year later, the first legislature of the new government (below) set him free by special act,—not by the usual form of pardon; but this martyr to the cause of constitutional freedom died some years later from disease contracted in his unwholesome prison life.

borough" basis. It was to have one member, and one only, from each town (so that Providence, with its 225,000 people, has no more weight in that House than a village of 500 people).

# III. DEMOCRATIC POLITICAL MACHINERY:

The other important measures of Tyler's administration are intimately connected with the slavery struggle. Before passing to that, we must note one other matter that belongs especially to the Jacksonian era. The new democracy needed new political machinery to work its will. This need gave birth to various devices in government, which continued with little change for some eighty years. Some of them, which were less democratic in reality than in theory, have now (1912) begun to suffer radical modification; but in parts of the Union the whole system is still unimpaired.

323. Composition of National Conventions. — The members of a political party in each State send to a National convention (§ 307) twice as many delegates as the State has electoral votes (four "delegates at large" for its two Senators, and two "district delegates" for each Representative.<sup>2</sup> The rule of voting within the Convention differs in different parties. The Democratic Party follows the "unit rule"; 3 that is, the chairman of each State delegation casts the whole vote of the State as the majority of the delegation may decide. The present Republican Party permits each delegate to cast his own vote.

¹ The only form of amendment provided for in the constitution demands the approval of two successive legislatures before submission to the people. The rotten-borough legislature refuses to submit any proposal which would reform itself; and the judges of the supreme court have recently given an opinion that amendment through a constitutional convention is not constitutionally possible. There is agitation now going on (1912), however, for such a convention.

<sup>&</sup>lt;sup>2</sup> Until 1912 the delegates at large were always chosen in a State convention of the party, while the others were chosen in separate "district conventions" (one for each congressional district).

<sup>&</sup>lt;sup>8</sup> Except where a State by its party convention, or by its presidential primary law (§§ 324 and 467), has expressly decided that its delegates are to vote individually.

324. The Convention and Committee System in Operation.—
The National Convention of a Party has three duties: it nominates candidates for President and Vice President; adopts a statement of principles ("platform") on which the candidates are supposed to stand; and appoints a National Committee, consisting of one member from each State and Territory, to act for the party during the next four years.

Some months in advance of the next presidential election, this National Committee names time and place for the next National Convention and issues a call to the party. In each State, a State committee (appointed usually by a preceding State convention) calls a State convention, specifying the number of delegates to be elected by the various counties. County and town and precinct committees, in order, transmit the call to their respective units, and manage the machinery of the campaign.

For more than three quarters of a century the further procedure remained as follows. Each voting precinct chose its party delegates to a town or county convention.<sup>3</sup> The county convention chose delegates to the State and Congressional conventions, sometimes instructed delegates how to vote, and appointed the county committee for the next period. The State convention (1) chose State delegates to the National Convention; (2) instructed them how to vote, if it chose, and usually adopted resolutions on political questions; (3) nomi-

<sup>&</sup>lt;sup>1</sup> Unhappily, platforms have become devices to catch votes rather than frank statements of principles, and their most solemn pledges are often disregarded after the elections. The people, therefore, pay more attention to the views expressed by the nominees in their letters of acceptance and their speeches, which sometimes are widely at variance with the Convention platform.

<sup>&</sup>lt;sup>2</sup> The ratio is fixed either by population or by the previous vote of the party in the various subdivisions.

<sup>&</sup>lt;sup>3</sup> Rural voting districts choose direct to the county convention. Cities are divided necessarily into smaller voting districts, called precincts. These sometimes choose direct to the county convention, which elects the county delegates.

111)

nated candidates for presidential electors; and (4) appointed the next State committee.

This network of committees is the vital machinery of the party. The National Committee keeps in close touch with each State committee; the State committee with County committees and so on down through the hierarchy to the precinct committees in the smallest voting unit. The National Committee collects funds, secures and distributes campaign literature, and decides to which States to send Speakers and money (after considering requests from State committees); 1 and each State committee, in like fashion, directs the campaign within its borders.

The same State convention may also have the nomination of State officers. Such was always the case until the introduction of "direct primaries" in many States, about 1900, gave this function directly to the people. Soon afterward, one or two States provided also that the members of a political party might directly choose their delegates to their National Convention — without the intervention of intermediate bodies, and the Progressive agitation of 1912 (§ 458 ff.) resulted in much more legislation for such direct expression of the popular will. Some of these State laws even made the State and local committees elective at the party primaries.

Thus, in political theory, the people, divided into two great parties, choose their candidates for President. Then, in State conventions, they nominate "electors." Whichever set of electors is chosen at the polls casts the vote of the people for the Convention candidate, to be counted at Washington. That is, the electors have become "letter carriers."

Still the election does not amount to direct election by the Nation as one unit. (1) A small State has relatively more than its share of votes. That is, Nevada, with a population not enough for a single Congressman,

<sup>&</sup>lt;sup>1</sup> In the campaign, the large and "close" States receive especial attention. In them are concentrated speakers, canvassers, and all influences at the command of the National Committee. Of recent years, a preëlection canvass of the voters in every precinct is customary (at expense far exceeding that of the actual election), so that every possible effort may be put in at the needful point. Under such conditions, the temptations to trickery and to actual corruption and bribery are tremendous,—especially as the men engaged most actively in the campaign are often professional politicians, whose livelihood depends upon bringing success to their superiors; and these, even when "honorable men," often prefer to know only the result, not the means.

casts three votes, while another State with five times that population casts only four. (2) A bare majority in one State, too, is just as effective as a majority of hundreds of thousands in another State of the same size. Hence, many Presidents are elected by a minority of the popular vote. This has been true in about one election out of three in our history.

All this convention and preflection campaigning is unknown to the Constitution; and until recently, it has been none of it regulated even by State law. Recent developments are treated more fully in §§ 459-468.

325. "Spoils" and "Bosses." - This complex machinery called for an immense body of workers, - "more people," thinks a competent authority, "than all the other political machinery in the world." It was natural, therefore, that its development should have gone along with the appearance of the spoils system (§ 299), to pay the necessary recruits, and with that of "bosses" to direct these forces. In theory, the political machinery was to represent the people's will. In practice, among a busy, optimistic people, it was admirably fitted to fall into the hands of "professionals." For half a century, while the system was at its worst, the average citizen (unless with an "ax to grind") largely withdrew from all political duties, except, perhaps, that of voting for the nominees put before him. Office holders of various grades managed the committees of the party in power; and expectants for office managed those of the other party. Such conditions gave a low tone to politics. A campaign, to the most active participants, was dangerously like a struggle for mere personal preferment.

"Ward heelers" and the lowest grade of active workers, taking orders from a city boss, managed ward and precinct primaries. Under the unreformed system of "mass-meeting" primaries, the professionals were often the only voters to appear; and if other citizens came, they found the chairman, judges, and printed tickets all arranged for them by the "machine." The managers were usually unscrupulous players of the game, and, at a pinch, did not hesitate to "pack" a meeting in order to secure the election of their delegates. Arrived at State or county con-

<sup>&</sup>lt;sup>1</sup> Special reports: (1) accounts of the last National Conventions of each party; (2) the last presidential campaign in *your* State; (3) abstract of your State law or practice as to the party primaries.

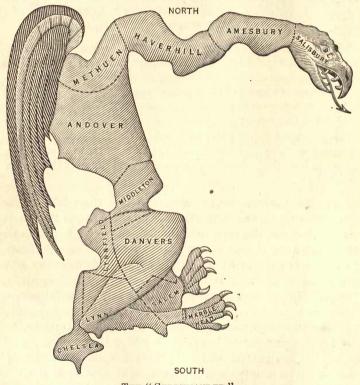
## POLITICAL MACHINERY

vention, such delegates, with disciplined obedience, put through the "slate" drawn up in advance by the bigger bosses,—who commonly had arranged all details with a nicety and precision found until recently in few lines of business.

The big boss was not always an officeholder. His profit often came in indirect ways and sometimes in corrupt ways. Corporations wishing favors or needing protection against unfair treatment were willing to pay liberally the man who could secure their will for them. Often the bosses of opposing parties in a State have had a perfect understanding with each other, working together behind the scenes and dividing the plunder.

- 326. Congressmen and "Patronage."—It soon became the custom for the President to nominate postmasters, and other Federal officeholders for a given Congressional district, only on the recommendation of the congressman, if he were of the President's party, or of the "boss" who expected to become or to make a congressman. The congressman used this control over federal patronage to build up a personal machine, so as to insure support for his reëlection. But the practice gives a powerful weapon to a strong President, who is often able to coerce reluctant congressmen into being "good" by threatening not to approve their recommendations.
- 327. The Gerrymander. Famous among the tricks of the game, as professional politicians came to play it, is the gerrymander. Since the early years of the Republic, it has been the custom to choose congressmen by districts. A State, therefore, is partitioned by its legislature into as many congressional districts as it has congressmen. Too frequently, the party in power shapes these districts with shameful unfairness. If it cannot control them all for itself, it can usually pack hostile majorities into two or three of many districts. leaving the rest "safe"; or it can add a strongly favorable county to a doubtful district. State constitutions usually require that a county shall not be divided (unless of itself it makes more than one district) and that each district must be made up of "contiguous territory." But such restrictions. amount to little in the absence of popular opinion to resent and punish trickery. Some atrocities have become notorious. Mississippi for decades had a "shoe-string" district two hun-

dred and fifty miles long and nowhere thirty miles wide. And in Missouri, to counteract the negro vote, a district was once devised with windings that made it longer than any straight line within the State. In general, however, a little manipulation secures the desired purpose, without recourse to such grossly apparent sins against good taste.



THE "GERRYMANDER."

(Part of an Anti-Gerry handbill in 1813.)

The first famous use of this device was in Massachusetts in 1812. The Republicans were in power, but could not hope to retain it against Federalist feeling regarding the War. To retain a part, the legislature, with the

approval of Governor Gerry, constructed a congressional district of atrocious unfairness. A Federalist editor drew a map of this and hung it over his desk, to feed his wrath. Gilbert Stuart, the famous painter, noticed the monstrosity one day, and with ready pencil added wings and claws, exclaiming, "There's your salamander!" "Better say Gerrymander," growled the editor, a bitter hater of Governor Gerry; and the uncouth name passed into current use.

Thus the invention of the disreputable device belonged to an era when statesmen, disbelieving in popular government, thought it no wrong to evade the people's will. It was perpetuated and magnified after 1830 by politicians whose lips worshiped the voice of the people, but who in practice played politics in much the same spirit they played poker at a gaming table.

All the faults of the congressional gerrymander are duplicated, of course, in dividing the State into legislative districts, and, to a great measure, in establishing in cities the units for choice of aldermen.<sup>1</sup>

328. "Mr. Speaker" and Congressional Committees. — The constitutional changes noted in §§ 299–303 and 323–327 were the product of growing democracy and of the development of party government. The latter alone was the chief cause of one other great change which belongs mainly to this era. This was the growth of the power of the Speaker in the House of Representatives, — "our king in dress coat," or "the second man in the government."

In the English parliament, the whole course of legislation is controlled by the ministry, — really a committee of the majority party. This ministry apportions time for debate and deter-

<sup>1</sup>Look up the congressional districts in your State on a map. Has there been any notable gerrymander, for State legislature or for Congress, in your State history? What are the rules governing apportionment in your State?

There is nothing, outside the State constitution, at least, to prevent a legislature providing at any time for electing all the congressmen of a State on one ticket; but (except in apparent necessity, from failure to redistrict a State in time) no party is likely to attempt this, because of the offense to local sentiment. Except in a few small States, American opinion has come to demand that congressmen shall be chosen by districts; and that each one shall be a resident of his district, and therefore known to the voters and familiar with their needs. Some State constitutions, indeed, contain this residence requirement.

mines the order in which bills shall be considered; and consequently few bills unacceptable to it are even introduced. legislative bodies lack such direction. Bills are introduced in vast numbers, beyond all possible ability to deal with them under any system; and the nearest approach to direction over this confused mass of legislation lies in the committee system peculiar to American legislative bodies. This machinery of standing committees, appointed by the Speaker, was well established when Henry Clay became Speaker for the second time in 1829; but Clay made a new era by the vigor with which he used his power of appointment in order to construct committees so as to control the whole course of legislation according to his own wish. Succeeding Speakers followed this practice, — with some notable revolts by Congress, — until the Democratic Congress of 1911 placed this directing power in the hands of a steering committee elected by a party caucus.

The English "Speaker" of the House of Commons is non-partisan. His recognized duty is to preside with absolute impartiality between the two parties; and this duty is so well met that, ordinarily, a change of parties does not involve a change of Speaker. In America, the Speaker is always a party leader,—leader of the majority. He is elected really not by the whole legislature, but by a caucus of his party. Whoever receives the nomination there is entitled by custom to the whole vote of the party in the election. When chosen, his duty is to manage the interests of his party and secure their dominance.

Every bill is referred to an appropriate committee (usually by the Speaker alone, or, in important cases, by vote of the House). Each committee, by custom, is made up of members from both parties; but the majority party has a working majority of every committee, and this majority, in secret caucus, decides all important action without admitting the members of the opposite party even to consultation. The full com-

<sup>&</sup>lt;sup>1</sup> In non-legislative bodies, the presiding officer still keeps the office of "moderator" between factions, and is expected to show absolute impartiality, after the old English traditions. The other practice in American legislative bodies seems to have originated in the period of the Revolution. The Speakers of the colonial legislatures were always leaders of the patriot opposition to English governors; and this partisan character became fixed in the office, when party government developed soon after.

mittee then can only ratify the action determined upon in such caucus. Bills undesirable to the majority, or to the Speaker, are smothered in committee and never reported, even adversely, except in cases where such action would arouse wide popular resentment.

When a bill has been reported, debate upon it is regulated by the chairman of the committee and by the Speaker. If the bill concerns a "party measure," custom requires a certain degree of fairness in debate; and some division of time is arranged between the Speaker (for the party in power) and the "leader of the opposition" (a member chosen by a caucus of the minority). Each of these leaders then apportions the time allotted his side among such speakers as he thinks fit, and the Speaker of the House recognizes the members in the order agreed upon.

Unlike an English presiding officer, the Speaker is not expected to recognize members in the order of their taking the floor, but, in the absence of such an agreement as just described, only at his discretion. This discretion is exercised sometimes in tyrannical manner, to pay off personal grudges. Only a determined and organized revolt by a strong majority, skilled in taking advantage of parliamentary rules, can overrule a strong Speaker. Indeed, success was almost without precedent, spite of many vigorous protests against "Tsarism," until the moderate success of the combined Republican and Democratic "Insurgents" against Speaker Cannon in 1910. At present (1912), the rules are in a state of flux, and some new procedure is likely to evolve.

In the absence of a responsible ministry to control debate, the despotic power intrusted to the Speaker and his committees was a convenient, if not a necessary, means of escaping legislative anarchy. Unless checked by some such power, minority members, by shrewd "filibustering," could waste

<sup>&</sup>lt;sup>1</sup> In 1910 Speaker Cannon's despotic rule, exercised largely in favor of certain moneyed interests, aroused intense indignation among a strong section of his own party. The Democrats secured a majority in the next Congress, largely through a popular revolt against "Cannonism." This Congress met in special session in April, 1911. The Democratic majority in caucus appointed a committee to nominate the Democratic members of each standing committee, and invited the Republican minority to adopt a like method (notifying them how many members would be allowed them). Then, in full House, when time came to organize, the Democratic majority, appointed the committees so nominated. Speaker Champ Clark had advocated this limitation of the power of his office in the hope of making congressional committees more truly representative.

time and prevent any action whatever upon many important measures. The party in power feels that it is responsible for action or non-action, and is very certain to always adopt some means to regulate legislative procedure. The United States Senate, it is true, has tried to cling to the ancient traditions of legislative freedom of debate; but even in that body change has already appeared.

State legislatures (both Houses) and city councils have copied most of these features of committee government and of the power of the presiding officer from the National House of Representatives.

For Further Reading.—On § 325, the advanced student may consult McConachie's Congressional Committees (1-149, 260-300); Follett's The Speaker (122-178, 217-296); Wilson's Congressional Government (80-99); Ford's American Politics. §§ 320-324 are covered in the lastnamed work and in other references already given for this period. Detailed treatment may be found best in Bryce's American Commonwealth, and, more briefly, in any good treatise on Civil Government. Fish's Civil Service and Patronage (Harvard Studies, XI) contains an admirable survey in the first thirty pages.

Exercise.—Review (1) the tariff system; (2) land policy; (3) the franchise; (4) the Labor movement; and make a "brief" for each topic. Make a brief list of important events in each Presidential administration from 1789 to 1841 to be preserved for reference.

Review Chapter for Monday

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In 1844 the Slave Power began to demand more territory; and, for the next twenty years, slavery (with its movement for disunion) was the dominant question in American politics (§§ 339 ff.). Before entering upon this story, it will be well for the student to review the earlier phases of the question (§§ 329-338).

## I. TO 1829: SLAVERY DEFENSIVE

329. Before the Revolution there is little trace of antislavery feeling. Slaves were held in every colony, though economic causes made them least numerous in the North (§ 124). The Revolution, with its new emphasis upon human rights, created the first antislavery movement. This movement lasted until about 1820, though it spent its greatest force before 1800. It was a moral and religious movement, rather than political, belonging to the South quite as much as to the North; and it was considerate of the slaveholder's difficulties. On their part, the slaveholders (outside Georgia and South Carolina) 2 usually apologized for slavery as an evil they would be glad to get rid of safely. Slavery seemed a dying institution.

330. State Emancipation. — Naturally it died quickest where slaves were fewest. Vermont's constitution of 1777 abolished slavery, as did that of Massachusetts, indirectly, in 1780 (§ 149, close), and that of New Hampshire in 1783. By law, Pennsylvania decreed freedom for all children born to slave parents

<sup>&</sup>lt;sup>1</sup> So, too, Revolutionary France abolished slavery in her West Indies in 1794, as did the Spanish-American States, without exception, as they won their independence after 1815 (§ 277).

<sup>&</sup>lt;sup>2</sup> And a congressman from Georgia in the First Congress stated, without contradiction, that there was no one in his State who did not think slavery a curse.

in her territory after 1780; and this sort of gradual emancipation was adopted in Connecticut and Rhode Island in 1784, in New York in 1799, and in New Jersey in 1804; while in most Southern States prominent statesmen and influential societies were urging similar action.

After 1804, no slave could be born north of Mason and Dixon's Line; but nearly all the "free States" continued to contain slaves born before "gradual emancipation" began. The census of 1830 showed some twenty-seven hundred slaves in the North-Atlantic section; and as late as 1850 New Jersey counted 236. So, too, all the States of the Old Northwest, except Michigan, contained some slaves in 1840,—survivors of those owned by the original French settlers. The antislavery provision in the Northwest Ordinance was interpreted, in practice, not to abolish existing slavery, but merely to forbid its further introduction.

In the Southern States, where slaves were numerous, no one believed in general emancipation without provision for removing the Negroes.¹ This sentiment created the American Colonization Society, which, with much tribulation, established the Negro Republic of Liberia on the African coast as a home for ex-slaves. The Society proved unable, however, to colonize free Negroes in large numbers.

The antislavery workers were the first agitators to make general use of organized societies to advance reform. The first antislavery society appeared among the Pennsylvania Quakers in 1775. Such organizations were especially strong in Southern States, and in 1820 were found in every Slave State except South Carolina, Georgia, and Louisiana.

If slavery was to die in the remaining States, two things were essential. New slaves must not be imported from abroad (§ 331), and slavery must not spread into new territory (§ 332 ft.).

¹ It had been part of Jefferson's plan, in his bill for gradual emancipation in Virginia (§ 254), that children of slaves should thereafter be educated at State expense "to tillage, arts, or sciences, according to their geniuses," until of age, "when they should be colonized to such place as the circumstances . . . should render most proper, sending them out with arms, implements of household and of handicraft arts, seeds, pairs of useful animals, etc., to declare them a free and independent people, and extend to them our alliance and protection until they have acquired strength." So, fifty years later (1829), Henry Clay, supporting the Kentucky Colonization Society, declared his hate for slavery as the "deepest stain upon the character of our country," but announced his belief that to free the Negroes, without at the same time colonizing them in Africa, would bring upon society "an aggregate of exils . . . greater than all the evils of slavery."

331. The foreign slave trade was condemned by resolutions of the Continental Congress in 1774 and 1776, and, during the Revolutionary period, was prohibited by every State except South Carolina and Georgia (§§ 205, 206). In deference to the demand of these two States, the Constitution permitted the importation of slaves for a limited time; but as soon as the twenty-year period had expired, the trade was prohibited by Congress (§ 258).

After 1807, England kept a naval patrol on the African coast to intercept "slavers," who were regarded as pirates by most European nations. Unhappily, England's invitations to the United States to join in this good work, in 1817 and 1824, were rejected by our Government. The War of 1812 had made us exceedingly sensitive regarding the "right of search," and we now refused to permit an English ship to search a vessel flying the American flag, even to ascertain whether that flag covered an American ship. Consequently our flag was used by slavers of all nations (especially, it must be confessed, of our own), engaged in the horrible and lucrative business of stealing Negroes in Africa to sell in Brazil or Cuba, or, after running our rather ineffective patrol, in the cities of South Carolina, where little disguise was made of defiance of the Federal law.

332. Limitation of Territory. — The three great attempts in this period to prevent slavery from spreading into the national domain have been treated (§§ 181, 183, 283). It was extended, however, into the old Southwest Territory and into the southern parts of the Louisiana Purchase. The action of Congress was vacillating. It established slavery in the District of Columbia, and it passed the infamous Fugitive Slave

<sup>&</sup>lt;sup>1</sup> Stern statutes, on paper, were passed repeatedly by Congress, but little effort was made to enforce them; and several thousand Negroes fresh from Africa were sold in Charleston every year. Special report: the horrors of this foreign trade.

France early conceded to England this "right of search," to check the piratical slave trade; and other European states followed this example. In 1842, in the Ashburton Treaty (§ 317), the United States joined England in an agreement to keep a joint squadron off the coast of Africa to suppress the trade; but we never took our proper share in this work until after the opening of the Civil War.

<sup>&</sup>lt;sup>2</sup> Congress reënacted the slave code of Virginia and Maryland for that District. Accordingly, under the shadow of the Capitol, a strange Negro might be arrested and advertised on the *suspicion* of being an escaped slave;

Act (§ 223); but, besides the restriction of the foreign slave trade (§ 258), it reënacted the anti-slavery provision of the Northwest Ordinance and resisted many attempts by the people of Indiana and Illinois to secure its repeal.

Many immigrants from south of the Ohio wished to bring in their slaves with them. To attract such settlers, and to supply the labor so much needed in all new countries, the people of early Indiana and Illinois made repeated petitions to Congress to repeal that famous restriction in the Northwest Ordinance. When such efforts failed, the Territorial legislatures tried evasion of the Federal law. Thousands of slaves were brought into the two Territories under forms of indenture or of "labor contracts"; and laws were enacted expressly to sanction this disguised slavery.

These "Black laws" are a blot on the fame of the early Northwestern States, so nobly dedicated to freedom by the great Ordinance. Says McMaster (History, V, 188): "To all intents and purposes, slavery was as much a domestic institution of Illinois in 1820 as of Kentucky"; and Professor Hart (Salmon P. Chase, 31) says of Ohio in the early thirties: "Ordinary principles of right to labor, of movement from place to place, of legal privileges, did not apply to men of dark skins."

333. Slavery Aggressive. — The years from the Missouri Compromise to the election of Jackson (1820–1829) form a transition period. Slavery was still defended as an evil, but as an evil inevitable and permanent. Its defenders still stood on the defensive, but they were less apologetic in tone.

This new attitude was due to a potent moneyed interest. Slavery was growing more profitable. The increased efficiency of slave-labor because of the cotton gin raised the value of a field hand from \$200 in 1790 to \$1000 in 1850. Accordingly, the Border States, where antislavery sentiment had been especially strong, looked upon the institution in a new light when they began to sell their surplus slaves at high prices to more southern communities. Moreover, the admission of Louisiana as a slave State, together with the extension of slavery into the

and if no owner appeared to prove that suspicion, he might still be sold into slavery to satisfy the jailor's fees. This, however, had been a recent practice in Northern States for white vagrants (§ 124).

rest of the Southwest, made its ultimate overthrow seem less possible.

The struggle over the Missouri Compromise (§ 283) was the first great indication of this changed attitude. The measure was distinctly Southern. It won Missouri and Arkansas to slavery; and this extension was favored by Clay, Madison, and the aged Jefferson! Not a Southern congressman voted for a "free" Missouri; while only fifteen Northerners voted against the restriction on slavery — and only three of these secured reëlection.

Ten or twelve years later, the Slave Power had become aggressive. It advocated slavery thereafter as a good, economic and moral, for both slave and master, and as the only corner stone for the highest type of civilization. In consequence, the Negro was represented as animal rather than human, and wholly unfit for freedom. All these new views found an able champion in Calhoun, who devoted the remaining years of his life to their advocacy.

# II. 1829-1860: SLAVERY AGGRESSIVE

334. African Slavery and the Slave Power in their Last Period. — The character of slavery in colonial times has been briefly suggested (§ 124); and the classes of Southern people in 1830 have been noted (§ 284 b). By that date slavery had taken on somewhat darker phases than were characteristic of the earlier period. Slave life in Virginia and the Border States continued, on the whole, humane and semi-patriarchal, except for the distressing sale of parts of a slave family. But the plantation type of harsh, degrading slavery, formerly characteristic mainly of Carolina or Georgia rice swamps, had now been extended over vast cotton areas in all the "Lower South." Even in that district, of course. the house servants were petted and gently cared for, as a rule; and often between masters and slaves there was warm affection. On most plantations, too, where the owner's family resided, master and mistress felt a high sense of duty to their helpless "charges," even of the field-hand But the majority of plantations were managed by overseers, class.1

<sup>&</sup>lt;sup>1</sup> The aged James B. Angell, in an address in 1910, recounting reminiscences of a horseback journey through the South in 1850, gave a forceful illustration. On a certain Carolina plantation, in the evening, the hostess had

drawn from the lower strata of the Whites, brutalized with irresponsible and despotic power, and forced to be hard taskmasters by the system under which they lived.¹ The overseer's reputation as a valuable man depended solely upon the number of bales of cotton he could turn out; and he was tempted increasingly to drive harder and more mercilessly. It was the general belief that the Negro would work only under the lash or the fear of it; and it was a common thing for the overseer to furnish long whips to the "drivers" (taken usually from the more brutal slaves), who stalked up and down between the rows of workers. In the extreme South, it was not unheard of for a master himself to avow the economic policy of working to death his gang of slaves every seven years or so, in favor of a new supply.² In general, however, critical observers had to confess that the same motives which secure reasonable treatment for a teamster's horses kept the slave in good condition.

The Negroes lived in foul cabins—which, however, are commonly little better after forty years of freedom—and their food and clothing were of the cheapest, though the food was usually sufficient in quantity. Among the worst direct evils of the system were the elimination of incentive to improvement and the ruin to family life.<sup>3</sup>

warmly denounced Northern antislavery agitation. In the early morning from his window, he chanced to see her returning from the group of Negro cabins, where, he learned, she had spent the later hours of the night in nursing a dying Negro baby.

1 State laws forbade murdering a slave at the whipping-post; but a loop-hole was usually provided by some clause pronouncing the owner or overseer guiltless if a slave "died" as the result of only "moderate correction." In any case, a Negro's testimony could not be taken against a White man, and often the merciless overseer was the only White present at his crimes.

<sup>2</sup> After 1830, the piratical and unspeakably horrible foreign slave trade grew rapidly, until, in the decade 1850–1860, hundreds of thousands of savages from African jungles were brought to American slave markets — nor did any slaver receive the penalty of the law until the Civil War had begun. Worse, perhaps, because the victims had taken on more civilization, and therefore more capacity for suffering, was the "domestic" trade "down the river." A curious self-condemnation of slavery lies in the fact that even in these times the slave dealer, so essential to the system, was a social outcast at the South.

<sup>3</sup> The better sort of Whites tried to keep slave families together, but legislation did not compel this decency; and, in practice the division of families was exceedingly common. Indeed, the Southern branches of the Protestant Churches, by formal resolution, recognized the separate sale of a husband or wife as a true "divorce," and permitted "remarriage" on such ground. In consequence of this condition, sex relations remained horribly degraded and confused.

On the other hand, the South pointed to the pitiful condition of the mass of labor in "free" countries, and argued eagerly that the slave was no worse off. Said DeBow's Review, the leading Southern periodical,—"Where a man is compelled to labor at the will of another, and to give him much the greater portion of the product of his labor, there Slavery exists; and it is immaterial by what sort of compulsion the will of the laborer be subdued. It is what no human being would do without some sort of compulsion (if not blows, then torture to his will by fear of starvation for himself or his family)." 1

Med.

# A. FROM 1829 TO 1844; NEW FORCES AND OLD ISSUES

335. Garrisonian Abolitionists. — The new attitude of the Slave Power was in some degree caused by a new and more aggressive antislavery movement, known as Abolitionism, which cried out for immediate and complete destruction of slavery. For some years before 1830, Benjamin Lundy had published at Baltimore The Genius of Universal Emancipation, devoted to this teaching. In 1828 Lundy found a greater disciple in one of his assistant printers, William Lloyd Garrison. Young, poor, friendless, in 1831 Garrison began in Boston the publication of the Liberator; and the first number (printed on paper secured with difficulty on credit, and set up wholly by Garrison's own hand) carried at its head a declaration of war:—

"Let Southern oppressors tremble . . . I shall strenuously contend for immediate enfranchisement . . . I will be as harsh as truth and as uncompromising as justice . . . I do not wish to think, or speak, or write with moderation . . . I am in earnest—I will not equivocate—I will not retreat a single inch—AND I WILL BE HEARD."

To the end this remained the keynote of the Garrisonian Abolitionists. They sought to arouse the moral sense of the North against slavery as a wrong to human nature. For long years their vehemence made them social outcasts, even when

<sup>&</sup>lt;sup>1</sup> With the growing difficulty for a laborer to pass into the class of employers (§ 444), those words of the old slaveholder have become a clarion appeal for industrial and social reform among us to-day.

they were not in danger of physical violence. Among the group were Wendell Phillips, a youth of high social position and opportunity, who forsook his career to become the hated and despised orator of the Abolition cause; Whittier, the gentle Quaker poet, whose verse rang like a bugle call; Theodore Parker, a Unitarian minister of Boston, whose own denomination refused, in considerable degree, to fellowship with the "terrible pastor of Abolition"; and, at a later time, James Russell Lowell, whose scathing satire in the Biglow Papers struck most effective blows for freedom, and whose established position helped to make Abolitionism "respectable."

Of this body of agitators, Garrison remained the most extreme. He could see no part of the slaveholder's side, and he dealt only in stern denunciation of all opponents—and even of moderate supporters. He and his group had no direct influence upon political action against slavery. Many of them disclaimed desire for any such influence. Garrison once burned in public a copy of the Constitution, defaming it as "a Covenant with Death and an agreement with Hell"; and the only political action advocated by him for Northern men was secession by the free States.<sup>1</sup>

A more reasonable group of Abolitionists contained such men as William Ellery Channing and Samuel May (Unitarian ministers), Emerson, Longfellow, Gerrit Smith, William Jay, and the aged Gallatin. For Channing's logical but temperate and patient indictment of slavery, Garrison, however, had only abuse. On the moderate side, Emerson at first condemned the Garrisonian extremists with unaccustomed harshness; but later he said that "they might be wrong-headed, but they were wrong-headed in the right direction."

<sup>&</sup>lt;sup>1</sup> So, too, Lowell's "Hosea Biglow" exclaims (opposing war with Mexico):—

<sup>&</sup>quot;Ef I'd my way, I hed ruther
We should go to work an' part,
They take one way, we take t'other,—
Guess it wouldn't break my heart.
Men hed ought to put asunder
Them that God has noways jined;
An' I shouldn't gretly wonder
Ef there's thousands of my mind."

Other foes of slavery, like Lincoln, rejected the name Abolitionist, altogether, and believed that the Garrisonian group harmed more than they helped. Such a charge is always made against extreme reformers. Garrison and his friends did rouse bitter antagonism and make their opponents more aggressive: but they achieved their purpose by being "heard." The nation would have been glad to forget the wrongs of slavery: these men made that impossible—sometimes by exaggerating and misrepresenting those wrongs—and they trusted to the moral sense of the people to do the rest. They made slavery a topic of discussion at every Northern fireside,—and slavery could not stand discussion.

336. Slave Insurrections. — A slave-holding community lives always over a sleeping volcano. The unspoken dread of all southern Whites was a possible slave insurrection, with its unimaginable horrors. Earlier in the century, two plots had been discovered, by fortunate accidents, just in time to avert terrible disaster. Then, in 1831, came Nat Turner's rising.

Turner was a Negro preacher and slave in Virginia. The plot so far miscarried that only a handful of slaves took part; but sixty Whites, including several children, were ferociously massacred, and, before order was restored, a hundred Negroes (five times the number in the rising) were shot, hanged, tortured, or burned. The South was thrown into a frenzy of terror and rage. Excited opinion charged that the rising was due directly to inflammatory articles in Garrison's Liberator. Southern States enacted stricter laws against the education and freedom of movement of slaves, and even of free Negroes, and the legislature of Georgia offered a reward of \$5000 to any kidnaper who should bring Garrison to that State for trial under her laws against inciting servile insurrection.

337. The Slave Power attacks the Rights of White Men.—After 1831 the former freedom of discussion about slavery vanished south of Mason and Dixon's Line. Antislavery societies dissolved; antislavery meetings could no longer find halls or audiences; antislavery publications were forced out. In many cases these ends were secured by mob violence; and such violence, after due warning, was sanctioned by Southern society.

In 1835 James G. Birney, a Kentuckian who had long worked valiantly against slavery in Alabama and his native State, was driven to move his antislavery paper across the Ohio to Cincinnati. He soon learned that this change of residence gave no immunity from personal violence. Within a few weeks (1836) his office was sacked, and his life sought, by a bloodthirsty proslavery mob, while respectable citizens merely advised him to seek safety in silence. The year before, a Boston mob, "in broadcloth and silk hats," had broken up one of Garrison's meetings, gutted his printing office, and dragged Garrison himself through the streets by a rope around his body — until he was rescued and protected by the mayor by being jailed. And in Alton, Illinois, the year after (1837), mobs twice sacked the office of Elijah Lovejov, an Abolitionist editor, and finally murdered Lovejov, when he tried to defend his property from a third assault. A free press was the particular object of attack; and for many years practically every Abolitionist paper in cities large or small ran danger of such destruction. Scores of cases might be enumerated. For instance, in the little frontier village of St. Cloud, Minnesota, a proslavery mob sacked the printing office of Mrs. Jane G. Swisshelm, and threw her press into the Mississippi.

There was this difference in the matter, however, between North and South. In the South, discussion was absolutely strangled. In the North, Lovejoy was the only martyr to suffer death,—though several other mobs planned murder, and one victim was brutally tarred and feathered. But in Cincinnati or Boston or St. Cloud, resolute men and women found it possible to continue the discussion, and eventually to win a hearing.<sup>2</sup>

It is curious to note the cowardice of respectable people and of property interests in these conflicts. Alton, in a measure, was dependent upon trade from the Missouri side of the Mississippi. Cincinnati's prosperity, in like fashion, was supposed to depend upon Kentucky trade. In both towns the cry arose that antislavery publications alienated the Slave State visitors and customers, and "hurt business"; and, before this direful threat, mayors, ministers, bankers, and every news-

<sup>&</sup>lt;sup>1</sup> The mob was particularly vindictive on this occasion because a certain Thompson, an Englishman, had been advertised as a speaker at the meeting. A favorite device of the proslavery fanatics was to represent Abolition as an English, un-American movement, designed insidiously to destroy the Union.

<sup>&</sup>lt;sup>2</sup> At St. Cloud, a mass meeting, excited not in behalf of Abolitionism, but by the attack upon free speech, promptly subscribed money to replace the press,—no small thing in a petty and moneyless frontier village.

paper in both cities were whipped into base submission, so far at least as to counsel giving up all agitation of the question. The student can easily find many parallels in a like cry regarding thoroughgoing attempts at political reform in American cities in very recent days. They "hurt business."

These attacks upon free speech were ominous enough to all men who really cared for their own rights, and they summoned to the antislavery cause many who had never been moved by wrong to the Negro. Still more significant in this respect were certain demands of the South that the National government or the Northern States should by law stifle discussion. The story is too long for detail; but two incidents can be touched upon,—the frenzied attempts of the Slave Power to dictate Federal interference with the mails, and the arrogant denial in Congress of the ancient "right of petition."

- a. In 1835 a Charleston mob took certain Northern antislavery papers from the post office for a public bonfire. Southern societies and legislatures were already calling upon Northern States to prevent the publication of such "inflammatory" material, or at least to keep it from spreading beyond their own borders. Some postmasters in large Northern cities showed a willingness to comply, - and even did so, during an appeal to the Postmaster General. This official (Amos Kendall, member of Jackson's Cabinet) practically justified the mob by his equivocal words on the matter, but was forced to acknowledge that under existing legislation he had no power to exclude any such material from the mails. President Jackson promptly recommended Congress to enact the necessary legislation so that "incendiary publications" might be excluded. "But," cried antislavery men - and many others never before so counted - "Who is to judge what is incendiary? On such a charge, the Bible or the Constitution might be excluded." And after a sharp struggle, the bill failed to pass.
- b. After 1820, petitions poured upon Congress in ever increasing bulk for the abolition of slavery in the District of Columbia. In the ordinary course, such a petition was referred to an appropriate committee, and if ever reported upon, it was rejected. But in 1836, the sensitive Southern members secured a "gag resolution" which each new Congress for eight years incorporated in its standing rules, —so that all petitions concerning slavery should be "laid on the table" without being discussed or printed or "committed" or read.

The Slave Power thought exultantly that it had choked off discussion. Instead, in manner dangerous to itself, it had merely shifted discussion from the slavery of the Negro, to the "right of petition" by White men, and had taken one more step in identifying the antislavery movement with a traditional right of the English-speaking people. The "Old Man Eloquent," John Quincy Adams, now Representative from a Massachusetts district and formerly indifferent to slavery, crowned his long public life with its chief glory by standing forth as the unconquerable champion of the right of petition, —which, he insisted, meant that his constituents and others had the right not merely to send petitions to the Congressional waste-paper basket, but the right to have their petitions read and considered. Tireless, skillful, indomitable, unruffled by tirades of abuse, quick to take advantage of all parliamentary openings, Adams were out his opponents and roused the country; and in 1844 the gag rule was abandoned.

338. Political Abolitionists: The Liberty Party and the Election of 1844. — Thus while Garrisonian Abolitionists were trying to persuade the North that slavery was a moral wrong to the Negro, the folly of the Slave Power called into being a new Abolitionist party which thought of slavery first and foremost as dangerous to Northern rights.¹ This party sought to limit slavery by all constitutional means, with a view to its ultimate extinction, and went into politics to accomplish its ends. It was strongest in the Middle and North Central States; and among its leading representatives were Birney and the young lawyer, Salmon P. Chase.

"Like thousands of other antislavery men . . . Chase was aroused, not by the wrongs of the slave, but by the dangers to free white men. He did not hear the cries of the Covington whipping post across the river [the Ohio], but he could not mistake the shouts of the mob which destroyed Birney's property and sought his life; and his earliest act as an antislavery man was to stand for the everyday right of a fellow resident of Cincinnati to express his mind." Hart, Salmon P. Chase, 48. An autobiographical sketch by Chase himself says (after describing his indignation at the Birney mobbing): "I was opposed at this time to the views of the Aboli-

<sup>&</sup>lt;sup>1</sup>A parallel will suggest itself between this fact and the remarkable way, in recent years, in which the arrogant and open attempts of the Liquor interests to dominate legislatures and city councils have driven into anti-liquor parties multitudes of citizens who never cared for the victims of the saloon.

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tionists; but I now recognized the Slave Power as the great enemy of freedom of speech, freedom of the press, and freedom of the person. I took an open part against the mob. Of the prominent citizens, very few stood decidedly on that side. . . . From this time, although not technically an Abolitionist, I became a decided opponent of slavery . . . and if any chose to call me an Abolitionist . . . I was at no trouble to disclaim the name."

In the campaign of 1844 the Birney Abolitionists appeared as the *Liberty party*. Polk, the Democratic candidate, was squarely committed, with his party, to the acquisition of more slave territory by the annexation of Texas (§ 339 ff.). The Whigs, with Clay for their candidate, tried to sidestep the issue. As had been hoped, and planned, Birney drew enough votes from Clay in the close State of New York to give its large electoral vote (and the presidency) to Polk. The Liberty party meant to force the Whigs into adopting antislavery principles, or to step into their place as the second great party.

# B. SLAVERY AND EXPANSION

339. Texas an Independent Slave State. — By the Louisiana purchase, the United States had acquired a possible title to Texas; but by the Florida treaties of 1819–1821, this claim had been given up (§ 261). In 1821 Mexico became independent, with Texas as one of her "States"; and in 1827 she decreed gradual emancipation of all slaves. The settlers of Texas were mainly Americans from the southwestern States, who now prepared for rebellion and the formation of an independent slave State. In 1835 Santa Anna made himself Dictator of Mexico, and prepared to consolidate its various "States" — which had previously enjoyed a large degree of self-government. This hastened action by the Texans. That State seceded, adopted a constitution which recognized slavery, and chose "Sam" Houston president.<sup>2</sup> A Mexican army captured

<sup>&</sup>lt;sup>1</sup>For the attitude and program of the Liberty party, see their own admirable statement, in Hart's *Chase*, 59-61.

<sup>&</sup>lt;sup>2</sup> Houston was a Tennessee Indian fighter, and a friend of Andrew Jackson.

a small Texan force in the Alamo (a fortified mission) after gallant resistance, and massacred every survivor. Somewhat later, the main body of Texas frontiersmen, under Houston, met the Mexican army (six times their number) for the decisive battle at San Jacinto (March 2, 1836), and charged with the vengeful cry, "Remember the Alamo." Their complete victory, and the capture of Santa Anna, established Texas in virtual independence, which was promptly recognized by the United States and by many European countries. Mexico, however, did not surrender her claims.

The Texans hoped and expected annexation to the United States. There was not yet much Abolition sentiment in the North; but there was sufficient opposition to further expansion of slavery to make Northern members of Congress hesitate. The Texas which was claimed by the Houston government was an enormous territory, large enough to make ten ordinary States; and its annexation would mean a vast gain to the Slave Power. President Jackson urged annexation strenuously, during the closing months of his term; but Van Buren skillfully kept the question out of discussion. Tyler renewed attempts for annexation, but a treaty for that purpose, presented by him to the Senate, was rejected by an overwhelming vote. Then the cry was raised that England would annex Texas if we did not; and the popular feeling for national expansion was skillfully played upon. In 1844 the Democratic party boldly took for its slogan "the Reoccupation of Oregon and the Reannexation of Texas." Their victory was accepted by Congress as a popular verdict for annexation; and in the closing days of the Tyler administration a "joint resolution" for the annexation of Texas was passed through Congress and signed by Tyler (March 3, 1845).

340. Excursus: Oregon. — The Democrats had challenged England as well as Mexico, — in order to reinforce the expansion sentiment of the

<sup>&</sup>lt;sup>1</sup> President Jackson hastened the recognition of Texan independence without the consent of Congress, in a most arbitrary manner.

Southwest with that of the Northwest; and it seemed as though now the Polk administration might have two wars on its hands. The claim to all of the Oregon country had been summed up in the campaign cry,—"Fifty-four forty [54° 40′] or fight." It was not to be expected that England would surrender her claims, so like our own (§ 276), to such loud demands; but wise moderation in both governments resulted in a peaceful and sensible division of Oregon, by extending the boundary line of the 49th parallel (already adopted east of the mountains) through the disputed district to the Pacific. This line was practically identical with the Northern watershed of the Columbia; and it gave us all that we could claim on the basis of "occupation," leaving to England that half of the district which Englishmen had "occupied."

341. Spoliation of Mexico. — President Polk wanted California, to which we had no claim whatever, quite as much as he had wanted Texas. Mexico was weak; but Polk could not bully her into selling the coveted district. Other means, however, remained.

Texas extended without question to the Nueces River. Not content with that southern boundary, she claimed to the Rio Grande — on grounds worse than questionable. War with a proud and sensitive people, like the Mexicans, was already probable because of our annexation of Texas. For the United States to back up this amazing Texan claim to Mexican territory was to make war certain. General Zachary Taylor, under express orders from the President, moved an American force into the disputed territory and on to the Rio Grande, where his position threatened a Mexican city across the river. The Mexicans demanded a withdrawal. Taylor refused, was attacked, won a victory, and crossed the river. Polk announced to Congress (May 11, 1846), "War exists, and, notwithstanding all our efforts to avoid it, exists by the act of Mexico." Congress accepted the pretext and adopted the war.

The unjust war was waged brilliantly. General Taylor in-

<sup>&</sup>lt;sup>1</sup> One Southern slaveholder had the manhood to oppose the war. Thundered Senator Benton of Missouri: "Why not march up to fifty-four forty as courageously as we can march to the Rio Grande? Because Great Britain is powerful, and Mexico is weak."

vaded from the north, and General Winfield Scott advanced from the Gulf. The Mexicans were both brave and subtle; but American armies won amazing victories over larger entrenched forces, and the contest closed with the spectacular storming of the fortified heights of Chapultepec and the capture of the City of Mexico (September 15, 1847).

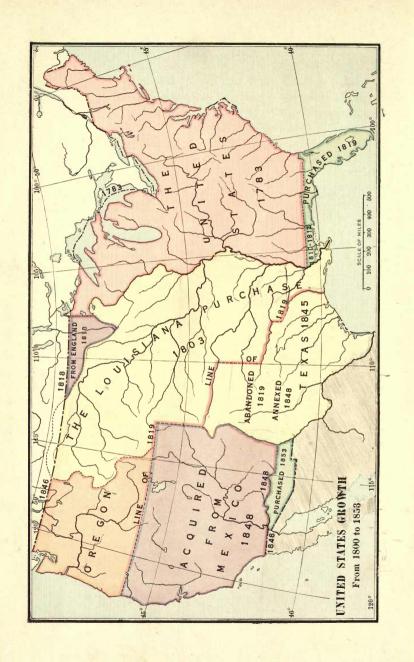
Promptly at the outbreak of the war American troops had been dispatched to seize California and New Mexico (territory which included, besides the modern States of those names, most of the present Arizona, Nevada, Utah, and parts of Colorado and Wyoming). In the treaty of peace after ceding Texas as far as the Rio Grande, Mexico was forced to accept \$15,000,000 for this other territory. Two members of the President's Cabinet wanted to take all of Mexico; but Polk wisely insisted upon a more moderate policy. To decide what to do with the territory acquired was quite enough to keep us busy for some years.

342. Gadsden Purchase; Designs on Cuba. — A misunderstanding soon arose as to some forty-five thousand square miles of the "Mexican cession," just south of the Gila; and Mexico threatened to fight again rather than surrender her claim. Finally, in 1853, the United States secured full title by payment of ten millions dollars more, through our agent, Gadsden.

This Gadsden Purchase was the last expansion of our territory before the overthrow of slavery; but it was not the last attempt by the Slave Power. Southern politicians had long looked with covetous desire at Cuba. In earlier years, on more than one occasion, that island might have achieved independence of Spain (with the proffered aid of Mexico); but the Slave Power in American politics had used its influence to preserve Spanish rule, rather than permit a free Cuba, sure to abolish slavery. President Polk offered Spain a hundred million dollars for the island. Then, about 1854, Southern leaders were ready for a more extreme program, and began to advocate frankly the seizure of Cuba by force, to form more Slave States, if Spain should persist in refusing to sell it. This

<sup>&</sup>lt;sup>1</sup> In 1851 the Lopez "fillibusters," five hundred strong, sailed from New Orleans to invade Cuba. This, and other like attempts upon Central America,

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piratical doctrine was set forth with particular emphasis in that year in the famous Ostend Manifesto, a document published in Europe by a group of leading American diplomatic representatives there, with James Buchanan among them.

# C. THE CONTEST TO CONTROL THE NEW TERRITORY

343. Population and New States. - Population increased in the decade 1840-1850 from seventeen to twenty-three millions. Immigration from Europe now took on large proportions. Until 1845, no one year had brought 100,000 immigrants (cf. § 272 a). That year brought 114,000; 1847 (during the Irish famine) brought 235,000; and 1849 (after the European "year of revolution"1) brought almost 300,000. This tremendous current, once started, continued unabated to the Civil War. came almost wholly from the northern European countries. It was composed mainly of laboring men, who naturally avoided the South (with its slave labor), and crowded into Northern cities or (aided by the great growth of railroads in this decade) found their way into the farming regions of the new Northwest. Florida was admitted as a State in 1845; but Slavery's gain in the Senate through the addition of that State and Texas was balanced by the admission of Iowa (1846) and Wisconsin (1848). This situation gave especial importance to the question whether slavery or freedom should control the new territory acquired from Mexico (§ 344 ff.).

344. The Wilmot Proviso. — The contest over the annexation of Texas (1843–1845) had drawn sectional lines more tensely

may well be studied by individual students, and presented in special reports. It is to be kept in mind that whatever the motives of the statesmen at Washington, the fillibusters themselves, and the Southern people back of them, were impelled largely by the aucient land hunger and spirit of conquest and adventure which had brought their ancestors to Virginia and had sent their brothers to Texas. See Browne's Lower South, pp. 74-77.

<sup>&</sup>lt;sup>1</sup>Cf. Modern History § 453, 454, and note. The German fugitives, after the failure of their gallant attempt at revolution, made an especially notable addition to the forces of Liberty in America. Among the immigrants of this class were Carl Schurz and Franz Sigel.

than ever before. Fire-eating Southerners threatened, "Texas or disunion"; while a group of Northern antislavery congressmen joined John Quincy Adams in a public announcement, that, in their opinion, the proposed annexation, if carried through, would justify the North in seceding.

The antislavery men had failed finally to unite the North in opposition to annexation, or even to war with Mexico; but the struggle was at once renewed, with even greater vehemence, with reference to the territory certain to be added by that war. California and New Mexico were "free" territory, by Mexican law; and, at first, Northern Whigs and Democrats agreed in resenting the idea that such territory should become "slave" by passing into American possession.

As soon as war began, the President had asked Congress for a grant of two million dollars to enable him to negotiate to advantage. It was understood that this money was to be used in satisfying Mexico for territory to be taken from her. this "Two-Million Dollar Bill" in the House of Representatives, David Wilmot, a Pennsylvania Democrat, secured an amendment providing that slavery should never exist in any territory (outside Texas) so acquired. The session expired (March 3, 1847) before a vote was reached in the Senate; and during the following months the Slave Power rallied its forces against the proposal. Early in the next session (February, 1848) Calhoun presented the Southern program in a set of resolutions affirming that, since the territories were the common domain of all the States, Congress had no constitutional power to forbid the people of any part of the Union, with their property, from seeking homes in that domain. This meant, of course, the right of Southerners to carry their slaves - and slave law

<sup>&</sup>lt;sup>1</sup> Cf. Lowell's words, quoted in note to § 334. The legislature of Massachusetts adopted resolutions declaring that Commonwealth 'etermined, as it doubts not the other States are, to submit to undelegated powers in no body of men on earth" [a claim that Congress had no right to annex a new State, like Texas]; and asserting that the project of the annexation of Texas, unless arrested on the threshold, "may tend to drive these States into a dissolution of the Union."

-into any "Territory." The Constitution, it was urged, "followed the flag," and the Constitution, by implication at least, legalized slavery. Then, said the South, when the time for Statehood arrives, let the inhabitants of each Territory decide the matter of slavery or freedom for themselves, as they decide other questions of public policy, in their first State This was the doctrine to be known later as constitution. "squatter sovereignty" or "popular sovereignty." It appealed shrewdly to a liking for fair play, in claiming that the South "simply asked not to be denied equal rights . . . in the common public domain"; and even more powerfully it appealed to the democratic instincts of the West by its appearance of merely turning over the whole question to the people most deeply interested (cf. § 355). Many Northern congressmen now deserted Wilmot in favor of "non-intervention by Congress," while others favored extending the old line of the Missouri Compromise to the Pacific. The House, on the whole, continued to favor the Wilmot Proviso; but the plan was voted down repeatedly in the Senate. Finally, the country went into the presidential election of 1848 without having settled any civil government for the vast area of our recent acquisitions.

This neglect was serious. New Mexico and California were seats of ancient Spanish settlement at such centers as Santa Fé and the various Missions near San Francisco; and the sensitive and highly civilized population resented military government by the American conquerors. Moreover, in January, 1848, just before the cession by Mexico, gold was discovered in California at Sutter's Fort (now Sacramento); and the vast and varied immigration needed imperatively a settled government.

345. Election of 1848. — The Whigs, who had won their one success with General Harrison, tried to repeat their tactics of 1840 by adopting no platform whatever and by nominating another military hero, Zachary Taylor, of Louisiana, a slave-holder and a straightforward soldier without previous connection with politics. The Democratic platform evaded all mention of slavery and of the burning Territorial question;

but the presidential candidate was Lewis Cass of Michigan, the originator of the "popular sovereignty" plan for Territories.



The antislavery Democrats had hoped to nominate Van Buren, who for a time had the strongest vote in the Convention. A seceding antislavery faction of New York Democrats ("Barnburners" 2), joined

<sup>1</sup> Democratic National Conventions use a "two-thirds rule," in making nominations. Other parties nominate by a majority vote.

<sup>&</sup>lt;sup>2</sup> This name, derived from a campaign story of a Dutchman who burned his barn to get rid of the rats, was applied in derision, because the faction avowed a willingness to ruin its party rather than permit slavery in the

afterward by delegations from four other States, did place Van Buren in nomination; and, a few weeks later, he was nominated also by a new Free Soil Party, which had absorbed the Liberty Party. The Free Soilers recognized frankly that Congress could not interfere with slavery in the States, but they insisted on its prohibition in the Territories, with the cry, "Free Speech, Free Labor, Free Soil, and Free Men." They cast 300,000 votes (five times as many as the Liberty Party four years before). In most of the country, they drew mainly from the Whigs; but in New York their Barnburner allies drew from Cass just enough to give that State (and the election) to the Whigs.

346. California and the Vigilantes. — The existing Congress (lasting until March of 1849) still declined to take action regarding the Territories. Meantime, California, lacking even a Territorial government, had grown to the stature of State-Thousands of "Forty-niners," from all quarters of the globe (but mainly from the Northern States of the Union) rushed to the rich gold fields; some around Cape Horn by ship; some by way of the Isthmus; but more by wagon train across the Plains, defying Indians and the more terrible Desert, along trails marked chiefly by bleaching skeletons of their forerunners. Whenever rumor reported that some prospecter had "struck it rich," distant camps and towns were depopulated to swell the new, roaring settlement, -toward which, over mountain paths, streamed multitudes of reckless men, laden with spade, pickax, and camp utensils. In a few months, the mining region contained some eighty thousand adventurers. To maintain rude order and restrain rampant crime, the better spirits among the settlers adopted regulations and organized Vigilance Committees to enforce them, with power of life and death.

347. The "Compromise of 1850."—Immediately upon his accession to office, President Taylor advised the people of New

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Territories. The "regular" faction of the Democratic Party in New York became known as *Old Hunkers*. Party epithets were growing bitter. Cass and other northern men who showed subserviency to the Slave Power were coming to be derided as "Doughfaces."

Mexico and California to organize their own State governments and apply for admission to the Union. The Californians acted promptly on this suggestion, and (November, 1849) a convention unanimously adopted a "free State" constitution.

Taylor urged Congress to admit the new state. The Slave Power raged at seeing the richest fruits of the Mexican War slipping from its grasp; and extremists again loudly threatened secession. Said Toombs of Georgia in Congress, "I... avow... in the presence of the living God, that if... you seek to drive us from California, ... I am for disunion." The situation was critical. A "free" California would give preponderance to the North in the Senate; and in the Northwest were looming up a band of future commonwealths, from Minnesota to Oregon, dedicated to freedom; while, outside the Mexican cession, there was no prospect whatever for new slave States.

Clay proposed to reconcile the South to the loss of California by surrendering to them on various other points in dispute concerning slavery (below). The straightforward Taylor opposed compromise, and sought to keep faith by securing the immediate and unconditional admission of California; and probably he would have carried the measure through but for his sudden death in July, 1850. Millard Fillmore, who succeeded from the vice presidency, gave his influence to the compromise arrangement.

Meantime the country was aflame. Every Northern legislature but one, Whig or Democrat, passed resolutions declaring that it was the right and the duty of Congress to prohibit slavery in the Territories; while in the South, public meetings and legislatures threatened secession if slavery was shut out. Clay, proud of his title of "the Great Pacificator," hoped, as his last public service, to remove slavery disputes from politics for all time. He pled for "a union of hearts" between North and South through mutual concession: otherwise, he feared there was little chance for the survival of the political Union which he loved. He recognized that his proposals gave to the

South much more than to the North; but, he urged, the South was the party most interested.

His "Omnibus" measures (as finally passed in separate bills after a strenuous eight months' debate) provided for: (1) the admission of the "free" California; (2) Territorial organization of New Mexico and Utah on "squatter-sovereignty" principles; (3) payment to Texas of ten million dollars for the relinquishment of her indefinite claim to part of "New Mexico" (so as to permit its Territorial organization); (4) prohibition of the slave trade in the District of Columbia; and (5) a new and more effective Fugitive Slave Law, with all the abominations of the old one (§ 223).

The fourth provision was the only real concession to Northern feeling (since the admission of California seemed to the North to be only in accordance with "popular sovereignty"); and this provision, in Clay's original proposals, was coupled with a concession from the North, agreeing that Congress should have no power to interfere with inter-State slave trade, or to abolish slavery in the District of Columbia.

The great trio, Clay, Calhoun, and Webster, so long the dominant powers in Congress, all pass from political life with this debate. It was Webster who really secured the passage of the compromise,—especially of that part referring to the organization of New Mexico. He had bitterly opposed the annexation of Texas and the war; but now he urged that the North owed concession to the weaker South. Moreover, slave labor, he was sure, could never be profitable in sterile New Mexico. It was not necessary to exclude it by law of Congress; it was already excluded "by the law of nature." He "would not take pains to reënact the will of God."

To-day the historical student is inclined to say that this "Seventh of March" speech was dictated by deep love for the Union. Webster never had been optimistic in temperament; and now he did not venture to hope that there could ever be a better Union, while he even began to despair of the continuance of the existing one unless the South was pacified. At the moment, however, the antislavery men of the North felt that he played a traitor's part to the cause of liberty, and to his own real principles, in order to secure Southern support for the presidency. The finest expression of this antislavery wrath is in the stern condemnation of Whittier's Ichabod:—

"So fallen! so lost! the light withdrawn
Which once he wore!
The glory from his gray hairs gone
Forevermore.

From those great eyes

The soul has fled.

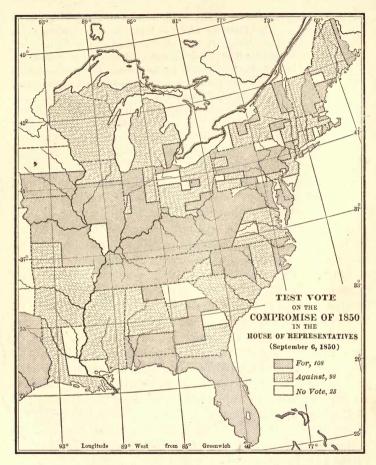
When faith is lost, when honor dies,

The man is dead."

So Horace Mann likened Webster to Lucifer falling from Heaven; and Emerson with barbed insight wrote: "Mr. Webster, perhaps, is only following the laws of his blood and constitution. . . . He is a man who lives by his memory: a man of the past; not a man of faith and hope. All the drops of his blood have eyes that look downward." And to much the same effect runs the modern judgment of Rhodes (History, I. 153), so far as concerns Webster's advocacy of the Fugitive Slave Law: "Webster could see 'an ordinance of nature' and 'the will of God' written on the mountains and plateaus of New Mexico; but he failed to see . . . the will of God implanted in the hearts of freemen that led them to refuse their assistance in reducing to bondage their fellows. whose only crime had been desire for liberty. . . . His remarks . . . are those of an advocate bound by the letter of the law, fettered by technicality, and overborne by precedent." With the great body of Northern "commercial Whigs," however, Webster's influence seemed at the time unimpaired.1

Calhoun, despairing and broken-hearted, opposed the compromise as ineffective and insufficient. If the North wished to preserve the Union, he urged, it must concede some kind of *political equilibrium* on slavery topics between itself and the weaker South. His papers, as his death left them just afterwards, show that he meant to propose an amendment to

¹ Before an audience of such Whigs, in Chicago, the youthful colored orator, Frederick Douglas, ventured to picture Webster in the guise of a splendid mastiff, to whom the South came, "as a man with a cracker in his hand, saying, 'Daniel Webster, stand up; Daniel Webster, speak!' And Daniel Webster stood up, and spoke as only he, of all men born of woman, is gifted to speak—and was damned from that hour!" Then the audience became a maddened mob, struggling in wild uproar to reach the platform. The magnificent outburst of indignant oratory by which Douglas caught its attention again and turned it to enthusiastic applause, has been described to the writer by an eyewitness, then a boy in the audience.



the Constitution, providing for two Presidents, one from each section, with a mutual veto.

· More significant than the attitude of these statesmen of a passing day was the appearance of a new group of antislavery men, led by William H. Seward of New York. Like Calhoun, Seward opposed the compromise, but for opposite reasons. He decried compromises on the Slavery question as leading only to further agitation, and he insisted that peace between the sections could come only with the extinction of slavery. As

to the Territories, said he: "The Constitution devotes the Domain to ... liberty.... But there is a higher law than the Constitution, which devotes it to the same noble purpose." Seward said only that the higher law, "written on the hearts and consciences of freemen," reinforced the Constitution; but he was understood by the South, not incorrectly, to intimate that, in case of conflict, the Constitution, where it compromised for Slavery, must be amended or disregarded.

For the moment, Webster and Clay prevailed. But the "Higher-Law" speech was to exert more permanent influence in our history than the speech of "the Seventh of March."

# D. THE BREAKDOWN OF COMPROMISE

348. Fugitive Slaves. - It has been fitly said that the Union was maintained from 1789 to 1820 by the compromises in the Constitution (§§ 201-206), and from 1820 to 1861 by congressional compromises. We have now entered on the last division of this second period. Just after 1850, political leaders and the mass of the people were desperately anxious to convince themselves that the Compromise of 1850 was final. Any further discussion of slavery was severely reprobated by many Northern men. But, exclaimed James Russell Lowell, "To tell us that we ought not to agitate the question of slavery. when it is that which is forever agitating us, is like telling a man with the ague to stop shaking and he will be cured." The moral sense of a large and influential section of the North was at last aroused; it could not think about slavery without fighting it; and the Fugitive Slave Law kept men thinking and feeling — and fighting. That law was the great mistake of the Slave Power. Had the South been diplomatically content to lose a few slaves who escaped into free States,2 the compromise might have endured years longer.

<sup>&</sup>lt;sup>1</sup> Seward's striking and awakening phrase was probably suggested by words of William Ellery Channing, fourteen years earlier (§ 335, note): "A higher law than the constitution protests against the action of Congress. . . . According to the law of nature, no greater crime can be committed against a human being than to make him a slave."

 $<sup>^2</sup>$  From 1830 to 1860 the number averaged 1500 or 1600 a year. A small insurance would have protected the owners.

In his "Higher Law" speech, Seward had warned the South: "You are entitled to no more stringent laws, and such laws would be useless. The cause of the inefficiency of the present statute is not at all the leniency of its provisions: it is the public sentiment of the North. . . . Your Constitution and laws convert hospitality to the refugee . . . into a crime; but all mankind except you esteem that hospitality a virtue. . . . If you will have this law executed, you must alleviate, not increase, its rigors. . . You cannot roll back the tide of social progress." And Emerson, in an address at Concord, called the law "a law which every one of you will break on the earliest occasion—a law which no man can obey, or abet, without loss of self-respect and forfeiture of the name of gentleman."

The evils of the Act were aggravated by its ex post facto character. It could be applied to Negroes who had been living for years in the North in supposed safety — since the breakdown of the former law of 1793. Thousands of such men abandoned their homes for hurried flight to Canada; and some were actually seized by slave hunters. Indeed, more attempts at recapture of fugitive slaves took place in 1851 than in all our history before. But now every seizure caused a tumult—if not a riot. Even "proslavery" men in the North could not stand for the hunting of slaves at their own doors. Legislatures refused to United States officials the use of State jails, forbade State officers to aid in executing the law, and enacted various "personal-liberty laws," to secure to any man seized as an escaped slave those rights of jury trial and legal privilege which the Federal law denied him. Some of these State laws, as interpreted by the State courts, amounted to downright Nullification. The "Underground Railroad" was extended and popularized. In several cases, fugitives were rescued from the officers in full day by "mobs" composed of such highminded gentlemen as Thomas Wentworth Higginson, Rev-

<sup>&</sup>lt;sup>1</sup> The Wisconsin legislative resolutions of 1859 used the words of the old Kentucky Resolutions of 1799. See the story of this and other Wisconsin cases in Siebert's *Underground Railroad*, or Vrooman Mason's article in *Proceedings of Wisconsin State Historical Society* for 1895.

<sup>&</sup>lt;sup>2</sup> An arrangement among Abolitionists in the Border States for concealing fugitives and forwarding them to Canada. Special report.

erend Samuel May, and Gerrit Smith. These men sometimes avowed their deed in the public press, and challenged prosecution; and all attempts to punish broke down, because no jury would convict. When a slave was returned, the recapture usually proved to have cost the master more than the man could be sold for.<sup>1</sup>

## PROCLAMATION!!

TO ALL

# THE GOOD PEOPLE OF MASSACHUSETTS!

Be it known that there are now

## THREE SLAVE-HUNTERS OR KIDNAPPERS

IN BOSTON

Looking for their prev. One of them is called

"DAVIS."

He is an unusually ill-looking fellow, about five feet eight inches high, wide-shouldered. He has a big mouth, black hair, and a good deal of dirty bushy hair on the lower part of his face. He has a Roman nose; one of his eyes has been knocked out. He looks like a Pirate, and knows how to be a Stealer of Men.

The next is called

### EDWARD BARRETT.

He is about five feet six inches high, thin and lank, is apparently about thirty years old. His nose turns up a little. He has a long mouth, long thin ears, and dark eyes. His hair is dark, and he has a bunch of fur on his chin. . . . He wears his shirt collar turned down, and has a black string—not of hemp—about his neck.

#### The third ruffian is named

### ROBERT M. BACON, alias JOHN D. BACON.

He is about fifty years old, five feet and a half high. He has a red, intemperate-looking face, and a retreating forehead. His hair is dark, and a little gray. He wears a black coat, mixed pants, and a purplish vest. He looks sleepy, and yet malicious.

Given at Boston, this 4th day of April, in the year of our Lord, 1851, and of the Independence of the United States the fifty-fourth.

God save the Commonwealth of Massachusetts!

## A HANDBILL OF 1851, GIVEN IN RHODES, I, 212.

<sup>&</sup>lt;sup>1</sup> In February, 1851, a mob of Negroes rescued a fugitive out of the hands of Federal officers in Boston and carried him in triumph through applauding streets, where, fifteen years before, Garrison had been dragged in ignominy by a White mob. And when the slave Burns was sent back to slavery, after

Still, in the campaign of 1852, the platforms of both the leading parties indorsed the "Compromise" emphatically, with express reference also to the Fugitive Slave provision; and when Charles Sumner in the Senate moved the repeal of that law, he found only three votes to support him. In the presidential election, too, the Free Soil vote ("Free Democracy," now) fell off a half; though this was mainly because the "Seward Whigs" and many other radicals supported General Scott, the Whig candidate, who was believed to be more liberal than his platform. The same supposition cost Scott the Whig vote in the South; and the Democrats easily elected Franklin Pierce.

349. The "Know-nothings." — One feature of the election of 1852 was the prominence of a new political party which called itself the American party, but which is better known by the appellation of Know-nothings. From the time of the Philadelphia Convention, bitter attempts had been made now and again to limit the influence of foreign immigrants in politics. To this "native" prejudice there was added, after the

bloody riots and a cost to the Government of \$100,000, it took eleven hundred soldiers with loaded muskets, and a battalion of artillery, to convey him through those streets, draped in mourning. Two or three of the more thrilling rescues might be looked up and reported as a special exercise.

¹ The tendency among respectable classes at the North to cling to the Compromise was especially notable in the eastern colleges. The students were generally conservative and proslavery. Andrew D. White says that in the Yale of the early fifties (when he was a student there), "the great majority of older professors spoke at public meetings in favor of proslavery compromises," though, "except for a few theological doctrinaires," their personal sympathies were against slavery. The two great Yale professors of the day who opposed the Fugitive Slave Law, he adds, were generally condemned for 'hurting Yale,' and driving away Southern students. Dr. White, whose Autobiography will be quoted again in the following pages, is a distinguished scholar, author, and diplomat,—the first President of Cornell University and in later years Minister to Russia and to Germany, and a United States representative at the First Hague Conference.

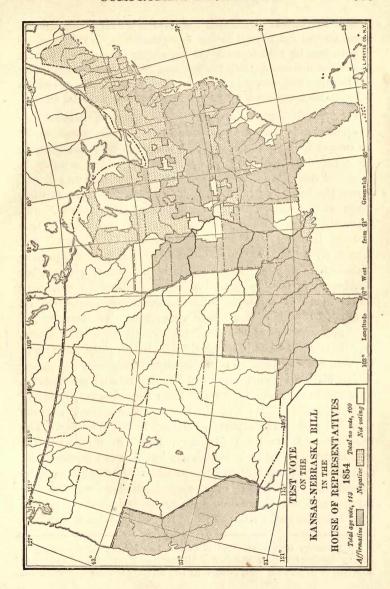
<sup>2</sup> In the Whig convention, approval of the Compromise was voted three to one; but Webster, the "Compromise" candidate, was defeated for the nomination, in favor of a candidate supported by the minority.

<sup>8</sup> Pierce, a "dark-horse" candidate, had been nominated in the Democratic convention on the 49th ballot, —when the two-thirds rule had made impossible the nomination of Cass, Buchanan, or Douglas, who had been the leading candidates.

Irish immigration of the late forties, an unreasoning theological bigotry,—a silly fear of "Catholic" domination. The new party was a vast secret society, with intricate ramifications and elaborate hierarchy. Its purpose was to exclude from office all but native-born, and all not in sympathy with this program; but members below the highest grade of officials were pledged to passive obedience to orders, and were instructed when questioned as to party secrets to reply, "I know nothing."

The movement was bigoted in character and un-American in methods; but it gained considerable strength in eastern and southern States, and elected several congressmen. In part, the movement drew its strength from the desire to ignore slavery and find new issues.

350. Repeal of the Missouri Compromise. — What slim chance there was that the North might quiet down under the iniquity of the Fugitive Slave Law was finally dissipated by another audacious measure in the interests of slavery. The vast region from Missouri and Iowa to the Rockies was known as the Platte country. Immigrants to California were pouring across it; and at the assembling of Congress in December, 1853, Senator Stephen A. Douglas of Illinois, chairman of the Committee on Territories, strove to secure a needed Territorial organization for the region. But his Kansas-Nebraska Bill proposed that two new Territories there should be placed on the squatter-sovereignty basis as to slavery. Douglas and President Pierce put forward the surprising claim that the Compromise of 1850 implied this form of organization for all Territories thereafter formed. But this district was part of the Old Louisiana Purchase, solemnly guaranteed to freedom by the Compromise of 1820. The Compromise of 1850 had applied only to territory just acquired from Mexico: no one had dreamed then that it was to repeal for old territory the only concession to freedom in the Missouri Compromise. The Southern congressmen had not asked such a thing; but now, after a gasp of astonishment, they seized their chance.



Most Northerners looked upon the move as a wanton violation of a sacred pledge; but the bill carried by a close vote, — in the House, 113 to 100. Douglas tried to make the bill a party measure; but it ended as a sectional measure. Half the Northern Democrats voted against it; and the other half, almost to a man, lost their seats at the next election. All Southern congressmen but nine, Whigs or Democrats, voted for it.

351. The Struggle for Kansas. — The region was divided into two Territories, with the expectation that Kansas at least would be settled by slaveholders from Missouri. Now the struggle for "Bleeding Kansas" was transferred to the country at large. From Missouri thousands of armed slave-owners poured across the line to preëmpt land — which, however, few of them made any pretence of really settling. From the North, especially from distant New England, came thousands of true settlers, financed often by the "Emigrant Aid Society." and armed with the new breech-loading Sharpe's rifle, to save Kansas for freedom. In like fashion, far-off Georgia sent her contingent of the "Sons of the South" religiously dedicated to the cause of slavery. But once more slavery proved its weakness. Spite of the closer vicinity of slave territory, it was not easy to move slave plantations to a new State, especially to one not particularly adapted to slave labor; and the free-State settlers soon predominated in numbers.

The Missouri men carried the first Territorial government, by gross fraud and "repeaters" from "the Border Ruffians" from across the line; and their legislature made it a crime even to question the legality of slavery in the Territory. The free-State settlers tried (January, 1856) to disregard this fraudulent proslavery government; but it was supported and defended by United States troops under commands from the President. Actual war was carried on between the two parties, and bloody murders were committed, both by raiders from Missouri and by free-State fanatics like John Brown.

Apparently, Brown had become crazed by dwelling on the wrong of slavery—which he called "the sum of all villainies." He was quite ready to take life, or to give his own, in fighting it. But he must not be confounded

352. The Republican Party of 1854–1856. — Said Emerson: "The Fugitive law did much to unglue the eyes; and now the Nebraska bill leaves us staring." That rash measure coalized the formerly discordant antislavery elements into one political party. In the next House of Representatives (1857–1858), the "Anti-Nebraska men" (Free Soilers, Northern Whigs, Northern Democrats opposed to Douglas' measure) drew together under the name Republican. This party took from the Free Soilers the program of prohibiting slavery in all "Territories." It adopted from the Whigs, who rallied to it in large numbers, their broad-construction views. And it recognized its antislavery Democratic element¹ by nominating as its first candidate for President a young officer belonging to that party, John C. Fremont.

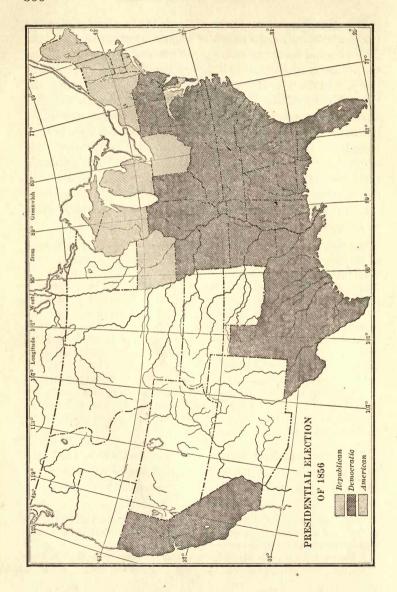
The first National Convention (1856) contained representatives from all the free States and from Maryland, Delaware, and Kentucky. The platform asserted that under the Constitution neither Congress nor any Territorial legislature had authority to establish slavery in a Territory, urged a railway across the continent, and pledged liberal aid to commerce by river and harbor improvement. Despite the sweeping statement regarding slavery in the Territories, the party, down to the War, affirmed steadfastly that Congress had no right to interfere with the institution in the States; and its leaders reviled Abolitionists almost as violently as the Southerners did.

In the election, Fremont carried all the Northern States but four; the Know-nothings carried Maryland; and the Democrats elected their candidate, James Buchanan, by 174 electoral votes to 114. The Republicans, however, in this first contest, mustered 1,300,000 votes, to 1,800,000 for the Democrats.

353. The Dred Scott Decision. — And then (March, 1857) the Supreme Court declared that both North and South were trying to stand upon unconstitutional ground — with a difference.

with ordinary criminals. His murders, after all, represented a blind revolt of the moral sense against an unrighteous system, — similar to the crimes by maddened enthusiasts in the cause of social reform.

 $<sup>^1</sup>$  The name Republican was designed to indicate the purpose of going back to the true democracy of Jefferson's original "Republican" party.



Dred Scott was the slave of an army officer. In 1834 his owner had taken him to an army post in Illinois, and, later, to one in what is now Minnesota; and then back to Missouri. Slavery could not legally exist in Illinois, because of the Northwest Ordinance, or in Minnesota, because of the Missouri Compromise: and, some years later, Scott sued for his freedom on the ground that he became free legally when he resided in that free territory. The case finally reached the Supreme Court. That august body held that Scott was still a slave and had no standing in court; 1 and two thirds of the Court 2 concurred in the further and uncalled-for opinion of the Chief Justice (Roger B. Taney) that neither Congress nor Territorial legislature could legally forbid slavery in a Territory. The Constitution, said the Court, sanctioned property in slaves, and every citizen of the Union must have his property protected in any part of the common national domain. Only a State could abolish slavery.

This was a sweeping adoption of Calhoun's contention, and the precise reverse of Republican doctrine. According to this dictum, the restriction upon slavery in the Missouri Compromise had always been void in law, even before repealed by the Nebraska Act. Quite as clearly, the opinion denied the "popular sovereignty" idea. But in exchange for this ground which it was told to surrender, the South was offered still more advanced and impregnable proslavery ground; while the Republican North was told that it could have no ground whatever to stand upon. The South was advised that it was seeking a proper end (extension of slavery into the Territories) by too modest and timid means: the Republican Party was branded as seeking an end wholly unconstitutional and illegitimate by any means. It must surrender, or defy the Court - "that part of our government on which all the rest hinges."

<sup>1</sup> Scott was at once manumitted by his owner.

<sup>&</sup>lt;sup>2</sup> Justices Curtis and McLean presented powerful dissenting opinions.

354. Republicans denounce the Court. - Without hesitation, the Republican leaders chose defiance. Said Seward in the Senate: "The Supreme Court attempts to command the people of the United States to accept the principle that one man can own other men; and that they must guarantee the inviolability of that false and pernicious property. The people . . . never can, and they never will, accept principles so unconstitutional and abhorrent. . . . We shall reorganize the Court, and thus reform its political sentiments and practices, and bring them into harmony with the Constitution and the laws of nature." Lincoln. in public debate, even accused the Court of entering into a plot with Pierce, Douglas, and Buchanan. Said he: "When we see a lot of framed timbers, different portions of which we know to have been gotten out at different times and places and by different workmen - Stephen, Franklin, Roger, and James, for instance - and when we see these timbers joined together and see that they exactly make the frame of a house, . . . in such a case, we find it impossible not to believe that Stephen and Franklin and Roger and James all understood one another from the beginning, and all worked together upon a common plan, drawn up before the first blow was struck." 1 Northern extremists were ready to secede from a Union dominated by such "judicial" law. Lowell, on hearing of the Court's decision, wrote to Charles Eliot Norton, in Italy: "I think it will do good. It makes slavery national, as far as the Supreme Court can. So now the lists are open, and we shall soon see where the stouter lance shafts are grown, North or South."

¹ This amounted to a charge that the Kansas-Nebraska Act had been arranged to lead up to the more sweeping doctrine of the Dred Scott case; and that the Democratic leaders had been assured, long in advance, that the Court would announce this doctrine when the time came. Seward made the same charge, in the Senate, in more offensive, though less effective, manner, referring to "whisperings" between the President and the Chief Justice. "Buchanan approached . . . the Supreme Court," said he, and "The Court did not hesitate to please the incoming President." In either form, the charge is without evidence to support it.

More temperately, but quite as decidedly, the influential Springfield Republican said: "The majority of the Court rushed needlessly to the conclusions, and are justly open to suspicion of being induced to pronounce them by partisan or sectional influences. . . . In this country, the court of last resort is the people. They will discuss and review the action of the Supreme Court, and, if it presents itself as a practical issue, they will vote against it." And Lincoln, in his more judicial mood, defending the Republican party against the Democratic cry that it "resisted" the Supreme Court replied: "Who has . . . declared Dred Scott free, or resisted the authority of his master over him? . . . But we think the decision erroneous. We know that the Court has often overruled its own decisions; and we shall do what we can to have it overrule this one. We offer no resistance to it."

In the same debates, Lincoln exposed the real fallacy in the "popular sovereignty" plea. The "people most interested" were the slaves, said he, and they were not consulted. "I admit that the emigrant to Nebraska is competent to govern himself; but I deny his right to govern any other person without that person's consent."

355. Lincoln-Douglas Debate, 1858.— The congressional elections of the next year showed great Republican gains, and that party became the strongest of the four or five into which the lower House was now split. Douglas, "Little Giant" of debate, was himself returned to the Senate only after a desperate campaign, made famous by a series of joint debates between him and Abraham Lincoln.

Lincoln was defeated, but he attained his deliberate purpose. His acute and persistent questions forced Douglas to choose between the new doctrine of the Supreme Court—to which the South now clung vociferously—and his own old doctrine of squatter sovereignty—which was certainly as far as Illinois would go. If he placed himself in opposition to the Supreme Court, he would not be able to secure Southern support for the presidency at the next election—to which men's eyes were already turned. If he did not oppose the Court, he would lose the Senatorship and Northern support for the presidency. In any case, the Democratic party would be robbed of its most formidable candidate in 1860. Douglas was driven to main-

tain that the legislature of a Territory, despite the Dred Scott decision, *could* keep slavery out by "unfriendly legislation," if it so wished. This admission was to make Lincoln President in 1861.

- √ 356. John Brown Raid and Uncle Tom's Cabin. Two other
  events must be noticed, before we take up the fateful election
  of 1860.
  - a. In 1859 John Brown (§ 351) attempted to arouse a slave insurrection in Virginia. He seems hardly to have comprehended the hideous results that would have followed a successful attempt. He planned to establish a camp in the mountains to which Negro fugitives might rally; and his little force of twenty-two men seized the arsenal at Harper's Ferry, to get arms for slave recruits. The neighboring slaves did not rise, as he had hoped they would, and he was captured, after a gallant defense. Virginia gave him a fair trial; and he was convicted of murder and of treason against that commonwealth. His unshaken fortitude and his death made his scaffold more formidable to slavery than ever the living man had been. The South began to feel that slavery would never be safe within the Union unless the whole Union adopted the institution. The North in general condemned Brown's action; but its condemnation was tempered by a note of sympathy and admiration for the man that sounded ominous to Southern ears
  - b. In 1852 Mrs. Harriet Beecher Stowe had written *Uncle Tom's Cabin*, one of the greatest moral forces ever contained between book covers. The volume contained many errors, and presented an exaggerated view of the miseries of slavery, under ordinary Southern conditions; but it did its great work in making the people of the North realize that the slave was a fellow man for whom any slavery was hateful. It was noted that, when the story was dramatized, the Bowery gangs in the New York theaters, who, out of doors were ready to mob Abolitionists, went wild with sympathy and grief for the fugitive slave mother. The tremendous influence of the book,

however, despite its enormous stir, was not really felt for some years. Such books exercise their deepest control upon the young; and the boys of fourteen to sixteen who read *Uncle Tom's Cabin* in 1852–1855 were just ready to give their vote to Abraham Lincoln in 1860. This explains in part, too, why the college youth, who had been generally proslavery in 1850 (§ 349), left the college halls vacant in 1861–1865 to join the Northern armies.

357. The Buchanan Administration. — In 1857 the free-State men won the Kansas elections so overwhelmingly that the proslavery organization could no longer expect open support from Washington. The expiring proslavery legislature, however, still provided for a proslavery convention, which met at Lecompton (November, 1857). President Buchanan had purchased for that body the privilege of meeting in peace by promising that its work should be submitted to popular vote. This pledge was not kept. The convention arranged a "constitution with slavery" and a "constitution with no slavery," which last, however, left in bondage the slaves then in the Territory, and forbade the residence of free Negroes. At the promised election, the voters were permitted merely to choose between these two constitutions: they were given no opportunity to reject both.

The free-State men kept away from the polls; and the "constitution with slavery" carried overwhelmingly, six thousand to less than six hundred. But the new free-State legislature provided for a new and proper expression of opinion. This time the proslavery men abstained from voting; and the two constitutions together received less than two hundred votes, to more than ten thousand against both of them. Still, the South and the Administration at Washington strove violently to secure the admission of the State with the Lecompton proslavery constitution, pretending to regard the first election as valid. This nefarious attempt to rob the people of their will was defeated by the warm opposition of Douglas, who at least remained true to his doctrine of popular sovereignty as he had

before expressed it. The Slave Power succeeded, however, in getting Congress to submit the Lecompton constitution to the people of Kansas for the third time, with a dazzling bribe of public lands if they should accept it. Kansas refused the bribe, eleven thousand to two thousand. Even then, the Democratic Senate would not vote to admit the State with a "free" constitution; and Kansas statehood had to wait until 1861. Meantime, two other free States had come in, to establish Northern supremacy in the Senate, — Minnesota (1858) and Oregon (1859).

The President made other earnest efforts to extend the realm of slavery. His first Message recommended the acquisition of Cuba and of parts of Central America and Mexico. In the light of his connection with the Ostend Manifesto (§ 342), such utterances pointed ominously to highwayman methods; but no action resulted. Nor was time given for anything to come of the loud demands now voiced in the South for the legalizing of the foreign slave trade.

# E. THE CONTEST FOR SUPREMACY IN 1860

358. Programs and Nominations. — In February, 1860, Jefferson Davis of Mississippi introduced into the Senate a set of resolutions affirming the duty of Congress to defend slavery in the Territories, and condemning the Douglas doctrine of possible "unfriendly legislation" as unconstitutional. His united Southern support was notice that the Slave Power would indorse no man for the presidency who would not accept these principles.

Amid the tense excitement of the whole country, the Democratic National Convention met at Charleston in April. A majority of the delegates favored Douglas' nomination, but the fight came on the platform. Resolutions according with the Davis program were defeated, in favor of more moderate ground. A strong minority of Southern extremists at once withdrew; and, after ten days of fruitless negotiation between the two wings, the Convention adjourned, to meet at Baltimore in June, —at which session Douglas was nominated. The

seceders then placed in nomination John C. Breckenridge of Kentucky upon their extreme platform.

Meantime, conservative representatives of the old Whig and Know-nothing parties organized as the Constitutional Union Party; and their Convention (May 9) nominated John Bell of Tennessee, announcing the compromise platform, "No constitutional principles except the Constitution of the country, the Union of the States, and the enforcement of the laws."

A week later, the Republican Convention met at Chicago in a vast "wigwam," amid wild enthusiasm from thousands of spectators. Seward was at first the leading candidate; but he had many personal enemies, and the more moderate Republicans looked upon him as a theorist rather than a practical man. The third ballot nominated Abraham Lincoln, who was expected to be strong against Douglas in Illinois, one of the doubtful States. The platform declared for protection, and for a free Homestead Bill (§ 367), denounced strenuously the Dred Scott decision (claiming that the normal condition of the Territories was free, not slave), and demanded the immediate admission of Kansas with her free-State constitution.

Lincoln was a strong candidate from the first, and his cause was skillfully handled. On the morning of the nomination, the Seward men paraded the city in imposing fashion; but when they reached the wigwam they found the center of the hall filled with a solid mass of Lincoln supporters (including some men whose stentorian lungs were their chief recommendation); and grave observers believed that the greater volume of Lincoln noise had much to do with deciding wavering delegations. Moreover, the result was due immediately to an unhappy bargain made by Lincoln's managers with Senator Cameron, the political boss of Pennsylvania. Cameron transferred fifty delegates pledged to himself into the Lincoln column, in return for a promise of a place in the Cabinet. Lincoln knew nothing of this at the time, and, indeed, had expressly forbidden any such "bargains" in his behalf; but afterwards he made the pledge good—until Cameron became "impossible."

<sup>&</sup>lt;sup>1</sup>Pennsylvania was one of the doubtful States; and the platform's emphasis on protection was calculated to appeal to her manufacturing interests.

Most New England Republicans were deeply grieved. They believed that, in passing by Seward, principle had been sacrificed to a mistaken idea of expediency; and they looked upon Lincoln as not only obscure, but ignorant, uncouth, and incapable. Most of his support, indeed, came from men who regarded him as "available" rather than particularly desirable. Almost no one of prominence yet dreamed of the wise, patient, steadfast, far-seeing man, of homely grandeur, that the next years were to reveal.

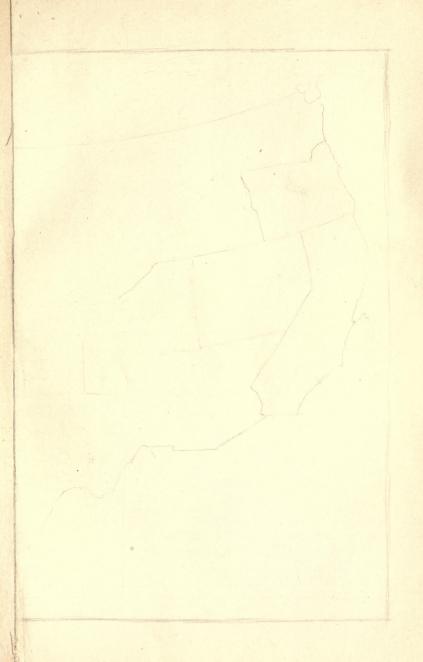
359. Meaning of the Contest. — With the Democratic party hopelessly divided, Republican victory in the electoral college was almost certain. To the South, that prospect was alarming. The Republican platform had once more reasserted that Congress had no power to interfere with slavery in the States; but in the 1858 debate with Douglas, Lincoln had said boldly and sagaciously:—

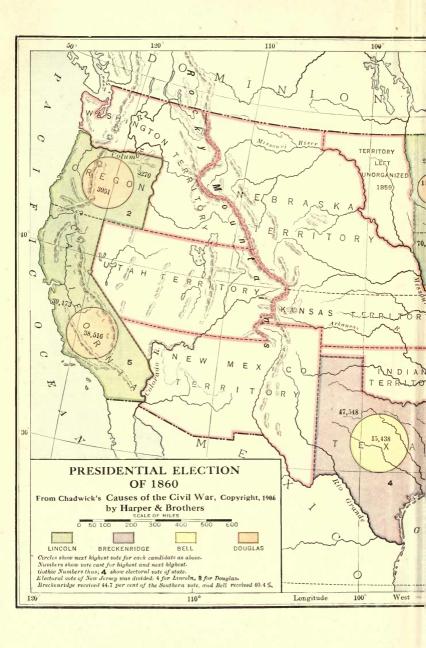
"'A house divided against itself cannot stand." I believe this government cannot endure permanently half slave and half free. I do not expect the house to fall; but I expect it will cease to be divided. It will become all one thing or all the other." So, even more impressively at the time, Seward had said of the slavery struggle: "It is an irrepressible conflict . . . and it means that the United States must, and will, sooner or later, become entirely a slaveholding nation or entirely a free-labor nation."

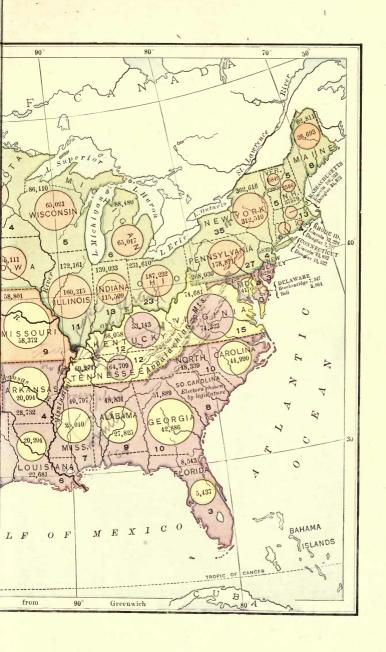
Armed with the Dred Scott decision, the South meant to make the nation all a slaveholding nation, and it saw that these speeches represented the real platform to which the Republican Party would have to come. Republican success would mean eventually a reversal of the Supreme Court, and continued progress toward Lincoln's "nation all free," if the nation held together at all.

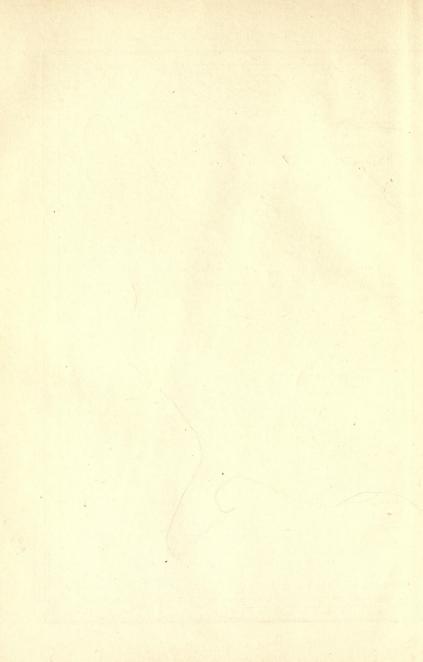
The South did not shrink. Deliberately, in advance, it made preparations to break up the Union and save slavery.

North and South no longer understood each other. In the seventy years since the adoption of the Constitution, the North had moved steadily toward new intellectual and moral standards and a new system of industry: the South had remained stagnant. As a Southern writer said: "The whirl and rush









of progress encompassed the South on every side. . . . Yet alone in all the world she stood unmoved by it." The North had adopted the new Websterian views of the Constitution, in accord with modern needs: the South clung to the old, outgrown views expressed by Calhoun. The great Protestant denominations' - Baptists, Methodists, Presbyterians - had already split apart into distinct churches, North and South, on the slavery issue. Southern associations were forming, pledged to non-importation of Northern manufactures, with a preference for importation from England. The North condemned the South as a community built upon a great sin: the South despised and reviled the North as a race of "mudsills" and cheats, and boasted its own higher sense of honesty and honor. Unity was already gone in hearts, in industry, in religious organizations. It was going in commercial intercourse. It could not long endure, on such terms, politically. The election was to prove that neither section would surrender peacefully to the demands of the other.1

360. The Vote.—Lincoln carried every Northern State (including California) except for three of the seven New Jersey electors. Douglas received only those three votes and the nine from Missouri, though his popular vote was nearly as large as Lincoln's even in most of the States which "went Republican." Bell carried the moderate Border States, Virginia, Kentucky, and Tennessee. All the other Southern States went to Breckenridge. Lincoln had 180 electoral votes to 163 for his three competitors combined; but in the popular vote, he had only 1,857,610 out of a total of 4,645,390.<sup>2</sup> The victory was narrow; and it was the victory of a divided section over a weaker but more united section. Before Christmas, secession had begun (§ 369).

 $<sup>^1</sup>$  Cf. § 134, for the similar growing apart of two sections as a cause of the Revolution.

<sup>&</sup>lt;sup>2</sup> The popular vote for the other candidates stood: Douglas, 1,291,574; Breckenridge, 850,082; Bell, 646,124. Either Breckenridge's or Bell's, added to Douglas', exceeded Lincoln's total,

#### F. ON THE EVE

(To prepare for this Division, the student is advised to review §§ 124, 244-251, 263, 272-273, and especially 285-293. The intellectual movement which began in 1830-1845 continued unabated to the sixties; but it has been treated in §§ 292-293 so fully that no further account is given here.)

- 361. Varying Viewpoints. We have treated the period 1845-1860 only in regard to the struggle for the extension or restriction of slavery. To most men of the time these years had a more engrossing aspect. The era was one of marvellous material prosperity. Comforts and luxuries multiplied as never before. In the twenty years following the panic of 1837, wealth increased fourfold, for the first time in our history, faster than population. Men were absorbed in a mad race to share these new opportunities. They were compelled to stop, in a degree, for the slavery discussion, but the majority regarded it as an annoying interruption to the real business of life.
- 362. Commercial Fortunes. Between 1850 and 1857, railway mileage multiplied enormously. In the old Northwest, it grew twenty times as fast as population (from one mile for 19,000 people to one for 900); and the map took on its modern gridiron look. Lines reached the Mississippi at ten points, and some projected themselves into the unsettled "plains." With the railway, or ahead of it, spread the telegraph; and

Most of the mileage was still single-track, with rickety roadbed and flimsy rolling stock, and without unity of management. Delays were annoying; connections, uncertain and sometimes wanting; and accidents appallingly common and destructive. Sleeping cars were not yet in use. The fastest time between New York and Chicago (38 hours) was twice that of the year 1912.

<sup>&</sup>lt;sup>1</sup> Railway extension had been assisted materially by National land grants, like those to canals in the earlier period. In 1850 three million acres were given to Illinois for the Illinois Central (alternate sections along both sides of the proposed route), and (as designed) the State legislature then transferred this domain to the Company building the road. Immense grants of like character were made to other western and southwestern States. In 1856 twenty million acres were given away. Mild attempts of legislatures to couple their transfers to the railways with conditions to secure the public interest achieved no marked success in this period.

mail routes took swift advantage of rail transportation. In 1851, Congress reduced letter postage to three cents per half ounce for any distance under three thousand miles.<sup>1</sup>

Thus began the era of commercial combinations (with its necessary handmaids, swift transportation and instant and cheap communication); and great fortunes piled up beyond previous dreams. Even for labor, the period was a golden age. Between 1840 and 1860, wages rose 20 per cent, while prices rose on the average only 2 per cent. Pauperism was unobtrusive, and, to foreign observers, amazingly rare.

distant West — Wisconsin, Iowa, Minnesota, Nebraska, southern Illinois — had remained tributary commercially to New Orleans, by the river. Now, with the development of rail routes, this new Northwest suddenly faced toward New England and began even to feed Europe. This change in trade currents was more than merely economic: it killed the last hope of the South for continued political alliance with the West. The moral awakening on the subject of slavery had done much to draw the West away from its old political connections, and to ally it with the Northeast. The new commercial ties hastened the process. If the break between sections had come in 1850 instead of 1860, it is not so sure that the West would not have sided with the South.

Between 1850 and 1860, grain crops swelled from 100,000,000 bushels to 171,000,000; and half the total came now from the Northwest. Grazing, too, ceased to be an eastern industry, passing to the far West and to Texas. In the East, however, manufactures enjoyed a marvelous growth—in just this era of low tariffs, 1842–1861 (§ 321). In 1850, for the first time, the value of manufactured products excelled that of agriculture (\$1,055,000,000 to \$994,000,000); but the census of 1860, after the panic of '57, again showed agriculture slightly in the lead. Our exports still came almost exclusively from agriculture, though we had begun to send cheap grades of cotton cloth to South America and the Orient.

<sup>&</sup>lt;sup>1</sup> For greater distance, it was six cents. The rate had been reduced twice before since 1800 (§ 247). In 1850, it was five cents for three hundred miles.

England's repeal of her Corn Laws (Modern History, § 544) was one incentive to American agriculture for export in this period, while our own low tariffs encouraged imports. Foreign trade mounted by leaps; and three fourths of it was carried in American shipping. In 1860 our merchant marine exceeded that of England.<sup>1</sup>

Thus the twenty years preceding the Civil War saw an industrial transformation. There was no such *revolution* as marked the transition from the Domestic to the Factory system (§ 248); but machinery, especially agricultural machinery, was multiplied and improved in marvelous fashion—too complicated for description outside a special treatise, but easily making one farm laborer worth more than three in earlier years.

As with the growth of railways, so this development of machinery had an indirect social result more important than its economic value. The improved reapers and threshers, it has been said, won the Civil War. Without them, Northern grain fields could never have spared the men who marched with Grant and Sherman. As it was, the Northwest, with half its grown men under arms, increased its agricultural output during the war.

364. Beginnings of More Distant Communications. — The acquisition of California had been followed by a swift expansion of trade with Asia. Hawaii had been brought under American influence previously by American missionaries and traders; and in 1844 China was persuaded to open up five "treaty ports" to American trade. Japan continued the oriental policy of exclusion of foreigners until 1854, when Commodore Perry, in pursuance of orders from Washington, entered Japanese ports with his fleet of warships and secured a commercial treaty — which began the transformation of Japan into a modern nation.

After the discovery of gold in California (and with the opening of these prospects of Oriental trade) the question of transportation across the Isthmus at once arose. Both Great Britain and the United States tried to secure control of routes for a canal from ocean to ocean; and in 1850 the Clayton Bulwer treaty agreed that any canal across those narrow lands should be neutral, and subject to common control by the two

<sup>&</sup>lt;sup>1</sup> Relatively, however, a decline had already set in. Americans clung to the wooden "clipper" sailing vessel, with which we had won supremacy; but England was turning to the iron steamship which was to be the commerce carrier of the future. Therefore, the coming interruption to our merchant marine in the Civil War was to prove fatal. Our carrying trade then passed to England, and we have never recovered it.

countries. Actual construction remained a matter of the future; but in 1855 a railway was opened across the Isthmus.

The more ambitious project of an American railway from the Mississippi to the Pacific was agitated for ten years before 1860, but without definite action except for surveys, until 1862. In 1861, however, encouraged by prospects of a government subsidy, the Western Union carried a telegraph line across the mountains to San Francisco.

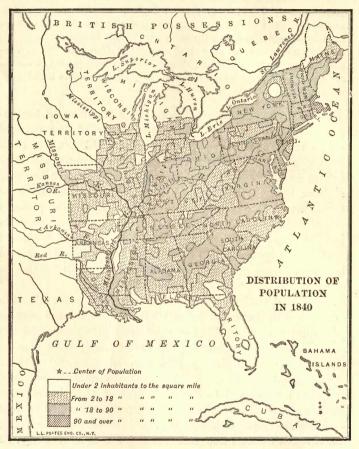
In 1858, thanks to the splendid enterprise of *Cyrus W. Field*, telegraphic communication was established between Europe and America. After a few weeks, however, a break in the submarine cable interrupted communication until after the War, in 1866.

365. Credit Expansion and the Crisis of 1857: Tariff Legislation.—Between 1850 and 1857 the banks of the country doubled in numbers (rising to more than 1400), while bank currency and bank loans also doubled in amount. In New England and New York the lesson of conservative banking had been learned; but in the West these institutions were still managed recklessly. In 1857 came another of our periodic years of financial distress, due, as in 1837, to speculation, reckless inflation of credit, and premature investment of borrowed capital in enterprises which could render no immediate return. This time, however, the country recovered quickly from the disorder.

In 1857 the national debt (augmented during the Mexican War) had been decreased to \$29,000,000, and a large surplus was piling up in the Treasury vaults. Many ascribed the financial stringency to this withdrawal of money from circulation; and the tariff, already low, was reduced practically to a free-trade basis (§ 321). But the decrease in revenues due to hard times and to the falling off of imports soon resulted in the disappearance of the surplus, and ran the debt up to \$65,000,000. Consequently, in 1861 (before the War), after a year's contest, Congress enacted the *Morrill Tariff*, on the protective principle.

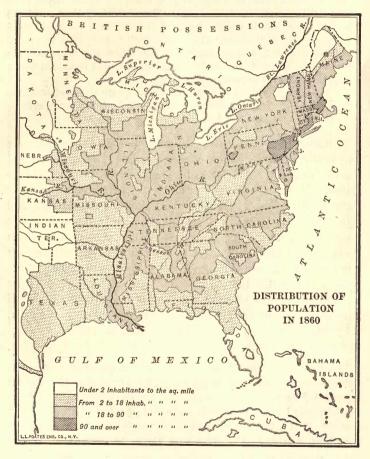
366. Population; Cities; Resources. — Population had continued to increase at about the old rate of 100 per cent in twenty-five years, besides the added volume of immigration in

the fifties. Between 1850 and 1860 our numbers had risen from twenty-three million to thirty-one and a half; and the cities (eight thousand people and upwards) counted now 158.



This was four times as many as twenty years earlier; and the cities now contained one man in every six of the entire population, instead of one in twelve. The westward movement of population, too, continued unabated.

The map (page 386) makes that movement appear even greater than in earlier decades; but the westward leap of the "center of population" between 1850 and 1860 is deceptive as an indication of the true distribution.



Before 1850, the position of that point had been a roughly correct indication, because, on the whole, except for a temporary gap at the Appalachians (§ 112), settlement had been fairly contiguous. But between 1849 and 1860 half a million people had crossed to the Pacific Coast, leaving

more than half the continent unsettled behind them,—so that in determining this artificial "center of gravity," three men at San Francisco had as much weight as ten in New York.

The cities of 1860 were still large towns gone to seed from rapid growth. They were unplanned, ugly, filthy, poorly policed; and the larger ones were run by corrupt "rings" of politicians, who maintained their power by unblushing fraud. New York introduced a uniformed and disciplined "Metropolitan police" just before the War; and the invention of the steam fire engine, in 1853, promised somewhat better protection against the common devastating fires.

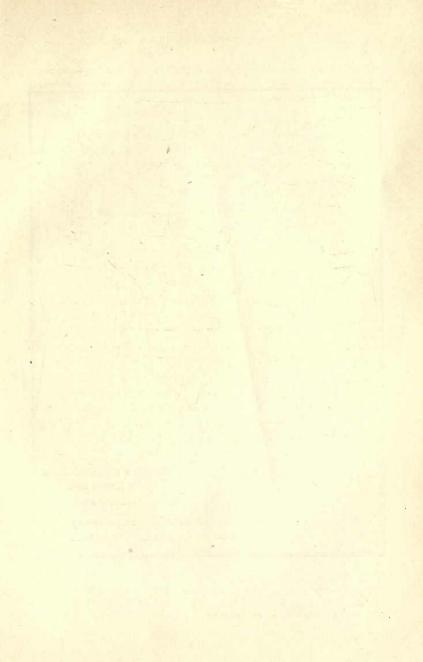
The foreign-born inhabitants now numbered nearly one in eight of the total population. They were massed almost wholly in the North, making more than half the people of some States.

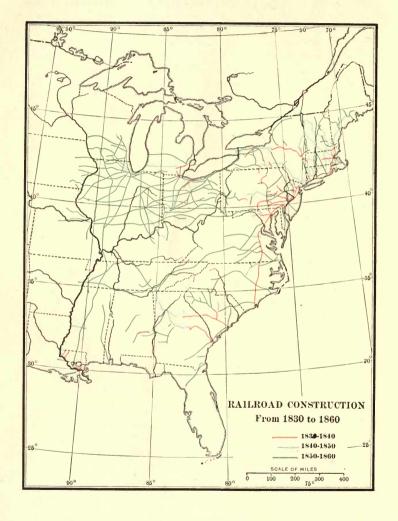
The North contained nineteen million of the thirty-one and a half million people of the Union (a ratio of 19 to 12); and of the twelve and a half million in the South, four million were slaves. Moreover, when the war line was finally drawn, four slave-holding States (Maryland, Delaware, Kentucky, and Missouri) remained with the North. These States contained a fourth of the "Southern" population; and the recruits which these divided districts sent to the South were about offset by recruits to the North from "West" Virginia and Eastern Tennessee. Thus, for totals, secession was to be supported by less than five and a half million Whites (with three and a half million slaves) against more than twenty-two millions. Or, the area of Secession contained one White man of military age to four in the North.

The South too was less able to feed and clothe armies. She furnished seven eighths of the world's raw cotton; but she had not raised her own full supply of food, and manufactures and mechanical skill were almost totally lacking. Minerals and water power were abundant, but unused.<sup>2</sup> Said a Charleston paper to its people: "Whence come your axes, hoes, scythes? Yes, even your plows, harrows, rakes, ax and

<sup>&</sup>lt;sup>1</sup> Cf. § 246 for the ratio in 1800.

<sup>&</sup>lt;sup>2</sup> The North combined the resources of "farm, shop, and factory," says Rhodes, "the South was but a farm,"—and a farm which sent its produce abroad and received from abroad much, even, of its bread and meat.





auger handles? Your furniture, carpets, calicoes, and muslins? The cradle that rocks your infant, the top your boy spins, the doll your girl caresses, the clothes your children wear, the books from which they are educated . . . all are imported into South Carolina."

The North had three fourths the railway mileage and six sevenths of the cities of the Union, while the only Southern city of more than eighty thousand people (New Orleans) was dependent upon Northern trade for prosperity. New York City, with 800,000 people, contained more Whites than any Southern State. Slave labor,—or rather, perhaps, ignorant Negro labor,—was unprofitable in any diversified industry. Agriculture was almost the sole occupation of the South. Even so, only half as much of the land was cultivated there as in the North; and the value of that was less than the value of similar land in the North, while the value of farm machinery to each cultivated acre was not half that in the North. The cultivation of the great staples, cotton and tobacco, poured riches into the coffers of the large planters; but the mass of even the White farmers remained poor.

The difference was not due to climate, but to labor. It was apparent instantly upon crossing a State line. In 1796 George Washington noted the higher prices of land in Pennsylvania than in Maryland "though not of superior quality"; and added his opinion, on that ground, that Virginia must follow Pennsylvania's example of emancipation "at a period not far remote." Tocqueville (§ 198, note) noted the contrast between the north and south banks of the Ohio: thinly scattered population, with occasional gangs of indolent slaves in the few, "half-desert" fields, as over against "the busy hum of industry... fields rich with harvest... comfortable homes... prosperity on all sides." In 1859 Frederick Law Olmsted made a journey through the Southern States; and his acute observations (summed up in his judicial Cotton Kingdom) proved that the industrial retardation of the South had been steadily increasing up to the final catastrophe.

In other respects, also, slavery was revenged upon the masters. The poorer Whites were degraded by it, and the

<sup>&</sup>lt;sup>1</sup> By the census of 1860 the value per acre was 42 cents in the South and 94 in the North. Slaves could not be trusted with valuable machinery.

slave owning class were exposed to all the temptations that necessarily assail petty but absolute tyrants. Slavery made Southern society unduly passionate, imperious, and willful.

The 9,000,000 Whites of the slaveholding States composed some 1,800,000 families. One fifth of these owned slaves; but only eight or ten thousand families owned more than fifty apiece (§ 285 b). This small aristocracy had a peculiar charm—if only the ugly substructure could be forgotten. The men were leisured and cultivated (educated in Northern colleges or abroad), with a natural gift for leadership and a high sense of public duty. They were courageous, honorable, generous, with easy bearing and a chivalrous courtesy. Visitors from the Old World complained that Northern men were too absorbed in business cares, or too lacking in ease of manner, to be fit for society; but they were always charmed by the aristocratic manners and cultivated taste of the gentry of the South.

It must be added, however, not only that the great body of small slaveowners were destitute of this charm, but that they were grossly uneducated. The South produced little literature (except political speeches) and no art; and it had almost no schools. On the other hand, Southern politics (dominated by this ruling aristocracy) had absolutely no taint of that corruption which had appeared in the North.

Man for man, in marching and fighting, the Southerner was far more than a match for the man of the North,—especially for the man of the Eastern cities. Southern outdoor life and familiarity with firearms counted for much in the early campaigns of the war. The North had been sadly deficient in athletics and in wholesome living, and was at its lowest ebb in physical condition.¹ The agricultural population of the West, however, resembled the South in physical characteristics; and the men of the North, city or country, had a mechanical ability, useful in repairing or building bridges or engines, which was sadly lacking in the armies of the South.

<sup>1</sup> Emerson ate "pie" for breakfast regularly!

367. Free Labor and Slavery and the Public Lands. — Happily, the political warfare on slavery had been intimately interwoven with a struggle for some of the privileges for which free labor cared most earnestly. The *Free Soilers* aimed not only to keep the soil of the public domain free from slavery, but also to keep it "free" for free labor. In 1852 their platform declared in accordance with the Labor parties of twenty years before:—

"The public land of the United States belongs to the people, and should not be sold to individuals or granted to corporations, but should be held as a sacred trust for the benefit of the people, and should be granted in limited quantities, free of cost, to landless settlers."

Other elements rallied to the movement. In 1845 Andrew Johnson (who had been connected with the early labor movement in Tennessee, § 290) introduced in Congress the first "Homestead Bill,"—to give every homeless citizen a farm from the public lands. Several times such bills passed the House; but the Slave Power now definitely set itself against this policy and defeated all such measures in the Senate. It saw truly that the increase of free immigration into the public domain would quickly end all chance to establish slavery there. But this new attitude of the South helped to make the masses of the North see more clearly the fundamental opposition of interest between the two systems of labor, and to array Northern workingmen more solidly against slavery.

In June of 1860 the House passed a Homestead Bill giving any head of a family a quarter section after five years' residence thereon. The Republican platform of the same year "demanded" the passing by the Senate of that "complete and satisfactory measure," protesting also "against any view of the free homestead policy which regards the settlers as paupers or suppliants for public bounty." The Senate did pass the

<sup>&</sup>lt;sup>1</sup> While urging one of these Homestead Bills, Ben Wade of Ohio was taunted by Southern congressmen (who wished right of way for consideration of a scheme to purchase Cuba) with trying merely to "give lands to the landless." Wade retorted with a phrase, famous in that day, that his adversaries sought only to "give Niggers to the Niggerless."

Bill, after adding a twenty-five-cent-per-acre fee; but, even in this modified form, Buchanan vetoed it:— (1) as "unjust" to earlier settlers who had paid for their land; (2) as worthless to help artisans; (3) as likely to depopulate older States; and (4) especially as tending to dangerous "agrarian" sentiments.<sup>2</sup> When the Slave Power had withdrawn from Congress, a Homestead Bill became law (May, 1862), on the same plan, but without the money fee.

Exercise. -a. Topical reviews: (1) territorial expansion; (2) population, immigration, distribution, etc.; (3) attempts to restrict slavery in the Territories; (4) tariff legislation, to the War.

- b. Prepare a table of admission of States for reference.
- c. Prepare lists of terms relating to each decade down to 1860 for brief explanation.

For Further Reading. — The standard anthority after 1850 is Rhodes' History of the United States. In the "American Nation" series the ground is covered by Hart's Slavery and Abolition and Smith's Parties and Slavery. The best brief account is perhaps Woodrow Wilson's Division and Reunion. Among the valuable special treatises are: Mary S. Locke's Antislavery in America; Marion G. McDougal's Fugitive Slaves; Siebert's Underground Railroad; Dubois' African Slave Trade. Among the many valuable biographies are Hart's Chase; Riddle's Wade; Julian's Giddings; Birney's Birney; Morse's Lincoln; Storey's Charles Sumner; Johnson's Garrison and His Times; Frothingham's Gerrit Smith; Chadwick's Theodore Parker; Schurz's Clay; Meigs' Benton; Davis' Jefferson Davis; and the admirable sketches in Trent's Southern Statesmen.

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<sup>&</sup>lt;sup>1</sup> Buchanan failed to see the plain logic of the early Workingman's Party on this point (§ 315).

<sup>2 &</sup>quot;The honest poor man," argued the President, "by frugality and industry, can in any part of our country acquire a competence. . . . He desires no charity. . . . This bill . . . will go far to demoralize the people, and repress this noble spirit of independence. It may introduce among us those pernicious social theories which have proved so disastrous in other countries." Such gracious and perfectly honest arguments by former conservatives against reforms which have become part of the warp of our daily life are valuable reading for the student. They suggest forcibly a doubt to the most obtuse whether such imposing authorities may not be wrong to-day, even when their rhetoric against progress is equally admirable.

Tinday who medenn Mars.

# CHAPTER XV

# NATIONALISM VICTORIOUS (1860-1876)

#### I. THE CIVIL WAR

368. Secession. — The legislature of South Carolina had assembled to choose electors (§ 295), and it remained in session to await the result in the nation at large. November 7, the day after the popular vote, it was clear that the "Black Republicans" had won the electoral college. Promptly, according to a program already fixed, the legislature appropriated money for arms, and called a State convention to act on the question of secession.

All over the State, Palmetto banners unfurled and "liberty poles" rose; and to these wild rejoicings a stern and solemn note was added by Puritan prayer and preaching, characteristic of a deeply religious people. December 17, the convention met. Three days later, it unanimously "repealed" the ratification of the Federal Constitution by the South Carolina convention of 1788, and declared that "the Union hitherto existing between this State and the other States of North America is dissolved, and that the State of South Carolina has resumed her place among the nations of the world." By February 1, like action had been taken in Georgia and the five Gulf States — the entire southern tier of States.

The population of this "Lower South" (§ 272 c) was politically active, devoted to discussion and public meetings—which sometimes lasted a week at a time, with huge barbecues. But, except in Texas, where the convention had been called irregularly, no one seriously advocated a popular vote on secession. In the language of the South, the States seceded in the same manner in which they had acceded to the Union. Just as in 1788, the State conventions (elected on an express issue) were sovereign and their action final.

Northern writers have sometimes charged that the Southern leaders carried secession as a "conspiracy," and that they were afraid to refer the matter to a direct vote. This is absolutely wrong. Public opinion forced Jefferson Davis onward faster than he liked; and the mass of small farmers were more ardent than the aristocracy - whose large property interests tended, perhaps, to keep them conservative. For more than a year, in the less aristocratic counties, popular conventions, local meetings, and newspapers had been threatening secession if a President unfriendly to the Dred Scott decision should be elected. Practically, the Southern people had just had a referendum on the subject. The large Southern majority for Breckenridge had been really a vote for secession (or at least a threat of it) in case of a Republican victory in the North; while the small Bell and Douglas votes were a feeble protest against this avowed program. In November South Carolina papers began to charge that the North had "bought up" the hesitating Southern leaders; and when even the "Fire-eater" Toombs paused for a moment, to contemplate compromise, his constituents talked indignantly of presenting him with a tin sword. The South was vastly more united in 1861 than the colonies were in 1776. The leaders acted through conventions, not because they feared a popular vote, but because their political methods had remained unchanged for seventy years.

In a recent scholarly study ("Southern Non-Slaveholders in the Election of 1860," in Political Science Quarterly, XXVI), Dr. David Y. Thomas demonstrates that the aristocracy was divided as to secession. Much of the Bell ("Union") vote, he shows, came from counties where the aristocracy was strongest, while the Breckenridge vote came largely from counties made up mostly of small farmers and non-slaveholders. For partial explanation, Professor Thomas points to a parallel between this phenomenon and the ardent support for many decades to the "special privileges" of Big Business by the masses of the North. Dr. Rhodes, the standard authority, makes clear the spontaneity of the secession movement (History, III, 273-276, and, especially for South Carolina, 120-123). Cf. also Morse's Lincoln, 225-276. Woodrow Wilson pictures the people as following its leaders, but says forcefully: " But the voting population of the Southern States was in a sense the most political in the world, -the least likely to follow blindly, because the most interested in politics, sensitive to nothing more keenly than to new aspects of public affairs. It could be managed by its leaders only because it was so thoroughly homogeneous, only because it so thoroughly sympathized with their point of view." - Division and Reunion, 241.

Few Southerners questioned the right of a Sovereign State to secede if it so decided. Almost the sole difference of opinion was whether sufficient provocation existed to make such action wise; and when a State convention had chosen, even the previous "Union men" went with their State, conscientiously and enthusiastically. Thus, Alexander H. Stephens, high-minded gentleman and a marvel of ability, made a desperate struggle in Georgia for the Union, both in the State campaign and in the convention; but when the convention decided against him, 208 to 69, he cast himself devotedly into secession. To Southern thought any other course would have been treason. Allegiance, the South felt, was due primarily to one's State; and secession was a constitutional right, to be exercised by a State at its discretion. It had nothing to do with "treason" or "rebellion" or even with "revolution."

To understand the splendid devotion of the South to a hopeless cause during the bloody years that followed, we must appreciate this viewpoint, — from which, happily, the progressive North had grown away in its movement toward a true Union. The South fought "to keep the past upon its throne"; but it believed, with every drop of its blood, that it was fighting for the sacred right of self-government, against "conquest" by tyrannical "invaders."

369. The Confederacy. — February 4, on the invitation of the Alabama convention, delegates from the seven seceding States met at Montgomery and soon drew up a provisional constitution

¹ The vast majority felt intensely that there was also good reason for secession. The South Carolina convention asserted that fourteen Northern States had violated the Constitution deliberately by "personal liberty laws" (§ 348), and that the remaining States were therefore released from obligation to that "compact"; and Jefferson Davis, in his farewell to the Senate, turning to the Northern Senators, exclaimed: "You refuse us that equality without which we should be degraded. . . . You elect a candidate upon the basis of sectional hostility—one who has made a distinct declaration of war upon our institutions." Rhodes (III, 271 ff.) gives long extracts from that pathetic and impressive speech, and portrays Davis' night of prayer that followed. Harding's Select Orations gives the speech in full.

<sup>&</sup>lt;sup>2</sup> The real test vote had come a little earlier—165 to 130. This was the strongest Union vote in the Lower South. In Mississippi, the test stood 84 to 15; in Florida, 62 to 7; in Alabama, 61 to 39; in Louisiana, 113 to 17. In Texas, in spite of a vigorous Union campaign by Governor Sam Houston, the people voted three to one for secession.

for a new union, "The Confederate States of America." Jefferson Davis was chosen President, provisionally, and Alexander H. Stephens, Vice President. In March a permanent constitution was adopted, and afterward ratified by State conventions; and the first electoral college confirmed the choice of Davis and Stephens.

The constitution was avowedly modeled upon that of the old Union,—with which, as they interpreted it, the seceding States were well satisfied. The changes were of two sorts:—

- a. In a few cases the Southern view of disputed points in the old Constitution was more clearly affirmed. Each State was declared to ratify the union "in its sovereign character." Protective tariffs and internal improvements were expressly prohibited. The word slave was used frankly; and the doctrine of the Dred Scott decision was affirmed.
- b. A few attempts were made to improve details. The President was to hold for six years, and to be ineligible for reëlection. He was given the right to veto separate items of appropriation bills (cf. § 303). Congress could make no appropriations not recommended by the executive, except by a two-thirds vote. Heads of executive departments were to have seats in the Congress, and the right of debate, but not of vote. These experiments, all worth trying, had no real try-out in the years of war that followed.

One other provision is of interest. The constitution prohibited the foreign slave trade. This was a sop to English opinion, which the Confederacy was very desirous to keep friendly, and at the same time it was an inducement to the remaining Slave States to join the Confederacy,—since, otherwise, they would lose their profitable business of selling surplus Negroes in more southern markets.

370. Indecision at the North.—The South did not believe the North would use force against secession. Still it made vigorous preparation for possible war. As each State seceded, its citizens in Congress and in the civil and military service of the United States resigned their offices. The small army and navy of the Union was in this way completely demoralized,—losing nearly half its officers. Each seceding State, too, seized promptly upon the Federal forts and arsenals within its limits,—sending commissioners to Washington to arrange for money compensation to the Federal government and for a proper di-

vision of the national debt. In the seven seceded States, the Government retained only Fort Sumter in Charleston harbor, Fort Pickens at Pensacola, and two small forts on detached islands near Key West. Federal courts ceased to be held in the seceded States, because of the resignation of judges and other officials and the absolute impossibility of securing jurors. Federal tariffs were no longer collected. Only the post office remained as a symbol of the old Union.

President Buchanan had been strongly under the influence of Southern advisers. The withdrawal of those men from Congress and Cabinet left him sadly at sea. His message to Congress, in December, declared that the Constitution gave no State the right to secede, but—a curious paradox—that it gave the government no right "to coerce a sovereign state" even if it did secede. Accordingly, for the remaining critical months of his term (cf. § 212, final note) he let secession gather head as it liked. This flabby policy, moreover, was much like the attitude of the masses of the North during those same months,—dismayed or incredulous regarding the storm, and waiting supinely for it possibly to blow over.

For months, even from Republican leaders, resounded the cry, "Let the erring sisters go in peace." In October, General Scott, Commander of the army, suggested to the President a division of the country into four confederacies, —for which he outlined boundaries. Northern papers declared "coercion" both wrong and impossible. Horace Greeley's New York Tribune, for years the greatest antislavery organ and the chief molder of Republican opinion, expressed these views repeatedly. "If the Cotton States shall decide they can do better out of the Union than in it, we insist upon letting them go in peace. . . . We hope never to live in a republic, whereof one section is pinned to another by bayonets" (November 9); "Five millions of people . . . of whom half a million are able and willing to shoulder muskets, can never be subdued while fighting around their own hearthstones" (November 30); "The

¹With homely wit, Seward wrote to his wife that the Message shows "conclusively that it is the President's duty to execute the laws—unless some one opposes him; and that no State has a right to go out of the Union—unless it wants to."

South has as good a right to secede from the Union as the colonies had to secede from Great Britain" (December 17); "If the Cotton States wish to form an independent nation, they have a clear moral right to do so" (February 23, 1861). For the moment, Lowell thought the seceding States would be "not worth conquering back, even if it could be done." And, April 9, Wendell Phillips asserted, "Abraham Lincoln has no right to a soldier in Fort Sumter."

Another portion of the North, and especially of the Border States, urged one more try at compromise. A Peace Convention was called by Virginia. The delegates, from twenty-one States, sat at Washington throughout February, and proposed several amendments to the Constitution, to fortify slavery. Committees of Congress made like suggestions. Other proposals of similar nature rained from the Republican press.

In general these proposals comprised: (1) division of the National Domain, present *and future*, between slavery and freedom, along the line of the old Missouri Compromise; (2) repeal of Northern "personal liberty laws" (which several States were already repealing, to soothe Southern feeling); and (3) Federal compensation for escaped slaves.

Even Seward seemed disposed to yield much; and if the Southern members had remained in Congress and voted for such amendments, they might have been carried, and the country, apparently, would have ratified them, in its panic. But the Southerners would not accept such offers unless they were voted for by practically the whole body of Republican congressmen—so as to insure finality. Against this surrender, Lincoln cast his influence, advising his friends in Congress to yield nothing of the Republican position on the Territories, though he was quite willing to conciliate the South as to fugitive slaves. "The tug has come," he wrote; "and now better than later"; and he pointed out that to surrender on the principle of Territories would merely invite fresh Southern demands for the acquisition of Cuba.

Accordingly, the only outcome of the compromise agitation was the submission to the country of an amendment prohibiting Congress from ever interfering with slavery in the States. This passed Congress with a solid Republican vote, and was ratified by three Northern States, before war stopped the process. It merely made express what was already imviled clearly in the Constitution, as Lincoln said; and it was wholly inadequate to satisfy the South. On the other hand, in the North, the seemingly apathetic masses needed only a blow or a leader to rally them for the preservation of the Union. South Carolina's firing on the flag at Sumter gave the blow; and Abraham Lincoln's call for troops showed the leader (§ 372). Talk of compromise and of peaceful secession ceased on the moment, or was drowned in the din of arms.

371. Abraham Lincoln succeeded to the presidency on the fourth of March, and straightway stood forth as one of the supremely grand figures in all history. The inaugural address was an answer to Southern claims and a winning but firm declaration of policy.

[As to the reason for secession]: "Apprehension seems to exist among the people of the Southern States that . . . their property and their peace and personal security are to be endangered. There has never been any reasonable cause for such apprehension. . . . I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so; and I have no inclination to do so."

[Turning to the theory of the constitutional "right" of secession]: "I hold that in contemplation of universal law and of the Constitution, the union of these States is perpetual.... [But if the United States be not a government, but only a 'compact,' even then mutual consent would be required to rescind the compact.] It follows ... that no State, upon its own mere motion, can lawfully get out of the Union.... I therefore consider that, in view of the Constitution and the laws, the Union is unbroken; and [now as to policy] to the extent of my ability, I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union shall be faithfully executed in all the States. ... In doing this there need be no bloodshed ... unless it is forced upon the National authority....

"The power confided to me will be used to hold, occupy, and possess the property and places belonging to the government, and collect the duties and imposts; but beyond what may be necessary for these objects there will be no invasion, no using of force against the people anywhere."

[Then, recognizing the right of revolution, the deplorable loss from any division of the Union is set forth]: "Physically speaking, we cannot separate: we cannot remove our respective sections from each other, nor build an impassable wall between them. A husband and wife may be divorced, and go out of the presence and beyond the reach of each other, but the different parts of our country cannot do this. . . Intercourse, either amicable or hostile, must continue between them. Is it possible, then, to make that intercourse more advantageous or more satisfactory after separation than before? Can aliens make treaties easier than friends can make laws?

"In your hands, my dissatisfied fellow-countrymen, and not in mine, is the momentous issue of civil war. The government will not assail you.

"You can have no conflict without being yourselves the aggressors.

You have no oath registered in heaven to destroy the government, while I shall have the most solemn one to 'preserve, protect, and defend' it.

"I am loath to close. We are not enemies, but friends. We must not be enemies. Though passion may have strained, it must not break, our bonds of affection.

"The mystic cords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature."

Seward, who had been made Secretary of State, expected to be the real head of the government. He came forward with wild and immoral proposals for war with England and France to unite North and South against the foreigner - and with generous offers to take the management of such affairs into his own more experienced hands. Lincoln set him in his true place so firmly that he never doubted again who was President, but so tactfully that he could still, with self-respect, retain his office. Other leaders showered the new President with advice. Lincoln heard all patiently; but his real efforts were given to keeping in touch, not with "leaders," but with the plain people whom he so well understood. His own eyes were set unwavering upon his goal - the preservation of the Union while with unrivaled skill, he kept his finger on the Nation's pulse, to know how fast he might move toward that end. For a time he was railed at by noisy extremists, who would have had him faster or slower; but the silent masses responded to his sympathy and answered his appeal with love and perfect trust, and enabled him to carry through successfully the greatest task so far set for any American statesman.

The country now paid heavily, through the wear upon its burdened chieftain, for its low tone toward the public service and the spoils system. With the change of parties, Washington was thronged, beyond all precedent, with office seekers, who were "Republicans for revenue"; and the first precious weeks of the new administration had to go largely to settling petty personal disputes over plunder. According to one of his private secretaries, Lincoln compared himself to a man busied in assigning rooms in a palace to importunate applicants, while the structure itself was burning over his head; and in 1862, when an Illinois visitor remarked on

his careworn face, he exclaimed with petulant humor, "It isn't this war that's killing me, Judge: it's your confounded Pepperton post office."

Says Geo. W. Julian (Political Recollections, 193-194): "A Republican member of Congress could form some idea of the President's troubles from his own. I fled from my home in the latter part of February [1861] in the hope of finding relief from importunities; but on reaching Washington, I found the business greatly aggravated . . . so that I could scarcely find time for my meals. . . . I met at every turn a swarm of miscellaneous people, many of them looking as hungry as wolves, ready to pounce upon members as they passed. . . . After Fort Sumter had been taken . . . and the whole land was in a blaze, this scuffle for place was unabated, and the pressure upon the strength of the President unrelieved."

372. The Call to Arms.—In November, 1860, Major Anderson commanded a force of sixty soldiers in dilapidated Fort Moultrie in Charleston harbor. Later, he removed to the more defensible Fort Sumter, in the same harbor, and pleaded in vain to Buchanan for reinforcements, while commissioners from South Carolina were trying to cajole that gentleman into surrendering the forts. In January, a threatened resignation of his Cabinet (Northern Democrats now, who meant at least to defend the National property) shamed Buchanan into a feeble show of sending reinforcements. The unarmed vessel, weakly chosen for the purpose, was easily turned back by Secessionist shells; and further efforts were made difficult by rising batteries — whose construction Anderson's orders did not permit him to prevent and which were soon strong enough to demolish the Federal fort.

Five weeks after assuming office, President Lincoln gave notice that he was about to send supplies to Anderson. The Confederate government took this notice as a declaration of war, and attacked the fort. April 12, the bombardment began; and thirty hours later, with the fortress in ruins, Major Anderson surrendered. The next day (April 15) the wires flashed over the country Abraham Lincoln's stirring call for seventy-five thousand volunteers.

Then came a magnificent uprising of the North. Laborers, mechanics, business men, professional men, college boys and

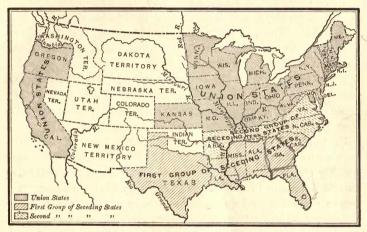
their learned teachers shouldered muskets side by side. From Maine to California, devotion and love for the Union spoke with one mighty voice. Banks offered huge loans without security, and wealthy men placed their private fortunes at the disposal of the government. By July, 310,000 men were in the field. Before the close of 1861, the number was 660,000, enlisted for "three years or the war."

Party distinctions in the North faded. Douglas hastened to offer support to Lincoln, and redeemed the pledge gallantly during the remaining weeks of his failing life; and Buchanan, unable though he had been to act for himself, gave cordial aid now to the government. Lowell wrote (Atlantic Monthly, June, 1861) of "that first gun at Sumter which brought the free States to their feet as one man"; and four years later he told again how "America lay asleep, like the princess of the fairy tale, enchanted by prosperity. But at the fiery kiss of war the spell is broken, the blood tingles along her veins, and she awakens, conscious of her beauty and sovereignty."

373. The Remaining Slave States Choose.—The Confederacy sprang to arms with even greater unanimity. And now the remaining Slave States had to choose sides. Within six weeks the second tier (North Carolina and Virginia, Tennessee, Arkansas) had joined the Confederacy rather than join in attempts "to coerce sister States"; 1 and the Confederate capital had

<sup>&</sup>lt;sup>1</sup> The North Carolina and Arkansas legislatures called conventions, which, it was expressly declared, should take final action. The Carolina convention voted for secession unanimously, and that of Arkansas with only one delegate in the negative. The legislature of Tennessee submitted the matter directly to the people; and the popular vote stood 105,000 to 47,000 (the eastern mountain counties, like their Virginia neighbors, containing a strong Union element). In Virginia the convention vote was two to one for secession. There also the question was submitted to a popular vote; and the people, regarding the issue as already decided, sustained the convention by a vote of three to one in a total of nearly 130,000 - the opposition coming almost wholly from the western counties, which were about to secede from the State. (See below.) Eggleston's A Rebel's Recollections: "The unanimity . . . was marvelous. So long as the question of secession was under discussion, opinions were both various and violent. The moment secession was determined upon, a revolution was wrought. There was no longer anything to discuss. . . . Men got ready for war, and delicate women sent them off with smiling faces." And a

been moved from Montgomery to Richmond, within striking distance of Washington. The third tier of Slave States (Maryland and Delaware, Kentucky, Missouri) were the true "Border States." Delaware alone stood firmly for the Union from the first; but, spite of strong secession sentiment, the others were finally kept in the Union by Lincoln's wise diplomacy and by



Union and Confederacy, 1862.

swift action of Union armies, — though their inhabitants sent many regiments to swell the Southern ranks. The lines were drawn, twenty-two States against eleven (§ 368).

The people of the western counties in Virginia had been op-

Virginian who had been one of the Unionist delegates in the convention, when asked just afterward by a Northerner, "What will the Union men of Virginia do?" replied: "There are no Union men left in Virginia. We stand this day a united people. . . . We will give you a fight which will stand out on the page of history."

<sup>1</sup> Missouri might have joined the Confederacy except for vigorous action by the many thousands of recent German immigrants in St. Louis, who stood stoutly for the Union. The governor had refused to obey Lincoln's call for troops (as did also the governors of Maryland and Kentucky), stigmatizing it as "illegal, unconstitutional, and revolutionary in its object, and inhuman and diabolical." posed to secession. When the State withdrew, they organized a separate State government, and (1863) were admitted to the Union as the State of West Virginia.<sup>1</sup>

374. A Bird's-eye View of the Plan of Campaign. — The splendid outburst of National spirit in the North was inspired in part by a mistaken impression that it could end the conflict with one decisive blow. From this idle dream the country awoke when the Union forces were utterly routed at Bull Run (July 21). Then, in more wholesome temper, it settled down to a stern war — which lasted four years and was one of the most tremendous struggles in history.

To subdue the South, two things were essential. (1) A cordon must be drawn about the seceding States, so that they could receive no supplies from the outside world; and (2) they must be invaded and conquered on their own soil.

On land, the overwhelming superiority of the North in numbers made the first task fairly easy. The Border States were quickly occupied, and the South was kept upon the defensive except for some invasions into Kentucky and a cavalry raid across the Ohio, and for two formidable invasions across the Potomac,—the first turned back at *Antietam* (September 17, 1862), and the second (the "high-tide of the Confederacy"), at *Gettysburg* (July 1–3, 1863).

On the three thousand miles of coast, the matter was more difficult. April 19, President Lincoln declared a blockade;

<sup>&</sup>lt;sup>1</sup> A constitutional difficulty was evaded by a legal fiction. The Constitution forbids Congress to divide a State without its own consent. But the government at Washington assumed that the only legal citizens were the "loyal" ones, and that the loyal legislature of the western counties was the legal representative of the entire State.

<sup>&</sup>lt;sup>2</sup> Andrew D. White (§ 348, note) tells us in his Autobiography that in June his uncle, a friend of Seward's, "a thoughtful man of affairs, successful in business, not at all prone to sanguine views" returned from a visit to Washington and said: "Depend upon it, it is all right. Seward says they have decided to end the trouble at once, even if it is necessary to raise an army of fifty thousand men (!); that they will send troops immediately to Richmond, and finish the whole thing, so that the country can go on quietly about its business."

but this was little more than a statement of intention. Only twelve ships were at the immediate disposal of the government. The rest of the small navy of forty-nine ships had fallen into Southern hands or was scattered far in foreign ports. But blockading squadrons were hurriedly bought, built, and adapted out of coasting steamers and ferryboats; and in a few months the paper blockade became real. From that time to the end, the throttling grip on Southern commerce clung closer and closer.

The export crops, cotton and tobacco, were robbed of value. In 1860 the cotton export amounted to nearly two hundred millions of dollars; in 1861, it sank to forty-two millions; and in 1862, to four millions. As arms, railway material, clothing, wore out, it was almost impossible to replenish the supply (§ 367). Before the end of the first year, there was an alarming scarcity of salt, butter, coffee, candles, and medicines. By recourse to homespun, and by raising corn instead of cotton, part of the need was met. Part was beyond remedy. Only with extreme difficulty could the government smuggle in the paper on which to print its currency. For correspondence and for newspapers, wall paper or brown wrapping paper was soon in demand.

Southern sympathizers and venturesome capitalists made it a business to build swift "blockade runners" to carry supplies to Confederate ports from the Bermudas, and to bring out the cotton piled up at Southern wharves and worth fabulous prices in the idle European factories. Fifteen hundred such vessels were captured during the war; and, before the close, they had nearly vanished from the seas. While trips could be made at all, profits were enormous. A ton of salt, costing \$7.50 outside the Confederacy, could be sold inside in gold for a profit of 20,000 per cent.

For one moment it looked as if the Union fleets would be swept from the seas, and the blockade raised. When the government troops abandoned Norfolk navy yard (on the secession of Virginia), they left there, only partially destroyed, the frigate *Merrimac*. The Confederates built on her hull an iron roofing, and sent her forth as the *Virginia* against the wooden frigates of the United States in Hampton Roads. This first armored ram on the American coast 1 sank two towering ships (March 8,

<sup>&</sup>lt;sup>1</sup> Vessels had been covered with iron plates in some of the earlier campaigns on the Mississippi; and England and France had constructed some ironclads; but it was the spectacular battle of "the Monitor and Merrimac"

1862) and steamed back to her anchorage, confident of completing her mission on the morrow. But, during that night, arrived at the Roads another type of iron vessel, the Monitor, with low, flat deck surmounted by a revolving turret mounting two huge guns, — a "cheese box on a raft." After a sharp engagement, the Virginia was driven to seek shelter. The blockade was saved; but the knell had sounded for wooden men-of-war.

Invasion of the Confederacy on the land side had been simplified tremendously by the saving of the Border States to the Union. Three primary lines were now plainly indicated by the nature of the case. (1) The Army of the Potomac, with headquarters about Washington, must try to capture Richmond, the political center of the Confederacy, and crush the army of defense (the Army of Northern Virginia). (2) In the West, the Unionists must secure the Tennessee and Cumberland rivers, so opening roads into Mississippi and Alabama, and occupying Tennessee. And (3) the course of the Mississippi had to be secured by the capture of such Confederate strongholds as New Madrid, Island No. 10, Port Hudson, Memphis, and New Orleans.

Vicksburg, the last of these river fortresses to hold out, was forced to surrender to General Grant on July 3, 1863 (the final day of Gettysburg); so that the Father of Waters "once more rolled unvexed to the sea," cutting off Arkansas, Louisiana, and Texas from the main body of the Confederacy. The second task had begun earlier, but lasted longer. Grant had captured Forts Donelson and Henry, commanding the lower courses of the Tennessee rivers, in 1862; but Union occupation of Tennessee, and indeed of Kentucky and the line of the Ohio, was incessantly threatened, until, after several oscillating and bloody campaigns, and, finally, some of the most desperate fighting of the war, Grant, Thomas, and Sherman drove the Confederates from the vicinity of Chattanooga, in November of 1863.

This decisive victory opened up a fourth line of invasion, to Atlanta,—at the farther end of the Atlanta and Chattanooga Railway,—only 135 miles distant, but with an intervening region of rugged mountains. Atlanta was located in the iron and coal region of northern Georgia

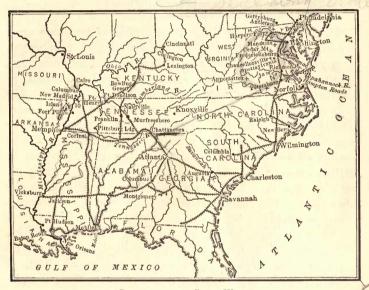
which demonstrated to the world the arrival of a new order—following the insolent victories of the Merrimac on the preceding day.

The Monitor was the invention of a Swedish immigrant, John Ericsson; and she had been just completed, after a hurried three months.

<sup>&</sup>lt;sup>1</sup> Secondary lines of invasion were pointed out by the location of the more important railways—especially those from west to east, such as the Memphis and Charleston Road—to secure which engagements were fought in 1862 at Corinth, Pittsburg Landing, Shiloh, and Memphis.

and was becoming a center for manufacturing arms and railway material. As the only such center in the Confederacy, its capture was of supreme importance. This became Sherman's task, in a four months' campaign of the next summer, against the skillful opposition of the outnumbered Johnston and the pounding of his desperate successor, Hood.

Atlanta was taken September 3, 1864. Leaving its factories in ashes, and detaching Thomas with sufficient force to engage Hood, Sherman



SCENE OF THE CIVIL WAR.

then (November) struck out a fifth line of invasion through the heart of the Confederacy for Savannah,—living on the country and finding not even a militia to oppose him.

Meantime, in the East, the genius of Lee <sup>1</sup> and the splendid fighting qualities of his devoted but diminishing army, aided, too, by geographi-

<sup>&</sup>lt;sup>1</sup>Robert E. Lee ranks among the noblest figures in American history. He loved the Union deeply; but when Virginia seceded, he declined an offer of the command of the Union armies, and gave his sword to the Confederacy (§ 368). The recent acceptance by Congress of his statue, to stand in Statuary Hall in the Capitol beside Virginia's other great son, Washington, fitly denotes the reunion of North and South as one people.

cal conditions,—broad streams subject to sudden floods, and trackless swamps,—held the Union forces at bay year after year, until Grant was brought from the West and given men in ever fresh multitudes to wear down his opponents. Even then, Lee's thinned and starving veterans remained unconquered, until the empty shell of the Confederacy had been pierced from circumference to circumference, and its absolute exhaustion bared to the world, by Sherman's devastating "March to the Sea." The South did not yield: it was pulverized.

375. Forces. — In the North one man out of two bore arms at some period of the war; and one man out of three served three years. In the South nine men out of ten bore arms, and eight out of ten served three years. The total enlistments in the North counted 2,900,000; in the South, 1,400,000. three-year average for the North was 1,557,000; for the South, 1.082,000. With far less effort than the South, the North kept a half more men in the field. But this does not take account of the slaves who served as teamsters, laborers on fortifications, cooks, and servants, in Southern armies, doing work that had to be performed by enlisted men on the other side.1 The Southern forces, too, were able to concentrate more rapidly, because they moved on the inside lines and knew the roads better. Perhaps, too, they were handled with greater skill. Certainly, until the final year, the armies in actual conflict did not often vary greatly in numbers.

Then, indeed, the exhausted South could no longer make good her losses in battle—though her stern recruiting system did "rob the cradle and the grave." Her ranks shrank daily, while the Northern armies grew larger than ever. At the opening of that last terrible year of slaughter, from May 5 to June 12 (1864),—or from the Wilderness to Petersburg,—Grant hurled his 120,000 veterans almost daily at Lee's 70,000, suffering a loss of 60,000 to Lee's 14,000. New recruits were ready to step into the gaps in the Union regiments; while the

<sup>&</sup>lt;sup>1</sup>On the plantations, too, under the management of women, slaves raised the food crops for the South. Wonderful to say, there was no hint of a slave-rising during the war, and, until 1863, very little increase of runaways.

Confederate ranks could only close up grimly. In the remaining campaigns, the Union forces usually outnumbered their opponents at least two to one. To add to the disparity, Grant's stern policy refused longer to exchange prisoners.<sup>1</sup>

In 1863 there was a falling off of enlistment in the North, and Congress authorized a "draft," a conscription by lot from able-bodied males between the ages of twenty and forty. In enforcing this law, some officials seem to have discriminated against Democratic districts; and violent anti-draft riots broke out in several Eastern cities. These were put down sternly by the military; but not till New York had been three days in the hands of a murderous "nigger-hunting" mob, and only after a sacrifice of a thousand lives.

Altogether the draft furnished less than forty thousand troops. Its real work lay in influencing State legislatures to stimulate enlistment by generous bounties. Such moneys furnished support for dependent mothers and for children, and so enabled many a man to volunteer who otherwise must have worked at home. But it remains absolutely true, as Lowell said, that "the bounty which drew our best soldiers to the ranks was an idea." For the South, this was even more true, mistaken though the idea was; but even the South had recourse to conscription, extending it to boys of seventeen and men of fifty. In most districts, however, volunteer enlistment had left small gleanings for this desperate law.

"There was no intention on either side to maltreat the prisoners. A mass of men had to be cared for unexpectedly. Arrangements were made in a hurry, and, as neither side expected a long duration of the war, were only makeshifts. . . . There was bad management at the North and still worse at the South, owing to a less efficient organization, with meager resources. . . . All things considered, the statistics [of deaths] show no reason why the North should reproach the South."

¹Military prisons are always a sore subject. There is usually a tendency, in a long conflict, for their administration, on both sides, to fall to men less competent and less chivalrous than those who seek service at the front. Even in the early years of the war, there had been terrible misery in the prisons at the South—where medicines and supplies were wanting even for the Confederate soldiers. With less excuse, there had been cruel suffering also in Northern prison camps. Toward the close, when the South was unable to feed her soldiers at the front, or to spare adequate forces for guards, conditions became horrible in the Southern prisons,—especially after Grant's refusal to exchange prisoners packed the already crowded Libby and Andersonville with Union soldiers. On this whole topic the student will do well to consult Rhodes' exhaustive and impartial treatment (History, V, 483–515), and especially to note his conclusions:—

Said Lowell, again, in 1865: "What splendid possibilities has not our trial revealed, even to ourselves! What costly stuff whereof to make a Nation!" The great Republic emerged from the battle-storm, glorious and whole, while the world stood amazed, convinced against its will. And yet the resources of the North were never lacking. They grew faster than they could be spent; and the North had more men, more tilled acres, more manufactures in 1865 than in 1861.

But for the South, as Woodrow Wilson says so well, "the great struggle was maintained by sheer spirit and self-devotion, in spite of constantly diminishing resources and constantly waning hope. . . . And all for a belated principle in government, an outgrown economy, an impossible purpose. There is in history no devotion not religious, no constancy not meant for success, that can furnish a parallel to the devotion and constancy of the South in this extraordinary war." The American of to-day sorrows at the terrible sacrifice the South made for mistaken ends; but his heart swells with patriotic emotion at the heroic vision of that chivalrous devotion to the Lost Cause, — that gallant constancy, that peerless courage.

376. War Finance. — The Buchanan administration left the treasury empty, a debt mounting, and credit dubious; but Salmon P. Chase, Lincoln's Secretary of the Treasury, was supported loyally by Congress in a course of vigorous war finance. Year by year, bonds were sold at home or abroad in amounts which at any earlier time would have seemed fabulous. A direct tax of \$20,000,000 was apportioned among the States. An income tax of 3 per cent on all incomes over \$800 was imposed. and in 1864 this was raised to 4 per cent, with 5 and 10 per cent rates on very large surpluses. Internal excises and stamp duties of the most varied and searching description reached almost all callings, products, and business transactions. Session by session Congress devised higher and higher "war-tariffs," rising to rates before unheard of, to remain without change twenty years after the war was over. And a series of "Legal Tender Acts" provided half a billion of dollars of paper money, based only on the faith of the government and amounting to a "forced loan," 1

These "greenbacks" mentioned no specific date for redemption, nor did the law provide any specific security. The amount exceeded the

<sup>&</sup>lt;sup>1</sup> Distinguish between taxes and borrowings in this statement.

real need for a circulating medium; and of course the value fluctuated with success or failure in the field. Depreciation set in at once. Gold was hoarded or sent abroad in trade; and on one dark day in 1864 it sold at 285, while most of the time after 1862, a dollar of paper was really worth only from fifty to seventy cents. Prices rose, for this reason and for other causes connected with the war, to some 90 per cent above the old level. Wages rose, too; but more slowly, and only two thirds as much, —so that the laboring classes bore the great part of the cost of the war. Workingmen endured much suffering, even while "business" was exceedingly "prosperous."

Toward the close of the war, taxation was bringing in half a billion a year; but in 1863 the expenditure had risen to two and a half millions a day—or four times the daily income. Business could not well stand more taxes; nor could more money be borrowed by legal-tender issues. The extra amount must be borrowed by selling new bonds. But how could the government induce capitalists to buy them in sufficient amounts? Chase solved this problem in part by the National Banking. Acts of 1863 and 1864—the basis also of an admirable system of banks and bank currency, better than America had before known, imperfect though it is for more recent needs.

Any associations of five or more persons, with a capital of at least \$100,000, were authorized to organize a National bank, purchase National bonds to the amount of one third the capital, deposit the bonds in the National Treasury, and issue "National bank notes" to the amount of 90 per cent of such deposit. Thus the government would sell its bonds; and the country would have a uniform bank currency guaranteed by the Nation, in place of the varying and uncertain State-bank issues.

Just at first, little use was made of this law; but a supplementary Act placed a tax of 10 per cent on notes issued by State banks. Then hundreds of State banks reorganized as National banks, and there was no more difficulty in placing bonds.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup>This system was based upon the successful "free-banking" system in force in New York, where bank issues were secured by State bonds.

<sup>&</sup>lt;sup>2</sup> Capital is notoriously timid, and business notoriously selfish. There were not wanting the customary shames of army contractors who swelled their fortunes by furnishing shoddy clothing, paper-soled shoes, and rotten food to the troops; while other more adventurous pirates of finance made fabulous profits by illicit or treasonable trade with the South. But more typical, after all, is Andrew D. White's story (Autobiography, I, 89) of the roughly expressed idealism of a multimillionaire

Northern statesmanship also devoted itself deliberately and effectively to encouraging the production of wealth—that there might be more to tax. The demand for war supplies and the high tariffs stimulated manufactures enormously. Congress gave vast amounts of land and money to the Union Pacific to enable that company to build a railway across the continent; and other railways opened up great tracts of new territory to agriculture. In 1862 the Morrill Bill offered National land grants to State institutions providing scientific training in agriculture and in mechanical arts. The same year the long-delayed "Homestead Bill" (§ 367) offered free 160 acres of land to any head of a family who would live upon and improve it.

The South had little wealth to tax. It had no capitalists to buy its bonds; and they could not long be sold abroad. Paper money was issued in floods by both central and State governments, — and depreciated even faster than the famous "Continental currency" of Revolutionary days, so that in 1864, it was not unusual for a Southern soldier to pay \$200 for a poor pair of shoes. The Confederacy did not formally make this paper a legal tender; but, before the end of the war, it was forced to seize supplies from the fields and barns, and it could pay for them only in this money—at rates fixed from month to month by government decree. Neither bonds nor currency were ever redeemed.

Thus the South lived upon itself. And the capital that could not be eaten, — that which was fixed in buildings and roads, — was burned or ruined by the Northern invaders. Southern wealth was gone before the survivors of her heroic men laid down their arms. The world has never seen another so vast and complete a devastation of a civilized land.

377. Slavery and the War.—Large elements in the North, devoted to the Union, cared nothing about abolishing slavery, or were positively averse to doing so; while the loyal Border States were kept in the Union only by the repeated assurances

<sup>—</sup> still a rare phenomenon in the sixties — who had "risen by hard work from simple beginnings to the head of an immense business . . . a hard, determined, shrewd man of affairs, the last man in the world to show anything like sentimentalism. . . . He said something advising investment in the newly created national debt. I answered, 'You are not, then, one of those who believe that our debt will be repudiated?' He answered: 'Repudiation or no repudiation, I am putting everything I can rake and scrape together into national bonds, to help this government maintain itself; for, by God, if I am not to have any country, I don't want any money.'"

of the government that the war was not intended to free slaves. The day after Bull Run, by 107 to 2, the Republican House reassured the War Democrats and the Border States to this effect. In the opening weeks of the struggle, it is true, General Butler, at Fortress Monroe, refused to deliver to an owner in the Confederate army a runaway slave who had escaped to the Union lines, - on the ground that the man was "contraband of war" (since he might be made useful to the enemy). This logic was so sound, and the phrase so caught the popular approval, that the government did not interfere with the Union generals who chose thereafter to free "contrabands" seeking refuge within their lines,1 but when certain generals went farther. Lincoln felt constrained to interpose. Thus, General Fremont, in command in Missouri, proclaimed free the slaves of all citizens of that State who were in arms for the Confederacy; but the order was promptly disavowed. For a year and more, all the public utterances of the President tried to keep true to his early promises; and the Fugitive Slave Act was enforced for all slave owners in the loval States.

But it became more and more apparent that, if the North was successful, the result must be freedom for the Negro; and, in March, 1862, President Lincoln recommended to Congress that the States should be invited to decree gradual emancipation, and that, wherever this was done the United States should compensate the owners and colonize the freed negroes.<sup>2</sup>

This wise plan was never adopted. In April Congress abolished slavery in the District of Columbia, it is true (with an appropriation of \$1,000,000 to compensate the owners); and, in June, it abolished slavery in the Territories, without compensation. It also passed resolutions approving Lincoln's plan for the States. But the President's repeated and earnest ap-

<sup>&</sup>lt;sup>1</sup> For two years or more, the majority of the generals and higher officers were inclined rather to enforce the Fugitive Slave Act as to such refugees, even when their owners were serving in the Confederate army.

<sup>&</sup>lt;sup>2</sup> He pointed out that the cost of the war for three months would pay for all the slaves in the loyal States.

peals to the Union leaders of the Border to persuade their States to act promptly, and secure compensation for their slaves before it was too late, fell upon deaf ears. They could not yet believe his prophecy that soon they would find "bonds better property than bondsmen"; and the opportunity passed. Moreover, Congress hesitated to grant the \$200,000,000 of bonds which Lincoln asked to have placed at his disposal, for use in case any State should act; but it did pass a "Confiscation Act," authorizing Union generals to free the slaves of all "Rebels."

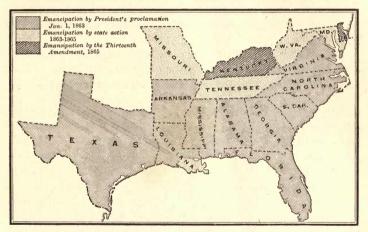
Congress adjourned for the season on July 17. Five days later, Lincoln read to his surprised Cabinet the draft of a proposed Emancipation Proclamation. This was not to apply to the Border States, or to the Southern territory under Union control. The only warrant in the Constitution for such action by the President had to be found in his powers as Commander in Chief. The Proclamation, in form, was merely a war measure, designed to weaken the enemy. At Seward's suggestion, Lincoln put the matter aside, to wait for some signal victory — of which there had been few for a long year — that the Proclamation might not seem the act of a despairing government. Two months later, Lee's retreat after Antietam (§ 374) furnished the appearance of a victory; and (September 23) the great Proclamation was given to the

¹The secret of Lincoln's purpose was perfectly kept, — with the curious result that the Northern radicals at just this time were loudest in abusing him for not acting against slavery. To a bitter protest, headed by Horace Greeley, Lincoln replied persuasively: "I would save the Union. I would save it the shortest way under the Constitution. . . . If there be those who would not save the Union unless they could at the same time save slavery, I do not agree with them. If there be those who would not save the Union unless at the same time they could destroy slavery, I do not agree with them. . . . If I could save the Union without freeing any slave, I would do it; and if I could save it by freeing all the slaves, I would do it. . . . I have stated my purpose according to my view of my official duty: and I intend no modification of my oft-expressed personal wish that all men everywhere might be free." The student will find both parts of this interesting correspondence in Rhodes, IV, 73-74, or Morse's Lincoln, II, 105-110.

world,—to go into operation on the first day of the coming year (1863).

The Proclamation made an era in history. At the moment, of course, it was a paper edict, and did not actually free a slave. But from that day the war became a war to free slaves; and, as Union armies slowly conquered their way into the South, thousands, and finally millions, did become free. Abroad, too, the Proclamation put an end to all possibility of foreign intervention in behalf of the South.

True, cautious as Lincoln had been, it seemed for a time as though he had moved too swiftly for Northern opinion. The fall elections gave



anti-war majorities in several of the largest Northern States, before strongly Republican. In Ohio the Democrats carried 14 congressional districts out of 19; in Indiana, 8 out of 11; in Illinois, 11 out of 14. Says Professor A. B. Hart (Salmon P. Chase, 270): "No Republican majority could be secured out of the free States; but a silent and drastic process was applied by the military in the loyal Border States, which caused them to furnish enough Republican members to make up the majority without which the war must have failed." New England and the West just balanced the Democratic gains in the North Central States; but "strangely enough," as McCall's Thaddeus Stevens phrases it, it was Missouri, Kentucky, and Maryland which furnished the small Republican majority, by electing 21 Republicans in a total of 26 districts!

But after an interval of dismay the Nation rallied. Emancipation was accepted as a settled policy; and, in 1864, Lincoln was reëlected triumphantly, carrying every loyal State except New Jersey, Delaware, and Kentucky.

The doom of slavery had sounded. Before the close of the war, Maryland, Missouri, and West Virginia abolished the institution within their limits, without compensation; and "Reconstruction governments" (§ 382) in Tennessee, Louisiana, and Virginia freed the slaves in those parts of the Confederacy to which the great Proclamation had not applied. Then "the whole thing was wound up," 1—all informalities legalized, all possible gaps covered, and the institution itself forever forbidden,2—by the Thirteenth Amendment (ratified in December, 1865). It was this Amendment which freed the remaining slaves in Kentucky and Delaware.

After the Emancipation Proclamation, the government began to receive Negro regiments into the army. More than fifty thousand black men were enrolled during the remaining months of the war.

378. Foreign Relations. — At the opening of the war, the government tried to look upon the Confederates merely as rioters, — "combinations of individuals" obstructing the laws. This view would have entitled the United States to treat prisoners as pirates. A threat, indeed, was made of such a policy; but a prompt notice from the Confederacy that Union prisoners would be executed in retaliation put an end to this unwise project. Moreover, the proclamation of blockade had itself amounted to an acknowledgment that the South was a belligerent power, outside the Union — since no nation would "blockade" its own ports. But when England and France

<sup>&</sup>lt;sup>1</sup> Lincoln's expressive phrase, in urging such an amendment upon Congress nearly a year before.

<sup>&</sup>lt;sup>2</sup> The Proclamation had freed slaves, but it had not made slavery subsequently illegal. The government had no power to do that as a war measure. But the great Amendment runs—after the phrasing of the Northwest Ordinance—"Neither slavery nor involuntary servitude . . . shall exist within the United States or any place subject to their jurisdiction." The contrast between this actual Thirteenth Amendment and the proposed "Thirteenth Amendment" of 1861, to guarantee slavery forever against national interference (§ 370), measures part of the value of the war.

followed that proclamation by proclaiming neutrality between the "belligerents," the North was deeply incensed.

Both North and South had counted upon English sympathy. The North felt that England must favor war against slavery, — forgetting, perhaps, that for more than a year it vociferated that it was not warring upon slavery, and ignoring also the fact that our mounting tariff, closing the usual market to English manufactures, was a constant irritation. The South hoped that England would break the blockade, to secure cotton, so as to give work to her idle factories and her hundreds of thousands of starving operatives.<sup>1</sup>

The acknowledgment of belligerency was perhaps made with unnecessary haste; but it stated a fact of which foreign powers must necessarily soon have taken notice. It is now generally agreed that such action afforded no real cause for complaint. It granted to the Confederates certain rights for their privateers in English and French ports, which, as mere rioters or pirates, they would not have enjoyed; but it was not at all a recognition of the Confederacy as an independent nation. That would almost certainly have been fatal to the Union.

There was real danger of this catastrophe. After Bull Run, English society generally believed that the South could not be conquered, and was more and more inclined to look upon the contest as one between empire and self-government. "In any case, since the South must win in the end," said they, "the sooner the matter is ended the better, so that our cotton mills may turn their spindles again and the danger of social revolution from starving workmen here be removed." Moreover, now that it

¹ Richard Cobden wrote to Charles Sumner (December 5, 1861): "You know how ignorant we are of your history, geography, etc. . . . There are two subjects upon which we are unanimous and fanatical . . . personal freedom and free trade. In your case we see a mighty struggle, — on one side protectionists, on the other slave owners. The protectionists say they do not seek to put down slavery: the slave owners say they do want free trade. Need you wonder at the confusion in John Bull's head?"—Quoted from Mss. by Rhodes (III, 529). Punch put the same dilemma:—

<sup>&</sup>quot;The South enslaves those fellow men
Whom we all love so dearly:
The North keeps commerce bound again,
Which touches us more nearly.
Thus a divided duty we
Perceive in this hard matter:
Free trade or sable brother free?
O, won't we choose the latter?"

seemed safe, the governing aristocracy of that time 1 was glad to show sympathy for the corresponding aristocracy of the South. Said Gladstone—not yet fully out of his Tory period—"Jefferson Davis and other leaders... have made an army; they are making a navy; they have made... a nation." Still, so far as any act of the English government is concerned, Mr. Rhodes to-day and Motley 2 at the time agree that the North had no cause whatever for offense until November, 1861. Then came an incident, indeed, which heightened animosities and nearly led to war.

The Confederacy appointed James Mason and John Slidell commissioners to England and France, to secure recognition and alliance. These gentlemen ran the blockade to Havana, and there took passage on the English steamship Trent. November 8, the Trent was overhauled by an over-zealous captain of an American man-of-war and compelled to submit to "search,"—the two commissioners being taken from her decks and carried prisoners to Boston.

The North burst into applause, though Lincoln and a few other cool heads saw that the government was placed in the wrong by this violation of a right of neutral vessels for which America had so long been ready to fight. England, too, had always prided herself particularly on affording refuge to political offenders from other lands; and there was now a burst of sincere indignation in that country. The aristocracy and the government used the opportunity to go far in showing Southern sympathies. Troops were hurried off for Canada, and a peremptory demand was made for the surrender of the prisoners and for an apology — softened though the form of the note was, from the original draft, through the influence of the Prince Consort and the command of the Queen. After unwise delay, due to fear of popular feeling, the American government yielded, and Mason and Slidell were placed on board an English steamer. The people of the North acquiesced; but their bitterness toward England was intensified.

In another international incident of more serious nature, the English government was deeply at fault. In the early years of the war, the South succeeded in getting a few cruisers to sea, to prey upon Northern commerce. The most famous one never entered a Confederate port. This vessel was built in England. The United States' minister there, Charles Francis Adams, warned Lord Russell of the purpose of the vessel as it neared completion; but Russell was stupidly incredulous, and trusted to

<sup>&</sup>lt;sup>1</sup> This was before the Reform Bill of 1867, which first made England a democracy. Cf. Modern History.

<sup>&</sup>lt;sup>2</sup> One of America's chief representatives in Europe at the time.

reports of his subordinates and to the assurances of the builders that the vessel was a peaceful one. Thus the Alabama was allowed to escape to sea, where she took on her armament, and soon became a terror to the Northern merchant marine—until she was overtaken and sunk by the Kearsage. The North was inclined to believe that the English government acted in bad faith. But it is now certain that Russell was guilty only of culpable negligence—for which his country afterward atoned so far as possible by paying the "Alabama claims" (§ 393).

More serious still would have been the barely defeated project of the South to build two iron-clad rams in England, with which to break up the blockade. These formidable vessels were nearly ready for sea; and Mr. Adams' remonstrances apparently had moved Lord Russell only to ineffectual precautions. At the last moment, Adams wrote to Russell, "It would be superfluous for me to point out to your lordship that this is war." But Russell had already awakened, and had just given effectual orders to seize the vessels.

The North, then, had some cause to blame the government and the aristocracy of England. It had greater cause, not always duly recognized, for deep gratitude to the sound heart of the English masses, who felt dimly that the Union was fighting slavery, even while Unionists denied it loudly, and who therefore gave the North a heroic support through cruel privations—in many ways as severe as those borne by Americans. Says Von Holst of this matter: "The attitude of the English workingmen is one of the great deeds in the world's history." They stood nobly by the cause of democracy and free labor, as their own cause; and their attitude was so determined that, even though they had no votes, their aristocratic government did not venture to take offensive action against America. It should be remembered, too, that, in the darkest hour, there were not wanting English leaders, like Richard Cobden, John Bright, and John Stuart Mill, to give enthusiastic support to the North.

France, too, felt the economic pressure due to the lack of cotton, though far less than England, and the Emperor Napoleon III made specific proposals to the English government to join hands in recognizing the South and breaking the blockade. These repeated overtures were always refused. With perfect right, Cobden wrote to Sumner (Morley's Cobden, II, 408): "You must not forget that we have been the only obstacle to what would have been almost a European recognition of the South."

Then, after the emancipation proclamation had put the North in the true light on the matter of slavery, English opposition was hushed. English workingmen thronged great public meetings to voice loud enthu-

siasm for the Union, and Cobden wrote jubilantly that those meetings had "closed the mouths of those who had been advocating the side of the South. And I write now to assure you that any unfriendly act, no matter which of our aristocratic parties is in power, is not to be apprehended. . . . A spirit would be instantly aroused which would drive that government from power" (February 13, 1863).

379. Personal Liberty. - After the war was well under way, the Democrats who favored its prosecution (War Democrats) generally united with the Republicans in a "Union Party." The Peace Democrats, opponents of the War, were commonly known as "Connerheads." Some of them believed that the Union could not be restored by arms; some did not wish it restored. These opponents varied all the way from highminded gentlemen, like Governor Seymour of New York or Robert C. Winthrop of Massachusetts, who criticized the tendency of the war government to overthrow private liberty, to real traitors who conspired to liberate Southern prisoners in the North and attack the Northern cities. This last class, however, was probably small in number at any time, though at the moment, such designs were imputed by the Unionists to all the members of an extensive secret organization in Ohio and Indiana known as the "Knights of the Golden Circle."

From the beginning, the government committed many invasions of personal liberty, unwarranted by the Constitution or by the spirit of our institutions; and this not merely near the theater of war, but all over the North. By executive order,

¹ The House of Lords, says Mr. Rhodes, was almost unanimously for the South, as was a majority of the Commons, — elected in that day by about a million voters. But there were six million other Englishmen not yet enfranchised; and "nearly all of these, who had any opinion whatever, sympathized with the North; and their hearty manifestations of friendship came at the most gloomy period of the war, when patriots at home and friends abroad despaired. . . . The Great Britain of to-day . . . would have been with the North." This greatest American authority agrees that even the England of that day "was the one insurmountable obstacle to the recognition of the Contederacy by France and other European nations" (*History*, IV, 388). On the whole topic the interested student cannot do better than to read Rhodes, III, 417–429, 502–538, and IV, 76–92, and (especially) 337–394.

the President suspended the writ of habeas corpus; <sup>1</sup> and thousands of men were imprisoned by *military order*, sometimes without trial, or even a specific charge; and others were punished by *military courts*, on the charge of "discouraging enlistments" or "giving aid and comfort to the enemy." Such prisoners included mayors, editors, judges, members of legislatures. In some cases, prisoners, while in durance, were chosen by their neighbors to legislature or to Congress — as a proof of confidence in them and of resentment at the high-handed practice of the government.

Mr. Rhodes' judgment is that this policy of the government was "futile for good . . . inexpedient, unnecessary, and wrong"; and that the sins against which it was aimed might have been controlled adequately by the ordinary process of law. The worst excesses were due to the "capriciousness of power" in the hands of Seward and especially of Stanton, the patriotic but arbitrary and irritable Secretary of War; and they were aggravated by the insolence of subordinates and the cruelty and tyranny of some brutal provost marshals, who found it safer to gratify their passions so than at the front, and who sometimes used their power to pay off personal grudges.

Final responsibility, of course, has to rest upon the President. At the time, he was reviled by opponents as "Abraham the First." He did "wield greater power than any single Englishman since Cromwell," as James Bryce has said; and this phase of the war is perhaps the least glorious to his fame. Military commissions were permitted to define "public enemies" so as to include the man "who overrates the success . . . of our adversaries," or "seeks false causes of complaint against the officers of the government," or "inflames party spirit among ourselves." And, in the eye of the President's agents, as Dr. Dunning says, such doctrine made the line between political opposition to the President and treason extremely hazy. Neither the despotic govern-

<sup>&</sup>lt;sup>1</sup>The power to suspend the great writ, "when public safety requires," in cases of rebellion or invasion, is named among the powers of Congress, not of the President. Months later, Congress "authorized" the President to suspend the writ at his discretion; but a later decision of the Supreme Court (below) declared this legislation unconstitutional.

<sup>&</sup>lt;sup>2</sup> Dunning's Essays on the Civil War and Reconstruction, 43-44.

ment in England during the French Revolutionary days, nor the government of Jefferson Davis, ventured so bluntly to ignore the constitutional rights of citizens. At the same time, it was just Lincoln's moderation and mercy and good sense which made the mass of the people willing to trust him with these enormous powers. Men knew that some mistakes must be made in those cruel days; but they felt rightly that their liberties were fundamentally safe in the hands of "Honest Abe."

Two cases were of particular importance.

- a. Vallandigham, a leader of the extreme Peace Democrats, was a candidate for nomination for the governorship of Ohio. After a speech at a public meeting, he was arrested by order of General Burnside, tried by a military commission, on the charge of "publicly expressing, in violation of general orders, . . . sympathy for those in arms against . . . the United States . . . with the purpose of weakening the government," and was condemned to close imprisonment during the war (May 16, 1862). Lincoln felt that he could not well disavow such action; but he turned the matter into a huge, if somewhat cruel joke, by "commuting" the sentence, ordering instead that Vallandigham should be sent through the Union lines, "to his friends" in the Confederacy. From this banishment, Vallandigham ventured back, soon after, to resume political activity; and his reappearance was wisely ignored by the government.
- b. In October, 1864, Dr. Milligan and two associates were arrested by military order, tried by court martial, and condemned to death by hanging, on charges similar to those in the Vallandigham case. President Lincoln, however, would not order the execution,—though he did not release the prisoners. President Johnson, on accession (§ 383), fixed a date for the hanging. Governor Morton of Indiana, one of the greatest of the War Governors, at the suggestion of Justice David Davis of the Supreme Court of the United States, prevailed on the President finally to commute the sentence (three hours before the time fixed for the hanging) to imprisonment for life. The war being now over, Milligan at last secured a hearing from the Supreme Court 1 on application for a writ of habeas corpus. A year and a half later (December, 1866), the Court unanimously ordered Milligan set free, and, five to four, declared that Congress had no authority under the Constitution, to authorize any such military commissions in regions where the civil courts were open.

<sup>&</sup>lt;sup>1</sup>During the war, the Court evaded all calls to interfere by alleging that the laws provided no form of appeal from military courts. Read Hart's *Chase*, 346, and, on the whole subject of military government in the North, see Rhodes' *History*, III, IV, V, in table of contents.

This decision was in line with the whole tradition of the English-speaking people; but it was met, even at that late day, by a storm of vehement public criticism, and the narrow majority of the court indicates how unstable civil liberty might again become in case of a great war.

380. Cost. — The war cost more than 700,000 lives, — the loss nearly even between North and South. Says Professor Ross, "The blood of the nation was lastingly impoverished by that awful hemorrhage" (Foundations of Sociology). As many men more had their lives sadly shortened or rendered miserable by disease or wounds. Other darkened lives, in homes from which the light had gone out, cannot be computed. Nor can we count the heaviest cost of all, the lowering of moral tone, and the habits of vice, that came from life in camp and barracks. In money, the war cost the Union government about three and a half billions, nearly three billions of which remained as a huge national debt to plague the next generation. The destruction of property, principally in the South, amounted to nearly as much more.

Still, this expenditure of blood and treasure was well worth while. The war struck shackles from four million men. It ended forever the ideas of constitutional nullification and of peaceful secession. It decided beyond further appeal, that the United States is a Nation, not a confederacy. It was the means whereby the more progressive portion of the country had to force its advanced political thought and its better labor system upon the weaker, stationary portion. It prevented the break-up of the country into squabbling communities, to be engaged in incessant bickerings over trade and boundaries, and it preserved the vast breadth of the continent for peace. It demonstrated to skeptical European aristocracies that the great Republic was not "a bubble," as some of them had hastened to exult in 1861, but "the most solid fact in history." 1

One part of the cost is yet to be counted. April 14, 1865, while the North was still blazing with illuminations and thrill-

<sup>&</sup>lt;sup>1</sup>Cobden, in a congratulatory letter to Sumner.

ing with rejoicings over the capture of Lee's army and the end of the war, it was plunged into intense gloom by the assassination of Lincoln. The great President was murdered by a crazed actor, a sympathizer of the South. No man was left to stand between North and South as mediator, and to bind up the wounds of the Nation with great-hearted pity and all-sufficing influence as Lincoln could have done. His death was an incomparable loss to the South. It added fierce flame to the spirit of vengeance at the North, and it explains in great part the blunders and sins of the dominant party in the "Reconstruction" that followed the war.

For Further Reading. — The best military story in brief form is Dodge's Bird's-eye View of the Civil War. Further details are given in an interesting series of articles, "Campaigns of the Civil War," written by generals of both armies, in the Century, VII-XIII. On other phases of the period, besides the references in notes above, the student may consult Rhodes' History; Hart's Chase ("American Statesmen" series); Morse's Lincoln (ib.); Schwab's Confederate States of America; Stephens' War between the States; Bancroft's Seward ("American Statesmen"); Davis' Rise and Fall of the Confederate Government; Lee's General Lee.

Much source material is given in Hart's Contemporaries, IV, and Mac Donald's Select Statutes.

Illustrative material is abundant. Special mention is due to Eggleston's Rebel's Recollections, and American War Ballads; Cary's Rebel's Recollections; T. N. Page's Among the Camps, and Burial of the Guns; Harold Frederic's Copperhead; L. M. Alcott's Hospital Sketches; Avary's A Viriginia Girl in the Civil War.

## II. RECONSTRUCTION

381. Problems, North and South. — Peace brought new problems. So far as the North was alone concerned, the most immediate ones were met satisfactorily. The million men under arms were paid off and sent to their homes at government expense, at the rate of one or two hundred thousand a month, until, at the end of a year, only some fifty thousand remained to garrison the conquered South. The "old soldiers" for the most part found honorable and useful places in industry with

marvelous rapidity and with hardly a ripple upon the usual order,—one of the notable phenomena of history.¹ Internal taxes were promptly reduced or abolished; and after 1869, the immense national debt was cut down steadily and resolutely,—so that by 1890, including the paper money, it amounted to less than half the amount of twenty years before.

For the wrecked South, the problems were infinitely more difficult - and more pressing. The ex-Confederate soldiers toiled homeward painfully, mostly on foot, from Northern prison camps and from surrendered armies. In some districts, remote from the march of the Union armies, there was still abundance of food, with the Negroes at work in the fields; but over wide areas the returned soldier found his home in ashes, his stock carried off, his family scattered, the labor system utterly gone. Many an aristocrat, who in April had ruled a veteran regiment, in July was hunting desperately for a mule,2 that he might plow an acre or two, to raise food against the starvation of his delicately nurtured family. The destruction of bridges and tearing up of railroads left the various districts isolated and self-dependent; and economic life had to be built up again from primitive conditions. No praise is too great for the quiet heroism with which the men of the South set themselves to this immediate and unaccustomed task.

· Before the end of the war, the Negroes along the lines of Northern invasion had begun to flock to the Federal camps; and, in March, 1865, Congress had found it necessary to establish a "Freedman's Bureau,"—a military organization, to feed these helpless multitudes, to start schools for them, and to stand to them in the place of guardian. Despite the best efforts of the noble men at the head of this organization, and notwithstanding the great services it did render, hundreds of thousands of ex-

<sup>&</sup>lt;sup>1</sup> Once more, "free land" helped us solve a tremendous problem. Thousands upon thousands of ex-soldiers, who found no immediate opening in their old homes, became "homesteaders" in the West.

<sup>&</sup>lt;sup>2</sup> At Lee's surrender, General Grant, with characteristic good sense and generosity, had told the men to keep their horses, which, said he, they would need for the spring work. This practice, followed by other Union commanders, lightened in some slight degree the suffering of the South.

slaves drifted aimlessly about the country for months, expecting soon a division of property which should give each one at least "forty acres and a mule." Deprived of their usual order of life, this unhappy population wasted away in disease and want. After Christmas week, they began to recover from the universal delusion of a coming distribution of property, and thereafter they slowly returned to work; but the habits of unaccustomed liberty to which they had been exposed led thereafter to unprecedented violence and crime.

To rebuild the industrial organization, beyond providing against immediate starvation, was a work not for individuals, but for organized political societies. But political organization was more completely wrecked even than the industrial system; and, with a civilized people, the first need was to restore it. The military government preserved order in the South; but civil liberties were in doubt, and civil government was lacking.

Thus the problems for the South were (1) to find food for its people; (2) to protect and control and uplift the Negro and find him a place again in the industrial system; (3) to build new State governments; and (4) to restore these reconstructed States to their old relation to the Union. Unfortunately, in practice, the second and third of these problems had to depend upon the fourth; and this problem the victorious North, after the assassination of Lincoln and the return of its emaciated prisoners, was in no mood to solve in the best way. It followed that for twelve years (1865-1877), though war had ceased, a "state of war" continued,—the South garrisoned by Federal troops and, much of it, ruled by conquering generals, as though it were a hostile country.

382. Lincoln and Reconstruction, in the War.—At the opening of the war, the Republican party held that the States did not go out of the Union, and that their normal relations to the Union were merely interrupted temporarily by illegal "combinations of individuals." President Lincoln kept this view consistently throughout; and under it, even while the war was in progress, he had tried to begin the political reconstruction of such States as had been occupied by the Union armies. "Louisiana," said he, in 1862, "has nothing to do now but to take her place in the Union as it was—barring the broken eggs." In 1863 he issued a proclamation of amnesty for all

Southerners (with a few specified exceptions) who would take an oath of allegiance to the Union; and he promised to recognize in any seceding State a civil government set up by such persons,—they being not less than 10 per cent of the number of voters of 1860.

But the more radical wing of the Republicans began to fear that the "rebels," getting back so easily into the Union, might get control of the Federal government and undo the results of the war. 1 Jealousy, too, developed as to whether President or Congress should manage the work of reconstruction. Thus, in July, 1864, the "Davis-Wade bill" was passed, (1) to make the process of reconstruction more difficult, and (2) to place control of it in Congress. President Lincoln killed this bill by a pocket veto, and appealed to the country with one of his persuasive proclamations; and during the adjournment of Congress, upon his own responsibility, he "recognized" the "tenper-cent governments" which he had helped to organize, in Arkansas, Louisiana, and Tennessee. Later, like action was taken for Virginia. Representatives and Senators from these States had not been admitted by Congress at Lincoln's death; but three days before that calamity, the President, in a public address, repeated his views as to reconstruction.

383. Presidential Reconstruction after the War. — The new President, Andrew Johnson, had been a War Democrat and a Union man in Tennessee, where he had served efficiently as military governor in 1863–1864. He possessed great native force of character, of a rather pugnacious order, and a rugged integrity; and, even in the aristocratic South before the war, he had passed from a tailor's bench to the highest offices of his State (cf. § 289). He was, however, sadly lacking in tact and good taste, and in generosity toward opponents, and he was possessed by a fatal itch for boastful and abusive public speech.

 $<sup>^{\</sup>rm 1}$  The fear long continued that in Congress they might repudiate the National debt, or perhaps assume the war debt of the Confederacy.

Julian, one of the radical Republican Congressmen, tells us (Political Recollections, 255) that at Lincoln's death, "while everybody was shocked, the feeling was nearly universal [among the radicals in Washington] that the accession of Johnson would prove a Godsend to the country." Two days later, Johnson received a committee of these radical politicians with mutual joy. Senator Wade greeted him: "Johnson, we have faith in you. By the gods, there will be no trouble now in running the government." And the President rejoined with the declaration: "Treason is a crime, and crime must be punished. Treason must be made infamous, and traitors must be impoverished."

For some weeks the new President seemed to keep this dangerous temper toward the South. He was ardent for the trial, by court martial, of Confederate leaders like Jefferson Davis and Robert E. Lee, both of whom he accused, absurdly, of complicity in Lincoln's murder, and who, he urged, should be hung for treason anyway. Happily this scheme fell before the more conservative temper of the mass of the North and the attitude of the courts. And soon Johnson himself disappointed his radical associates by taking up the reconstruction policy just where his predecessor left it—but with infinitely less chance of success. Before Congress met, in December, he had brought about the organization of State governments in the remaining seven States of the defunct Confederacy, essentially upon Lincoln's plan.

The process was as follows: (1) The appointed "governor" in each State arranged for registration of voters under the franchise laws in force in 1860, except for the exclusion of certain classes of the higher Confederate officials, which classes were made somewhat larger by Johnson than they had been by Lincoln. (2) A convention, chosen by these voters, repealed the ordinance of secession, repudiated any share in the Confederate war debt, and adopted a constitution. (3) Under this constitution, the people chose a legislature and a new governor. (4) The legislature was required, before the State government was recognized by the President, to ratify the Thirteenth Amendment to the National Constitution. Thereupon President Johnson proclaimed civil government fully restored; the legislatures proceeded to enact much legislation to restore society and

<sup>&</sup>lt;sup>1</sup> Mississippi did not take the last step.

industry; and Senators and Representatives were chosen for Congress—who, however, were never to take their seats (§ 385).

384. Alarm at the North.—The North was taking alarm. In the "reconstructed" States, the governors and newly chosen Representatives were ex-Confederate generals. Such men were the only natural leaders of their people; but the North could not understand this fact. Still less did it believe that these "rebel brigadiers" had accepted the result of the war in good faith—though now all agree that such was the case.

Moreover, cause for irritation was found in the attitude of the reconstructed legislatures toward the freedmen. States forbade Negroes to carry weapons without special license, or to bear witness in court against Whites, or to own land; while in at least three States, a magistrate might arrest an idle Negro as a vagrant, fine him, and sell him into service to work out the fine. A like penalty was often imposed for petty larceny, and for other minor offenses; and a common feature of these "Black Codes" was the provision that a court might "apprentice" Negro minors (who had no family support) to White employers, preferably their former masters. To the Southerner, most of this legislation seemed inevitable; and, except for its most extreme instances, it is approved to-day by Northern scholars. But at the moment it seemed to the inflamed and uninstructed imagination of the North a deliberate and defiant attempt to reënslave "persons of color." Northern opinion, therefore, demanded that this Presidential "reconstruction" should be undone, until the Southern States

<sup>1 &</sup>quot;This legislation, far from embodying any spirit of defiance towards the North . . . was in the main a conscientious and straightforward attempt to bring some sort of order out of the social and economic chaos." — Dunning, Reconstruction, Political and Economic ("American Nation" series), 57-58. "The trend of legislation . . . was distinctly favorable to the Negro." — Rhodes, History, VI, 27. Cf. ib., 23-28, for illustrations, and for the judgment that the Northern opinion and the subsequent action of Congress were based upon "specious tales" and untrustworthy evidence. Cf. also the context of the reference above for Professor Dunning's full judgment.

should undo such legislation and should grant the franchise to the Blacks,— to enable those wards of the nation to protect themselves.

Lincoln had advised his reconstructed governments that they would do well to give the franchise to Negroes who had fought for the Union or who could pass an educational test; and President Johnson repeatedly urged a like policy. But no one of the reconstructed legislatures paid attention to such counsel. For this there is little wonder when we remember that only six Northern States allowed the Negro to vote at this time, one of these with limitations not imposed upon Whites, and that in this same year (1865), State conventions in Wisconsin, Connecticut, and Minnesota refused the privilege. In 1867–1868, Minnesota, Michigan, Ohio, and Kansas rejected, by popular vote, constitutional amendments providing for Negro suffrage.

385. Congressional Reconstruction. — When Congress met in December, 1865, the Radicals had fully decided to ignore the President's work, and themselves to reconstruct the South over again. To suit this plan, the leaders devised new political theories. The Southern States, by attempting secession, had "committed State-suicide" and reverted to the position of Territories, subject of course to Congressional regulation. This was the theory put forward by Charles Sumner in the Thaddeus Stevens insisted upon the more extreme view that the South was a "conquered province," so that its people had no claim even to civil rights. Sumner was an unselfish idealist, but unpractical and bigoted, with the one idea of doing justice to the Negro. Stevens was an unscrupulous politician and a vindictive partisan, determined to entrench Republican rule by Negro majorities in Southern States, and not averse incidentally to punishing "rebels." The spirit of reckless retribution which stained the National legislation of the next months was due mainly to his harsh influence; but, more and more, as the contest progressed, the Republican majority in Congress was actuated, aside from the leading motives just indicated, by a desire also to humiliate the President

At the first roll call of the new Congress, the clerk, under Stevens' direction, omitted the reconstructed States, so that their representatives were not recognized. Later, the question of the readmission of those States to the Union was referred to a joint committee of the two Houses,—which then held the matter skillfully in abeyance. Meantime, steps were taken to secure the Negro against Southern oppression. The Freedman's Bureau was continued, with authority to override State legislation; and a Civil Rights Bill placed the civil equality of the Negro directly under the protection of the Federal courts—rather than of the State courts. Both these measures were passed over the President's veto, and the breach between legislature and executive widened daily.

In June, 1866, the principle of the Civil Rights Bill was made more secure by the adoption in Congress of the Fourteenth Amendment. This measure also held out to the South an inducement to give the suffrage to the Negro - in the provision that if a State denied the suffrage to any citizens, its representation in Congress might be correspondingly reduced; and it disqualified from office large classes of leading Southerners, such as made up the reconstructed governments. This last provision alone was sufficient to secure a prompt rejection of the Amendment by Southern legislatures,—the members refusing to be themselves the instruments of their own political degradation. Then the Radicals in Congress announced their program: Congress should not admit Representatives from any State until it did ratify the Amendment. On this issue they won a sweeping victory over the President in the fall election (1866), and then hastened to complete their work. The President's power of dismissing insubordinate officials was taken away by an insulting "Tenure of Office" Act, and there was enacted (beginning March 2, 1867) a series of atrocious Reconstruction Acts.

These Acts divided the old Confederacy (except Tennessee, which had ratified the Amendment) into *five military districts*. Each district was placed under an army general, who, in practice, set aside at will the laws

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of the existing Southern legislatures, overruled the decisions of courts by military commissions, and even superseded the will of the new State conventions which they themselves called. They appointed municipal authorities, regulated collection of debts, decreed (for instance) the non-manufacture of whisky, and aimed in general to exercise a minute paternal despotism.

This situation was to continue until the following process should be complete: (1) Each commander was to register the voters in each State in his district, including the Negroes and excluding large classes of ex-Confederates. (2) State conventions, chosen by Negro suffrage, must ratify the Fourteenth Amendment and (3) adopt new State constitutions, — which must be satisfactory to Congress and which, in particular, must provide for future Negro suffrage. (4) These constitutions must then be ratified by the registered voters. (5) A State which complied with these requirements might be readmitted to the Union by Congress. By June of 1868, six more States had been reconstructed on this basis. Virginia, Mississippi, Georgia, and Texas preferred military rule for three years more. Meantime Congress added the Fifteenth Amendment to the requirements for readmission, so placing Negro suffrage beyond the legal control of the States in the future.

386. Partisan Intolerance. — Annoyed by Johnson's veto messages, Congress now determined to remove him by impeachment. Ground was sought in his dismissal of Secretary Stanton from office, contrary, it was claimed, to the Tenure-of-Office Act; but it was shown promptly that Stanton's term had expired legally with President Lincoln's first term, and that he had never been reappointed and had no claim to protection under the law. Indeed, with all his coarseness, Johnson had administered his high office with scrupulous fidelity to the laws; and the impeachment necessarily became a frank attempt to depose him because he differed with the majority of Congress.

The attempt failed (May, 1868) for want of one vote to make the necessary two thirds; but every Northern Senator who voted against this partisan degradation of the presidency lost his seat at the first subsequent election. The North was even more mad than Congress. Julian,

¹In contemptuous defiance of the Supreme Court's decision in the Milligan Case a few months before (Cf. §§ 379 and 391). The Attorney-General of the United States formally decided that these officers had no right to set aside legislative acts; but Congress promptly added that power to their functions by a special law.

himself then one of the Congressional leaders, wrote later: "It is impossible now to realize how overmastering was the excitement of those days. The exercise of calm judgment was simply out of the question.... Passion ruled the hour.... The attempt to impeach was undoubtedly inspired by patriotic motives; but the spirit of intolerance among Republicans toward those who differed with them set all moderation and common sense at defiance. Patriotism and party animosity were ... inextricably mingled and confounded."

A few months later, the Republicans elected General Grant to the Presidency in an enthusiastic campaign, by 214 electoral votes to 80. Still in the popular vote, Grant had a majority of only 300,000 out of 6,000,000. Part of the Southern States, too, were still unreconstructed, and had no vote; while the others were controlled by Republican "carpetbaggers" (below).

387. Carpetbagger Misgovernment. — Meantime, the Reconstruction Acts of '67 had been followed by extraordinary anarchy and misgovernment in the South. In a few weeks, thousands of Northern adventurers, drawn by scent of plunder, had thronged thither to exploit the ignorant Negro vote and to organize it as the Republican party.<sup>2</sup> These "carpetbaggers," joined by a few even more detested "scalawags" (Southern Whites, largely of the former overseer class), with mobs of grossly ignorant and incapable ex-slaves, made up the bulk of the constitutional conventions and the subsequent State legislatures. Then, in the words of Woodrow Wilson, "a carnival of public crime set in under the forms of law."

Irresponsible or rascally legislatures ruined the war-impoverished South over again by stupendous taxes, bearing mainly on the property of the disfranchised Whites. Then these adventurers, with their favorites, stole or wasted the proceeds. In Mississippi, a fifth of the total area of the State was sold for unpaid taxes. In New Orleans, the rate of taxation rose to

<sup>&</sup>lt;sup>1</sup> Political Recollections, 317-318. The student will do well to read the context.

<sup>&</sup>lt;sup>2</sup> A favorite device, when one was needed, was to show the illiterate and credulous Negroes an "order" purporting to be signed by General Grant, commanding them to vote the Republican ticket.

6 per cent, which meant confiscation. Enormous State debts, too, were piled up, to like unprofitable ends. Crime against individuals was rampant; and vicious Negroes heaped indignities upon former masters. History fails to disclose a parallel to this legal revolution whereby a civilized society was subjected to ruin and insult by an ignorant barbarism led by brutal and greedy renegades. The nearest approach, perhaps, is the open military conquest of the Roman world of the fifth century by the Goths and Vandals.

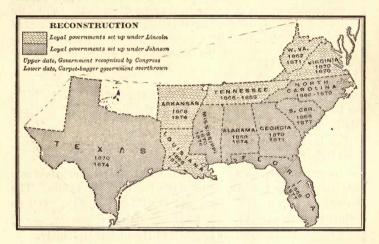
Says Rhodes (*History*, VI, 35): "No law so unjust in its policy, so direful in its results, had passed the American Congress since the Kansas-Nebraska Act... Douglas' repeal of the Missouri Compromise was in the interest of slavery, and precipitated the Civil War: Stevens' Reconstruction Acts, ostensibly in the interests of freedom, were an attack on Civilization." True, much of this extravagant legislation was generously intended by many members of the legislatures,—to place their States in economic and educational development alongside the more progressive North at a bound. Even so, says Dunning (Reconstruction, 208), "The result was legislation of incredible recklessness executed with inconceivable corruption and fraud." Perhaps the deepest sting lay in the fact that the tax-paying class was mostly disfranchised, and that it disapproved violently of some of the most unselfish purposes to which State funds were put—as in the attempts at book education for the Negroes.

Some of the political adventurers from the North were men of personal integrity; but at the best they were deeply obnoxious to Southern Whites as the leaders of Negro domination. Many other Northerners of high character, with much-needed capital and enterprise, attempted to settle in the South, in order to take advantage of opportunities there for economic development. Unhappily Southern opinion confounded all "Yankee" immigrants with the political invasion; and few of the more desirable settlers remained long, to face social ostracism.

388. Counter-revolution. — The Southern Whites, it should have been foreseen, would soon overthrow this vile supremacy, or perish. Peaceful and legal means for preserving White civilization there were none; open rebellion against Negro domination, while it was supported by Federal bayonets, was equally impossible; and so the Whites had recourse to the

only available methods,—which were very deplorable ones.¹ Secret societies intimidated Negro majorities by mysterious warnings; and midnight patrols of white-robed, masked horsemen inflicted many floggings and hangings. By the close of 1870, the North, in law, had imposed its system of reconstruction successfully upon the South; in actual fact, the South was rapidly carrying out a counter-revolution.

In the spring of 1867, there spread over the South a spontaneous and elaborate organization of "The Invisible Empire" of Ku-Klux Klans, to establish White supremacy. The leaders hoped for a minimum of violence; but the lower-class Whites made the midnight patrols a means of



plunder and of gratifying brutal passions and personal spite. Alarmed at this tendency, in 1869 the head of the order sent forth a command to disband the organization; but local bodies long continued a lamentable career of crime. Congress passed Force Bills (1870–1871), to protect the Negro in voting; and the presence of Federal troops at the polls, often under the control of local Republican politicians or candidates, was a common feature of elections. In 1872, however, public feeling at the North compelled Congress to restore political rights to the ex-Confederates save for

<sup>&</sup>lt;sup>1</sup> Says William Garrett Brown (Lower South), "Never before had an end so clearly worth fighting for been so clearly unattainable by any good means."

a small class of some seven hundred in all; and the consolidation of all Southern Whites in one (Democratic) party gave them a majority in most States over the Negroes. Thereafter violence toward the Blacks was rarely used: but by threats of non-employment, by persuasion, by indirect bribery, or by vague intimidation, the Negro masses more and more were excluded from the polls. The Force Bills and State legislation had given the existing (Carpetbagger) governments authority to count election returns through their "Returning Boards," with what Professor Dunning calls justly "extraordinary facilities for fraud." These facilities were used quite as unblushingly as was intimidation of the Negro by the Southern Whites. As a result, several States saw conflicting governments, with brief civil wars. 1 The government at Washington repeatedly secured the victory of the Carpetbaggers, by the use of Federal troops; but this process became increasingly distasteful to President Grant and to the country. By 1875, Tennessee, Virginia, Georgia, and North Carolina had reverted to White rule; and the remaining Southern States did so in the election of 1876, or as an immediate result of the settlement following that remarkable election (§ 389).

389. Presidential Elections and Need of "Reform." — In 1872, the Republicans began to divide on the question of military rule in the South. The conviction was growing that the North needed its energies, too, to carry out essential reforms at home. A "Liberal Republican" Convention nominated Horace Greeley for the presidency, on a platform calling for civil-service reform and for leaving the South to solve its own problems. The Democrats accepted program and candidate; but they felt no enthusiasm for Greeley, — a life-long, violent opponent, — and the "regular" Republicans reëlected Grant triumphantly.

His second term, however, proved a period of humiliation for the simple-minded soldier. His confidence was abused basely by political "friends," and he showed himself a veritable babe in their unscrupulous hands. The public service had become honeycombed with inefficiency and corruption. In 1875 extensive frauds were disclosed whereby high officials had permitted a "Whisky Ring" to cheat the government of

<sup>&</sup>lt;sup>1</sup> For the curious and instructive situation in Louisiana in 1872-1873, see Dunning's Reconstruction, 217-219.

millions of the internal revenue. Babcock, the President's private secretary, was deeply implicated, and Grant showed an ill-advised eagerness to save his friend from prosecution, while he allowed the Congressional friends of the convicted criminals to drive from office the Secretary of the Treasury, Benjamin H. Bristow, with all his active assistants, in unearthing the frauds. In 1876, Belknap, Secretary of War, was found to have accepted bribes, year after year, for appointments to office in the matter of Indian affairs; and of course the Indian officials had paid the bribes and enriched themselves by robbing the Indians. The Democratic House (see elections of 1874, below) began impeachment proceedings; but Belknap resigned, and the President permitted him to escape punishment by hastily accepting the resignation. Grant had real sympathy with a movement then under way, for reform of the civil service (§ 415); but his most intimate friends and lieutenants in Congress, like the cynical Senator Conkling of New York, were bitter enemies of all reform, and in practice were permitted to embarrass well-meaning officers into resignation. In 1876, the President himself dismissed his Postmaster-General, - the only remaining member of his official family who showed a real interest in purifying the service.

Designing public criminals and such stock market pirates as Jay Gould and James Fiske (§ 392) sought Grant's company in hopes to use him for their infamous purposes. On a visit to St. Louis he was lavishly entertained by a member of the "Whisky Ring," and even accepted from him a present of a span of fine horses, "with oriental nonchalance." Low, however, as the honor of the government had fallen, no one imputes personal dishonesty to the President.

The long domination of one political party, almost exempt from effective criticism, had demoralized Congress, also. The transcontinental railway was completed in 1869, by the aid of enormous grants from the government.<sup>2</sup> The "Union Pacific"

<sup>&</sup>lt;sup>2</sup> This first transcontinental road was really built by government funds, though it was left private property. The Nation was so dazzled by the



<sup>&</sup>lt;sup>1</sup> Rhodes, VII, 184. Cf. context, and also Dunning's Reconstruction, 281-293.

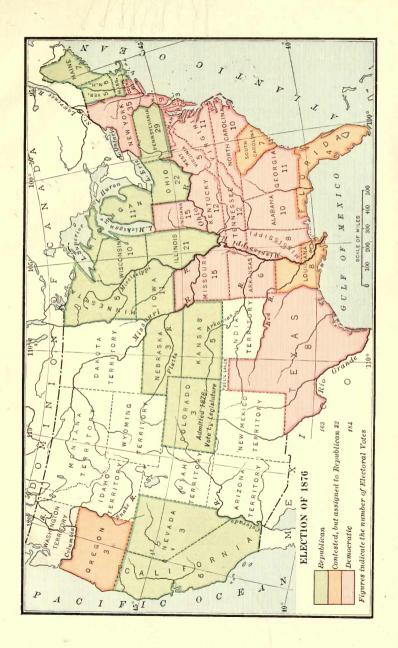
<sup>2</sup> This first transcontinental road was really built by government funds,

had been managed financially by a corporation known as "The Credit Mobilier." This organization gave stock, or sold it far below market value, to members of Congress, to secure their votes. In 1873, an investigating committee reported absolute proof against two Congressmen, excused various others on the peculiar ground (not creditable to their intellects) that they had not understood the intent of corruption, and left many others, even the Vice President, under grave suspicion of disgraceful motives. The public belief in the corruption of Congress was emphasized by the "salary grab,"—a scandalous act increasing the pay of members of Congress and applying to the past two years (cf. § 216, note) as well as to the future.

The elections of 1874 showed a popular revolt against these conditions by giving the Democrats a large majority in the lower House of Congress, and by placing them in control in several of the Northern State governments, even in that of Massachusetts. Then the presidential election of 1876 closed the long era of political reconstruction. The Democrats nominated Samuel J. Tilden of New York (a prominent reformer) and adopted a "reform" platform. The Republicans named as their candidate Rutherford B. Hayes of Ohio, and appealed

romance of carrying an iron road through nearly two thousand miles of desert that it neglected its own interests in the matter. The "Union Pacific"—the main line from Omaha to California—ran through "Territories." To this company, Congress gave (1) right of way; (2) twenty square miles of land along each mile of road; and (3) a loan of government bonds to the amount of fifty millions,—which was inadequately secured and never repaid. The road might have been built directly by the government at less cost.

<sup>1</sup> James G. Blaine, for many years preceding 1874 the Speaker of the House, and now the leader of the Republican minority there, had been a leading candidate. Shortly before the convention met, however, he was accused of complicity in the Credit Mobilier scandal. The evidence was supposed to be contained in letters from Blaine to a certain Mulligan. On pretense of examining these letters, Blaine got hold of them and never permitted them to pass again from his hands. He read parts from them in a dramatic "justification" of himself before the House; but the "Mulligan Letters" made this great "magnetic" statesman thereafter an impossible candidate for National favor, and added one more count to the disgraceful imputations under which public life in America suffered.



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chiefly to war-time prejudices by a vigorous "waving of the bloody shirt."

On the morning after election, papers of both parties generally announced a Democratic victory. That party had safely carried every "doubtful" Northern State (New York, New Jersey, Connecticut, and Indiana), and, on the face of the returns, they had majorities in every Southern State. In the nation at large their plurality was nearly as large as Grant's in 1868; and they claimed 204 electoral votes to 165.

But in Louisiana, Florida, and South Carolina, carpetbagger governments, hedged by the Federal bayonets, would have the canvassing of the returns, and they were promptly urged by desperate Republican politicians in the North to secure a favorable count. These officials proved easily equal to the emergency. On the alleged ground of fraud and of intimidation to Negro voters, they threw out the vote of enough districts to declare the Republican electors chosen. In Oregon, one of the Republican electors who had been chosen proved to be a postmaster; but the Constitution declares Federal officials ineligible to such position. In these four States, two sets of electors secured credentials from rival State governments or conflicting officials, and double sets of votes were sent to Washington. How should it be decided which sets were valid? The Constitution was unhappily vague. Congress could not easily agree upon a law, because the lower House was Democratic and the Senate Republican. Injudicious leadership

¹ Louisiana was perhaps the most trying case. There the Democratic ticket had a majority of more than 6000, spite of the fact that the carpet-bagger officials freely employed "perjury, forgery, and shameless manipulation of the returns before publication" (Dunning, Reconstruction, 316, on authority of testimony taken two years later by a Congressional Committee). They ignored the legal requirements for a Democratic member of the canvassing board and "threw out returns on vague rumor and unsupported assertion," while they "ignored technical irregularities in returns that favored Republicans, but used the same defects as a ground for rejecting returns that favored the Democrats." (Dunning, as above.) Such methods manufactured a Republican majority of 3500.

might easily have plunged the Nation again into civil war, which this time would not have been sectional. To elect Hayes, he had to be given every one of the disputed twenty votes. Any one of them would elect Tilden; and to reject both sets of returns from any State would have the same result.

Finally (January, 1877), Congress created the famous *Electoral Commission* of fifteen, to pass upon the disputes,—five members chosen by the House, five by the Senate, and five justices of the Supreme Court, of which last five three were Republicans. After many painful weeks, by a strict party vote, the Commission decided every disputed point in favor of the Republicans. The end was reached only two days before the date for the inauguration of the new President.

The "eight to seven" decisions became a by-word in politics, and they are generally regarded as proof that even members of the Supreme Court were controlled by partisan bias. But this discreditable result was more than offset by the notable spectacle of half a nation submitting quietly, even in time of such intense party feeling, to a decision that had the form of law. Rarely, in any country, has free government been subjected to such a strain—or withstood one so triumphantly.

The Democratic moderation was due in part to the fact that, in the closing days, the leaders had arrived at a secret understanding whereby the South was to reap much of the fruit of victory after all. This agreement, too, was in full sympathy with President Hayes' personal inclination, though presumably he knew nothing of it at the time. In accordance with it, he promptly removed the Federal garrisons. Then the State governments to which his election had been due immediately vanished, and were replaced by the rival Democratic governments. The South was to work out its salvation for itself as best it could.

390. The Courts and Reconstruction. — Throughout the Reconstruction period, Congress showed a high-handed determination to override the courts, as it overrode the executive. The Supreme Court had been increased to ten Justices. Five of these were appointed by President

Lincoln. To prevent President Johnson from filling vacancies, Congress reduced the number to eight, when two of the older justices died. From 1865 to 1870, the five Justices named by Lincoln made a majority of the Court.

As long as war lasted, the Court scrupulously avoided interfering with the President's extraordinary war powers. But, in 1866, by the decision in the Milligan case (§ 379) it sought to restore security for personal liberty in the future. The Radicals in Congress took alarm. They feared that the Court would proceed to demolish their program for military rule in the South. Stevens raved in the House: "That decision, though in terms, perhaps, not as infamous as the Dred Scott decision, is yet far more dangerous" (January 3, 1867). Suggestions were made for abolishing the Court, and Stevens introduced a bill to require a unanimous vote of the Court in decisions impairing the validity of an Act of Congress. The bill was not pressed to a vote, but, with some other like proposals, was held over the Court as a threat.

Under such conditions, the Court grew cautions. When President Johnson's reconstructed State governments appealed to it for protection against the military rule set over them by the Congressional Reconstruction Acts, it refused to accept jurisdiction, on the ground that in "political cases" it had no control; and in 1872 (in White v. Hart) it pronounced a sweeping approval of Reconstruction: "The action of Congress is not to be inquired into. The case is clearly one in which the judicial is bound to follow the action of the political branch of the government."

Later, however, the Court sought to revive constitutional theories which the war had overridden, describing the Nation as "an indestructible Union of indestructible States." The theory of State sovereignty was dead; but the doctrine of State Rights, essential to a federal form of government, was preserved. Indeed, in the Slaughterhouse Cases (1883) the Court restored to the States the control over their own citizens which the Fourteenth Amendment had been supposed to take from them.

The stress of feeling following the war showed that the Court might be subject to another form of control. February 7, 1870, it declared unconstitutional the Legal Tender Act of 1862 (§ 376), so far as that law made the "greenbacks" legal tender for a debt contracted before the passage of the law. Chief Justice Chase, who, as Secretary of the Treasury, had devised the law, wrote the decision, and the vote of the Court stood four to three. One of the eight Justices had just died, and Congress had provided also for one additional member. President Grant now filled both

places—the day this decision was handed down. Promptly a new case of like character was brought before the Court. This time the new Justices voted with the former minority, and the constitutionality of the law was upheld, five to four. Loud complaint was made that the President and the Republican Senate had "packed the Court," to secure this reversal; and an unfortunate feature of the business lies in the suspicion of influence by great corporations whose long-term bonds, about to expire, would have had to be paid in gold under the first decision, but which they now paid in the depreciated greenbacks—saving millions for corporation coffers. It is certain, however, that the nominations had been settled upon before the first decision had been made public. At the same time, the opinions of the nominees upon the controverted point were known; and the incident makes clear the dependence of the court, in times of great political excitement, upon the departments of government more immediately subject to popular control.

391. Excursus: The Negro Problem. — The blunders of Reconstruction, together with the tremendous natural difficulties of the situation, have left America burdened with a frightful race problem. On the political side, Southern Whites have continued to agree in the necessity for keeping the Negro from the polls, — at least wherever his vote might be a real factor, — and that race remains (1913) practically destitute of political privilege. To keep it so, there has been created and preserved for a third of a century "the Solid South," in close alliance with the Democratic party, without the possibility of natural and wholesome division upon other issues.

In 1890, the Republicans in Congress attempted to restore Federal supervision of congressional and presidential elections, in order to secure the Negro vote again for their party. The "Lodge Force Bill" failed, partly from the opposition of Northern capital invested now in Southern manufactures (§ 406), and partly from a new political alliance between the South and the Western "Silver" States. But the South took warning, and has attempted since to protect its policy by the forms of constitutional right. The States have adopted property qualifications and

<sup>&</sup>lt;sup>1</sup>Even the Chief Justice stated publicly his belief that the appointments were designed expressly to secure a reversal of the Court.

On the whole subject of the Court and the War, the interested student may consult Rhodes, Dunning, and Hart's Chase, 324-414.

educational tests for the franchise; <sup>1</sup> and then these qualifications, in practice, are invoked only against the Negro, not against the illiterate White. Sometimes the latter is protected further by the notorious "Grandfather clause," expressly declaring that the restrictions shall not exclude any one who could vote prior to January 1, 1861, or who is the son or grandson of such voter. So plain an evasion of the Fifteenth Amendment might be declared unconstitutional by the Supreme Court; but great reluctance is felt, even at the North, to interfere again in State control of the suffrage.

One other feature of the situation concerns the North more directly. In 1888, Kansas and South Carolina had the same population, and accordingly the same representation in Congress; but South Carolina cast only one third as many votes as the Northern State. This contrast has led Northern politicians sometimes to threaten to deprive the South of part of its power in Congress, under the provisions of the Fourteenth Amendment. Such proposals, however, have ended in talk, — as have the corresponding threats from the South to repeal the Fifteenth Amendment.

On the side of civil equality, the Fourteenth Amendment is even more a dead letter. Just at the close of Reconstruction (in 1875), Congress made a final attempt to secure for Negroes the same accommodations as for Whites in hotels, railways, and theaters. In 1883, however, the Supreme Court declared the law unconstitutional so far as it overrode State authority. Accordingly, the two races in the South live without social mingling.

The Whites indeed are even more a unit on the policy of excluding the Negro from social than from political equality. The special cry of the South is "race integrity." Intermarriage, it is insisted, shall not be permitted. Therefore there must be no social intercourse on terms of equality. Many noble leaders of the Negro race, too, like Booker Washington of Tuskegee and Charles Moten of Hampton Institute, desire

<sup>&</sup>lt;sup>1</sup>Mississippi led off (1890) by prescribing payment of a poll tax and the ability to read or *understand* the Constitution. Only 37,000 of the 147,000 adult Negro males could read; few of these paid the tax; only 8615 registered for the next election.

social segregation for the present,—but with a difference. To the White, Negro segregation means Negro inferiority. On the other hand, these leaders are eager for separate cars and separate schools for their people as a necessary step to help the Negro to "find himself"; but they insist that the "Jim Crow car" shall be cared for and equipped as well as the car for Whites who pay the same rates, and that Negro schools shall receive their proportion of State funds and attention. As yet, this goal remains far distant. The governing class does not feel responsibility for those to whom it denies the power to care for themselves.

392. The Depreciated War Currency, 1865–1879. — For some years after the war, the half billion of Treasury notes and the third of a billion of National bank notes made the only money in circulation. Paper money was still depreciated, and prices were correspondingly inflated. In 1868, the Secretary of the Treasury began to redeem four million dollars of the paper each month. This "contraction of the currency" was believed, however, to threaten "hard times" and to profit the monied classes at the expense of debtors; and, in 1868, Congress put a stop to the process, — with 356 millions still outstanding. These notes were worth then 80 or 83 cents on the dollar, and they were subject to fluctuations in value according as the Wall Street speculators forced gold up or down.<sup>2</sup>

To preserve National credit, the Government paid the interest on all its bonds in gold; but, under such conditions, even this very proper policy had its repulsive side. The man who earned fifty dollars in the

<sup>&</sup>lt;sup>1</sup>The most complete recent study of the Negro problem is Hart's *The Southern South*.

<sup>&</sup>lt;sup>2</sup> In the summer of 1869, Jay Gould and "Jim" Fisk made the extreme attempt to corner gold, driving it, on Black Friday, to 162. The Secretary of the Treasury averted the ruin of business interests, and overwhelmed the pirates of finance, by suddenly throwing upon the market many millions of the government's gold reserve. That the government should possess such control over the business of the country, capable of exercise in either direction, seemed ominous, however, to many people, and gave a sinister meaning to attempts by Gould and Fisk shortly before to cultivate an intimacy with President Grant (§ 389).

field, or who received that amount as interest on a small loan, had to take his pay at its face in paper; but the wealthy holder of a government bond, to whom fifty dollars of interest was due, could exchange his gold for sixty or seventy dollars in paper. Accordingly, the Democratic platform of 1868 demanded "one currency . . . for the producer and the bondholder," and urged that the government should pay its obligations in greenbacks except where the bond specifically named gold.

Another kind of wrong was more serious. When paper money was worth fifty cents on a dollar, let us say, a farmer had mortgaged his two-thousand dollar farm for half its value, receiving \$1000 in greenbacks, or \$500 in gold. Now, as paper appreciated, approaching par, prices fell, until the farm was worth perhaps only \$1000 in all, and the farmer must pay all of that to redeem. His property was halved, or his debt doubled, by the juggling tricks of varying currency. Many men, who saw the abuse clearly, jumped at a deceptive remedy. Local "Greenback" parties arose, to demand "fiat money" as a permanent policy. In 1876, the organization became national, with a candidate for the Presidency; and two years later, it cast a million votes. Then it faded away before successful "resumption" (§ 428).

Meantime the Republican party stood forth victoriously against all these vagaries as the champion of national credit and the "resumption of specie payment." In 1875, Congress provided for the accumulation of a gold reserve for that purpose, from the sale of bonds and from surplus revenues; and January 1, 1879, the Treasury announced its readiness to exchange gold for its greenbacks. Paper money rose at once to par, and no one cared longer to make the exchange. A third of a billion remained in circulation; but notes are now redeemable on demand, and are "as good as gold."

- 393. Foreign Relations. All general phases of internal development, except the one temporary matter treated in the preceding section, merge into the next period. Two incidents connected with foreign relations, however, can best be noted here.
- a. France in Mexico. During the War, England, Spain, and France united in a military "demonstration," to secure from Mexico the payment of debts due their citizens. England and Spain soon withdrew from the movement; but Napoleon III of France proceeded to establish Maximilian, an Austrian Archduke, as Emperor of Mexico, and to maintain him there by a French army, in spite of vigorous protests from Washington

against this infraction of the Monroe Doctrine. At the close of the war, American troops were massed on the Rio Grande; and Secretary Seward renewed his representations. Napoleon withdrew his army. Then the "Emperor" was captured and shot by the Mexican Republicans (1867).

b. Alabama Claims. — Much bitterness was still felt toward England for her government's conduct in the matter of the Alabama (§ 378). But in 1867 a franchise reform in that country put power at last in the hands of the workingmen, who had all along been friendly to the Union, and a new British ministry showed a desire for a fair settlement between the two nations. In the Treaty of Washington (1871), England apologized gracefully for any remissness on her part in permitting the Confederate cruiser to escape, and the question of liability for damages was submitted to arbitration.

A Tribunal of Arbitration met at Geneva, — one member appointed by each of the five governments, the United States, England, Switzerland, Italy, and Brazil. At first the American government claimed "indirect damages"—for the cost of pursuing the Alabama, the longer continuance of the war, and the increased rates of insurance on merchant shipping. The Tribunal threw out these claims; but it decided that England was responsible for damages to American commerce committed directly by the Alabama, because of England's lack of "due diligence" in preventing her escape. England paid to the United States the award of \$15,500,000, to be distributed by us to the owners of destroyed property. The amount proved to be excessive, since claimants for much of it could never be found; but the settlement was honorable to both nations, and it made the greatest victory up to that time for the principle of arbitration.

For Further Reading.—Dunning's Reconstruction ("American Nation" series); Rhodes' History, V-VII; Woodrow Wilson's American People, V; Brown's Lower South, 191-271; McCall's Thaddeus Stevens, 239 ff.; Hart's Chase, 319-435; McCarthy's Lincoln's Plan of Reconstruction.

<sup>&</sup>lt;sup>1</sup> Another dispute between England and the United States concerned the proper dividing channel in Vancouver Straits on our Northwestern boundary. The Treaty of Washington also referred this to the German Emperor for settlement. The Emperor favored the American contention, and gave us the disputed island of San Juan.

Source material, as before, in Hart's Contemporaries, IV, and in McDonald's Select Statutes.

Illustrative material: The best story for the Southern side is Thomas Nelson Page's Red Rock, which every Northern student should read. Mention is due, also, to Tourgee's A Fool's Errand, Cable's John March, and Octave Thanet's Expiation.

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# PART IV

# THE PEOPLE VS. PRIVILEGE

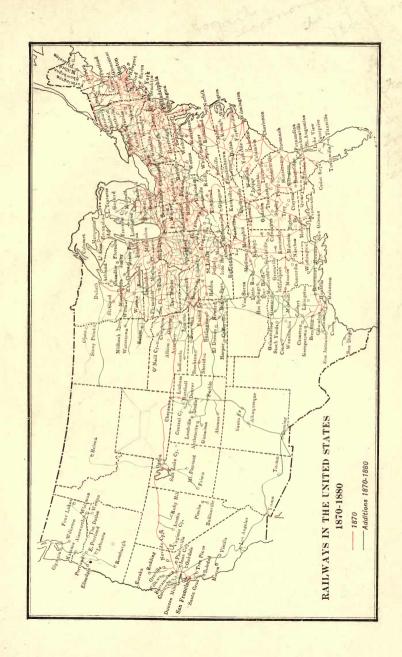
"The fundamental division of powers in the Constitution of the United States is between voters on the one hand and property owners on the other. The forces of democracy, on one side, divided between the executive and the legislature, are set over against the forces of property on the other side, with the judiciary as arbiter between them."—ARTHUR T. HADLEY (President of Yale), in The Independent, April 16, 1908.

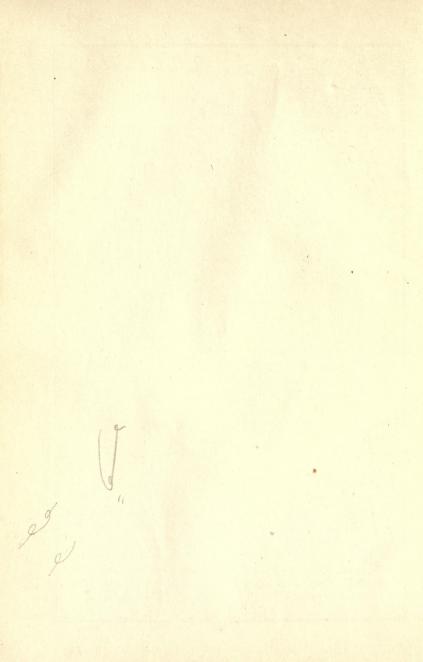
# CHAPTER XVI

#### A "BUSINESS AGE"

394. General Phases.—The thirty-six years since Reconstruction (1876-1912) belong to "contemporary history." Leading actors are still living, and causes and motives in many cases are still unrevealed. Any narrative is necessarily sketchy: and yet just this history concerns us most deeply.

The period has been taken up mainly with industrial and economic development. Wealth has multiplied enormously, and has been concentrated in a few hands, with far-reaching domination over politics and over the daily life of every citizen. In practically every State one or more groups of capitalists have grown up, holding or hoping for special privileges. These groups (sometimes without seeing the full tendency of their acts, but often deliberately) have set themselves to fill legislatures and courts and governors' chairs with their creatures and to intrench themselves behind laws and constitutions framed for their advantage. Above these several groups, other groups of greater capitalists, controlling the whole network of capitalistic combinations, have come to stand in like relation to the Union. The forms of popular government remained; but, for some decades, the people permitted real mastery, in city, State, and Nation, to slip from their own hands to





a narrow plutocracy, which fed itself fatter and fatter at the general expense, and which, too often, made the trusted "representatives" of the people into its obedient errand boys.

Combination in the management of industry follows naturally from modern facilities like the railway and telegraph. It makes possible the use of costlier machinery, utilizes former wastes into by-products, and saves labor of hand and brain. This tendency ought to have meant a coöperative saving for all: in actual fact, it has meant too often a monopoly privilege of plunder for a few. The problem of the age is to secure the proper gains of inevitable and wholesome combination and at the same time to restore to the individual his industrial and political liberty.

### I. RAILROADS

395. Extension. — The four years of war checked railway extension (§§ 290, 362); but the last five years of the sixties almost doubled the mileage of the country. The new lines were located mainly in the Northwestern States and Territories; and they were busied at first only in carrying settlers to the moving frontier, and then soon in bringing back farm produce. From 1873 to 1878, construction was checked again by one of the periodic business panics. Then by 1880, another almost fabulous burst raised the mileage to 92,000, and the next ten years nearly doubled this, - to 164,000 miles. 1890, expansion has been less rapid; but the next twenty years (to 1910) raised the total to 237,000 miles. Since 1880, America has had a larger ratio of railway mileage to population than any other country. Railroads represent one seventh the total wealth of the Nation, and employ more than a million men.

The eighties witnessed also a transformation in the *old* railroads. Heavier steel rails, thanks to the Bessemer invention, replaced iron. This made possible the use of heavier locomotives and of steel cars of

<sup>&</sup>lt;sup>1</sup> It was this same invention that made possible also a transformation of cities in exterior, and in character of life,—a change symbolized by the replacement of the old four or five-storied buildings by the new steel ten-to-thirty-storied structures.

greater size; and this improvement called in turn for straightening curves, cutting down grades, and bettering bridges and roadbed. A huge amount of capital became "fixed" in these changes; but they greatly reduced the cost of transportation to the companies.

Many safety appliances, too, were forced upon the roads by law. But the loss of life upon them remains a blot on American civilization, —far greater than the relative loss in any other country. Data on this matter were first collected in 1888; but since then the accidents have doubled. In 1905, the roads killed 9703 people, and injured 86,006. The Cuban War was less costly. For trainmen the danger is especially appalling. One out of every 133 was killed in that year; and one of every 9 was mained. This horrible destruction of life is due in part to the rush and recklessness of American society; but it has important specific causes, such as the "economical" continuance of "grade crossings," even on crowded streets, and the cruel practice of compelling employees to work overtime—until senses become dulled and incapable of responding quickly. In 1907, Congress prohibited more than sixteen hours continuous service for men engaged in carrying interstate commerce.

396. Consolidation. — More significant than these physical changes was the consolidation of management. In 1860, no one company reached from the seaboard to Chicago, or controlled more than 500 miles of road. One short line led to another, and so to another, with awkward gaps, or annoying and costly transfers, and with corresponding changes in rates and schedules, and perhaps even in width of track. By 1880, gaps had been filled, gauges unified, and small lines grouped into a much smaller number of larger systems.

Consolidation was a business necessity. Construction had far outrun demand; and the greatest burden of cost had had to be borne while there was still little business. For that little, the roads were driven to ferocious competition. Consolidation ended the worst of this cutthroat process, and also made a more economical management possible.



<sup>&</sup>lt;sup>1</sup> Thus the Pennsylvania Road ran from Philadelphia to Pittsburg. In 1869, it bought up the Fort Wayne line, reaching to Chicago; and by 1875 it had absorbed other lines, giving it terminals in St. Louis, Cincinnati, and New York.

The panic of '73 was essentially a railroad panic. Before '78, half the mileage of the country had been sold under the hammer or had passed into the hands of "receivers," to be managed for the creditors. This condition gave special opportunity for the absorption of weak lines by strong ones.

Railroad presidents explained the panic on this ground of over-investment. Another cause, of which they said little, was over-capitalization. The operating companies really were poor; but, as the people saw, the men who had built the roads had become fabulously rich. Often they had put in practically no money, — building the roads from National or State grants, 1 or with money borrowed by bond sales, secured on the future road. Then they had sold stock, to any amount which they could persuade a credulous public to buy, pocketing the millions of proceeds, and leaving the corporations upon which they had "unloaded" to extort in rates from the people the interest not only on the legitimate investment, but also on this "watered stock."

397. Watered Stock. - When the stock and bonds of a corporation equal the money actually invested, the value is fully "capitalized." To make the legitimate investment "pay," it must secure an income sufficient to pay good interest on this capitalization (the rate varying somewhat according to the certainty or risk of the investment), together with adequate salaries and other running expenses, and also to set aside a fair amount to cover "depreciation" (as in the wearing out of engines or their passing out of use because of better inventions). Whenever more capital is put into improvements, it is proper for a board of directors to sell more stock or to issue more bonds, representing the increased value. But to sell more stock or bonds upon an old investment already fully capitalized is to dilute values improperly, and is a fraud upon either the purchasers or the public, - usually the latter, since it is compelled to pay interest on this "water." If the improvements are paid for out of profits (above the normal dividends) instead of out of new capital, then the public is just as much defrauded - since it

<sup>&</sup>lt;sup>1</sup> Before 1873, more than 150 millions of acres had been granted to railroads out of the public domain (about as much as passed to settlers under the Homestead Act up to 1900), besides lavish "bounties" paid by rival towns along possible routes. In 1872, every party platform demanded that such National grants cease; and some years later, President Cleveland's administration enforced the forfeiture to the government of many grants, for nonfulfilment of contracts by the companies.

really furnishes the capital at the time in unreasonable charges, and the dividends upon it afterward in a continuation of such charges.

The public-service corporations, like railroads and city lighting-companies, have peculiar facilities in selling such over-issues of stock because of the monopoly privilege conferred upon them by society. "watered stock" upon which dividends can really be paid, represents monopoly, natural or artificial. Whenever dividends become so large as to incur danger from popular indignation (say 12 per cent), it has been the practice of public-service corporations to disguise their profits by issuing more stock (each holder receiving perhaps two shares for one). The company then claims the right to charge enough to pay a "reasonable" dividend of at least 6 per cent upon this "water," urging especially the rights of "widows and orphans" who have acquired stock by innocent purchase. Such dividends represent an unreasonable tax upon the community, including multitudes of other widows and orphans, who are forced to pay higher prices for almost all commodities. Over-capitalization of corporations is unquestionably one cause of the "increased cost of living" which has marked recent years. Until quite lately, little attempt was made to prevent stock-watering, and public control is not yet efficient. In general, when the "water" has once been marketed, the courts have protected the corporations in their claims to dividend-paying rates.

398. Pooling and Discriminations. — The first period of railway consolidation closed about 1880, with some 1500 lines still doing business. From time to time, to prevent ruinous ratewars, the lines within a given territory (say between Chicago and the Atlantic) now adopted the device of throwing their earnings into a common "pool," to be divided later according to some set ratio. This method was characteristic of the eighties. It restored the railroad to its natural position as a monopoly.

Rates on freight did fall, but not so fast as did the cost of transportation to the companies. At the close of the Civil War the average rate for one ton for one mile was about 2 cents (gold value). By 1877, it was  $1\frac{3}{5}$  cents; five years later,  $1\frac{1}{4}$ ; and by 1900 only  $\frac{3}{4}$  of a cent. But, in spite of the apparently low average, many localities paid much higher rates. Moreover, long hauls in trains of car-load lots (as in hauling Montana cattle to Chicago, or Kansas wheat to New York) cost

the railroads so much less than small local business that they make large profits even at the lowest rates used, while, on the other hand, even those "low" rates confiscate the inland farmer's profits. As the country grew in population and production, railway profits became great enough to permit high dividends upon even the watered stock, after wasteful management.

In fixing rates for localities where one road controlled the freight business, the maxim early became "all the traffic will bear." The road, existing by virtue of a franchise from the people, and sometimes built by other gifts from the people, extorted from the people all their surplus profits above what it seemed advisable to leave them in order to induce them to go on producing more freight. Roads used their power, too, to destroy one city and build up another, sometimes perhaps to gratify caprice or to afford opportunity to those "on the inside" for profits in real estate, but more commonly "in the regular course of business." Often they favored large cities at the expense of small ones, and gave lower rates to large shippers than to small ones.

- a. The two statements in the last sentence can be readily illustrated. Faribault, a town of seven thousand people, is situated on a road from Chicago to Minneapolis, and is 65 miles nearer Chicago than Minneapolis is; but freight from Chicago to Faribault was as high as on the same goods right through Faribault to Minneapolis and back again to the smaller town. Such practice was general. It built up the large centers, but drove mills and factories away from the small ones by artificial pressure. It was the first method to which the people woke up, out of many methods by which organized wealth had begun to govern the lives and everyday fortunes of individuals and communities.
- b. Farmers were subjected to a particularly irritating discrimination. The land grants to railroads were in the form of alternate sections. Farmers had settled the intervening sections, and thereby added value to the railroad lands, which, still unsold, kept the settlers unduly scattered, with all the disadvantages that followed such an arrangement. When the lands had become sufficiently valuable, they were sold in large amounts to "bonanza kings," who were then given better rates in shipping produce than were the poorer settlers about them. The worst abuses, however, of this discrimination between individuals were found in the cities, though they were there more secret, and though the companies were sometimes their unwilling victims themselves. To obtain the business of great shippers, they felt compelled to submit to demands for secret and lower rates; and sometimes they even obliged such a shipper by imposing a

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Treamered territory particularly high rate upon a competing shipper. Thus at one time the

growing Standard Oil Company ordered a railway to "give another twist to the screw" upon a rival oil company which it desired to put out of business. 399. Attempts at State and National Regulation. - For long.

the intense desire for railway advantages prevented serious attempts at public regulation of these abuses. Only by slow degrees, indeed, did the public as a whole awake to their existence. In the early seventies, however, appeared organizations of Western farmers, known as "Patrons of Husbandry," or Grangers,1 for the special purpose of doing away with railroad abuses. In 1871, Illinois established a State Railway Commission, with power to fix rates and to prevent discriminations. This example was followed promptly in Iowa, Wisconsin, Minnesota, and several other Western and Southern States; and much other restrictive legislation was enacted.

Much of this legislation was unreasonable, no doubt. It was enacted in the dark, because the roads refused to make public any information about their business; and sometimes it was infused with a bitter spirit of retaliation. The companies made it for the most part ineffective, by securing delays in the courts, the judges of which they had secretly assisted to appointment or election, or had influenced by free passes and other disgraceful favors. They bulldozed timid business interests, too, against even proper regulation, by ceasing railway extension, or threatening to cease it; and most of the legislation was finally repealed. Railway Commissions, however, are found now in nearly every State. cases their authority is limited to investigating charges and giving publicity to conditions; and in some unhappy instances they have become merely the creatures of the corporations they are elected to restrain.

<sup>1</sup> Each local organization was called a "grange." The Grangers were the first workingman's party outside the cities; and the movement represented a wholesome tendency to turn away from the spectacular work of ruling the distant South, in order to take up pressing problems nearer home. In 1872, too, a Labor party and a Prohibition party achieved National organizations.

The Grangers had a social and economic as well as a political side. One of their attempts was to build up a system of cooperative elevators to store grain.

RAILWAY PROBLEMS

At first, the Supreme Court seemed favorably inclined toward the Granger legislation; but in 1886, it decided that a State could not legislate regarding the carriage of goods billed to another State, even for that part of the journey within its own borders. This decision ended all prospect of effective regulation of railroads by the States.

So far Congress had refused to act. Now, National control seemed imperative; and in 1887 the Interstate Commerce Act forbade pooling, secret rates, discriminations of all kinds (including especially a higher rate for a short haul than for a longer one on the same line, when the shorter distance was included within the longer, except under certain peculiar conditions of competition), and created a Commission of five persons to investigate complaints and punish violations of these provisions.

400. Failure to Preserve Competition. - The roads now abandoned pooling for "rate agreements" and for a new period of consolidation, and so continued the old process under new names. The former period of consolidation had united short lines into "trunk" systems, several still in one territory: the new tendency was to consolidate all the trunk lines of a given territory into one system. By 1895, the number of separate lines was less than 800, of which some forty included more than half the mileage of the country. In 1897-1898, two decisions of the Supreme Court declared any rate agreement a "conspiracy in restraint of trade," which had been made illegal under the Sherman Anti-trust Act of 1890 (\$ 410). This merely hastened further consolidation, so that by 1904 all the important lines were controlled by seven or eight groups of capitalists. In 1904, the Court made a futile effort to stop this movement by declaring the consolidation of parallel lines of illegal (Northern Securities Case) under the same Anti-trust Act. But, once more, combination to avoid competition was merely driven to another disguise. The groups of capitalists

binations of Justices that mere in

<sup>&</sup>lt;sup>1</sup> The Court was just then in the full swing of its disposition to maintain State Rights against the Reconstruction policy of Congress (cf. § 390),

no longer consolidate the stock of different companies into one, with one board of directors; but they exchange among themselves the stock of the different companies which they control, and memberships in the different governing boards, and so maintain a community of ownership and management.

401. The Commission shorn by the Courts. - For a time, in regard to other abuses, the Interstate Commerce Act seemed to promise a better day. The roads, however, persistently evaded or disobeved the law: and its main intent was soon nullified by decisions of the courts. Congress meant to make the Commission the final authority as to facts, leaving to the Federal courts only a power to review the decisions, on appeals, as to their reasonableness upon the basis of those established facts. The courts, however, determined to permit the introduction of new evidence on such appeals. This meant a new trial in every case, and destroyed the character of the Commission. The Commission was hampered, too, by various decisions of the courts - as by one which set aside its authority to compel the companies to produce their books. As the veteran Justice Harlan declared indignantly, in a dissenting opinion, the Commission was "shorn by judicial interpretation of authority to do anything of effective character." In 1898, the Commission itself formally declared its position "intolerable."

∆402. The Hepburn Act of 1906 sought to revive the authority of the Interstate Commerce Commission, which was now impowered to fix "just and reasonable rates," subject to review by the Federal courts. The law also forbade roads (1) to grant free passes, (2) give "rebates" of any sort, or (3) carry their own produce. These prohibitions should be briefly discussed.

a. Lavish grants of passes, good for a year, and renewed each New Year, extending sometimes to free travel across the continent and back, had been one of the most common means of indirect bribery of legislators, congressmen, newspapers. Sometimes a judge traveled on such a pass to the court when he tried cases in which the railroad was a party. Apart from the corrupting influence of the practice, too, the public had of course to pay for the passes in higher rates. In this matter Congressional prohibition was preceded by similar prohibition in many of the States; and this reform is probably really established.

b. Rebates had long been one of the chief methods of evading the Interstate Commerce law against discriminations. Certain favored ship-

pers, no longer given better rates than their neighbors directly, were still given secret rebates in coin, or, still less directly, were allowed to falsify their billing of freight, so as to come under a lower legal rate, or were paid unreasonable allowances for themselves storing or handling freight, or for the rent of private cars furnished by the customers. The receivers of the Baltimore and Ohio Road in 1898 testified that more than half the freight of the country was still carried on discriminating rates. Says Professor Davis R. Dewey (National Problems, in "American Nation" series, 103): "The ingenuity of officials in breaking the spirit of the law knew no limit, and is a discouraging commentary on the dishonesty which had benetrated to the heart of business enterprise;" and one of the great railroad presidents mourned, in 1907, that good faith had "departed from the railroad world." When company and shipper agree in trying to deceive the authorities in such a matter, proof is exceedingly difficult; and it is too much to suppose that the more stringent provisions of the Hepburn Act have done away with this demoralizing and infamous practice. admirable State Railway Commission of Wisconsin, however, backed by the remarkable legislation of that State, seems to have completely abolished the evil in one State of the Union.

- c. Certain Pennsylvania Roads owned the most important coal mines of the Nation, and paid themselves what they pleased, out of one pocket into another, for carrying coal to market, so excusing themselves for a higher price to the consumer. The last prohibition referred to above (3) attempted to stop this practice. So far, the attempt is fruitless. The United States Steel Corporation mines iron in northern Minnesota. In deference to the Hepburn Act the Corporation is not also a railroad corporation; but the same group of capitalists under another name own railroads (on the "community of interest" method) which carry the ore to market at extravagant rates.
- 403. Recent Phases. In 1906–1908 a new series of attempts were made, over widely spread sections of the Union, to secure a two-cent passenger rate and lower freight rates by State legislation, on travel and commerce wholly *intrastate*. Many of these laws have been nullified as confiscatory by the courts. On the other hand, in 1910, Congress once more attempted to strengthen the hands of the Interstate Commerce Commission, and created a new *Court of Commerce*, to hear appeals

<sup>&</sup>lt;sup>1</sup> The bill, as originally approved by President Taft and his cabinet, was a shrewd design to undermine whatever authority remained in the Commission. The measure, it seems most probable, had really been dictated by

from it. It is yet too early (1913) to speak positively of the workings of this law. But, the same fall, when the roads tried to get permission from the Interstate Commerce Commission to raise existing rates (on the ground that the higher prices of recent years increased their operating expenses), the Commission was able to forbid the change. On the other hand, when the Commission, later in the year, after careful investigation, ordered lower rates on Western traffic (where abuses had long been notorious), the commerce Court promptly nullified their action.

After this forty years of failure in public control, there are still many people who do not see why a railway should not be as free to charge one shipper more and another less as is a shoe manufacturer to sell to one retailer cheaper than to another. The distinction between private business, open to all on the same terms, and the business of a common carrier existing by right of a grant from the Commonwealth is always recognized both by common and by statute law. Attempts at public regulation of these mighty agencies, however, have proved so futile for almost two generations that many thinkers are turning to the alternative of public ownership.

#### II. NATIONAL GROWTH

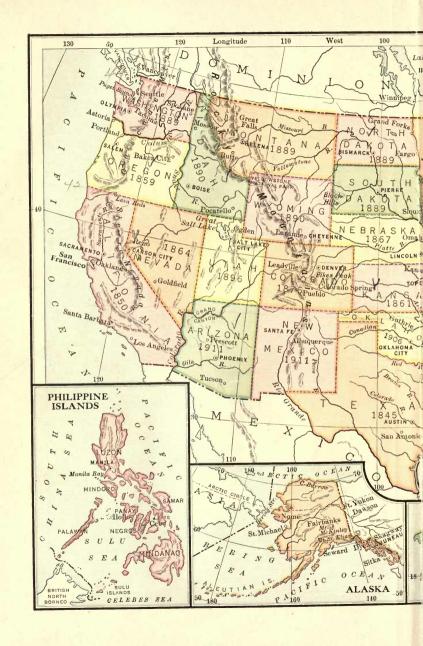
**404.** Population. — Reconstruction practically came to a close with the centennial of the Republic. The Union then consisted of *thirty-eight States*. Kansas had been admitted in 1861, Nevada in 1864, Nebraska in 1867, and Colorado in 1876. In 1867, too, the public domain was augmented by 600,000 square miles (since found rich in coal and gold), by the purchase of Alaska from Russia. Between 1860 and 1880, population rose from 31 millions to 50 millions. One fourth the gain during this twenty years ( $5\frac{1}{2}$  millions) came from immigration. The urban population (one sixth in 1860) rose to one fifth the whole in 1870, and one fourth in 1880. During the same twenty-year period wealth multiplied two and a half times, despite the ravages of war.

railroad interests. But its weak and misleading features were exposed mercilessly and effectively by the gallant group of "Insurgents" (§ 457) in Congress, and the people made an irresistible demand for some real increase in protection against transportation monopoly. The bill as it passed was a wholesomely transformed measure.

<sup>1</sup>The following comparison of per capita wealth for different sections at two periods is instructive:

North Atlantic States						South Atlantic		Western		
	1860			\$528		\$537 (including slav	es)			\$434
	1890			1232		579				2250

Lincoln, Lasfield, me Kind Vice Presidents succeeding One about fire.





and the same of th 17 In the thirty years that have followed, this growth in wealth has been accelerated. The rate of growth of population for each decade, it is true, has slowly declined; but the total rose by 1890 to  $63\frac{1}{2}$  millions; by 1900 (not including the eight millions in the new possessions acquired in the Spanish War) to  $77\frac{1}{4}$  millions; and in 1910, to  $93\frac{1}{2}$  millions. The city population in 1910 had risen to almost one half of the whole (46.3 per cent). Farmers, formerly the dominant element in the population, now make less than one third.

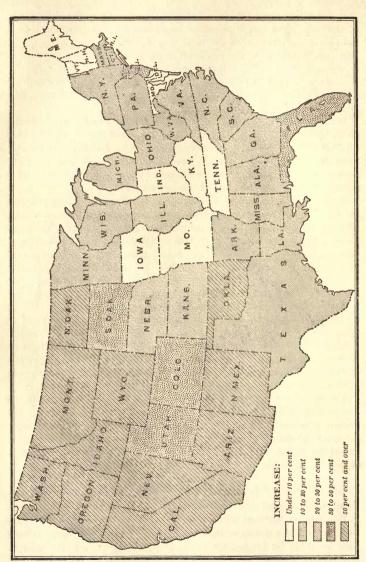
Immigration, it will be remembered, received a remarkable impulse about 1850. The panic of 1857 and the war checked it seriously; and not till 1873 did the annual increase from this source rise again to 400,000. Then came another falling away, from the industrial depression of the next years. But in 1883, the newcomers numbered three fourths of a million, and the year 1905 passed the million mark.

Until 1890, the character of immigration remained essentially as before the Civil War, — with an increase of the proportion of Scandinavians, who settled mainly in the Northwest. But since that year, more and more, the immigrants have come from Southern and Eastern Europe, — Italians, Russian Jews, Bohemians, Poles, Hungarians. A large part of these Southern European immigrants are illiterate and unskilled, with a "standard of living" lower than that of American workingmen. In 1880, they made only one twentieth of the immigrants; in 1900, they made one fourth; and the proportion is constantly increasing. Unlike the earlier immigrants, they settle mainly in the seaboard cities and in other great manufacturing centers, and add rapidly to the European character of the growing proletariat there. Meanwhile, the rapid decrease in the birthrate of families of the older American stocks (especially of the New England stock) alarms many observers, who raise the cry of "race-suicide."

A curious fact is revealed by the census of 1910. Population in the agricultural Middle West (so long the scene of most rapid growth) has become practically stationary; while the old East (in its manufacturing districts) and the far West share between them the most rapid gains. It should be noted, too, that though the West has the largest percentage of gain, the East has gained far the most in actual numbers.

405. States and Territories.—In the eighties, the increase of population was still most characteristic of the new communities in the West. In the Dakotas, districts without a settler in March were perhaps organized and settled counties in November. Soon North and South Dakota were knocking for admission into the Union. The Democratic strength in Congress, however, was unwilling to admit more States so certain to

find real



RATE OF INCREASE OF POPULATION FROM 1900 TO 1910.

reinforce the Republican party. They had more hopes for themselves in Montana and Washington; and, in 1889, a compromise "omnibus" bill admitted all four States. The next year, the Republicans, now in full control, with equal partisanship, hurried the admission of Idaho and Wyoming with a population too small to entitle them properly to representation in Congress.

The Mormons in Utah had long ceased to hope for the isolation they had sought in the desert. In 1862 (and more effectively in 1882) Congress prohibited polygamy in that Territory, and dissolved the Mormon church as a corporation. In 1890, the Mormon authorities renounced polygamy as a doctrine; but, from suspicions of good faith, the Territory was refused admission as a State, though it possessed a population of over two hundred thousand people. In 1896, however, it was finally admitted, with a State constitution forbidding plural marriages.

The admission of Utah raised the number of States to forty-five, where it stood for eleven years, until the admission of Oklahoma (1907) 1 with a constitution remarkable for its democratic experiments. and New Mexico were the only remaining Territories on the continent. Congress planned to admit them together; but Arizona placed the recall (applicable even to judges) in her constitution, and statehood was delayed for some time on that account. After several failures, a bill for admission passed Congress in the special session of 1911, with a provision requiring the people of the Territory first to vote once more upon this clause of their constitution, but leaving the final determination in their hands. President Taft vetoed this bill; and, at his insistence, statehood was offered only on condition that the people should first vote down the recall provision.2 This was done, in December of the same year. But, at the same election, anti-administration officials were chosen for the new State and all the leaders of the Territory proclaimed in advance that, statehood once secured, they would work to restore the recall to the constitution. This threat has since been made good (November, 1912). The admission of these two States (1912) leaves a solid block of forty-eight States in the vast region bounded by the two

<sup>&</sup>lt;sup>1</sup> In 1874, a strip of the "Indian Territory" was organized as the Territory of Oklahoma. In 1907, the two districts were reunited in the new State.

<sup>&</sup>lt;sup>2</sup> Many people who personally disbelieved in the recall were hotly indignant at this attempt to "bribe" a whole people into stultifying itself. This indignation played a part, a few weeks later, in a striking vote for the recall in the great State of California (§ 463).

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oceans, east and west, and by Canada and Mexico north and south. Ere long, no doubt, the United States will be confronted with demands for statehood from distant possessions,—Alaska, Hawaii, or Porto Rico.

406. The New South, no longer distracted by political reconstruction, began to reap its share of the industrial development. The long-neglected advantages for cotton manufacture were first seized upon. Mills (built first by Northern capital) arose along the "Fall Line"; and cheap labor was found by inducing the "Poor Whites" of the neighboring mountain folk to gather in factory villages — where the families might live on the unaccustomed earnings of their children. The low standard of living, and the absence of legal restraint in the South on long hours of labor or on employment of young children, made manufacturing particularly profitable in this region, — where it reproduces still (1913) the shameful conditions which England and the North outgrew half a century ago. By 1880, the output of Southern factories was one fourth that of New England.

The new spirit of enterprise began also to make use of the mines and forests of the South. In particular, attention turned to the vast mineral region stretching from West Virginia through Tennessee into northern Alabama — 700 miles long and 150 wide, — rich in coal and iron. By 1880, Alabama was sending pig iron to Northern markets, and soon she became herself one of the great centers of steel manufactures.

Thus the old agricultural South has been transformed into a new South of diversified industries. And even agriculture has been transformed. Just after the war, attempts were made to cultivate huge plantations of the old type with gangs of hired Negroes. This proved a losing venture; and soon the great plantations began to break up into smaller holdings rented on shares to Negroes or to Poor Whites. These renters have been growing rapidly into owners. The Negro's wholesome ambition to own a farm promises to be a chief source of industrial and social salvation to his race and to the whole South.

## III. "BIG BUSINESS"

407. Business Immorality. - In the decades following the Civil War, an amazing lack of morals became increasingly noticeable in business. The tendency, too observable before the war (§ 366), had been strengthened by the flaunting success of corrupt army contractors, and was fostered no doubt for years afterward by the gambling spirit begotten of an unstable currency and of the spectacle of multitudes of fortunes made over night in the oil wells of Pennsylvania 1 or in the new mining regions of Nevada, Colorado, Idaho, and Montana. In later years, too, the tremendous power over credits possessed by railroad kings and other heads of great consolidations of capital has tempted them constantly from their true functions as "captains of industry" to play the part of buccaneers in the stock market. Unreasonable profits, too, in the regular line of business draw the controlling stockholders in multitudes of corporations to increase their own shares by juggling the smaller holders out of theirs.

Sometimes the controlling stockholders of a corporation turn its affairs over to an operating company — composed of themselves alone — which then absorbs all the profits of the whole business in salaries or in other ways provided in the contract which the raiders have made with themselves. Or leading members of a railway company organize an inside company — like an express company — to which then the legitimate profits of the first company are largely diverted in the shape of excessive rates on certain parts of the railroad business. Only one degree worse is the deliberate wrecking of a prosperous corporation, by intentional mismanagement, so that the insiders may buy up the stock for a song, and then rejuvenate it — to their huge profit. Step by step, the law has striven to cope with all such forms of robbery; but numerous shrewd corporation lawyers find employment in steering "certain malefactors of great wealth" 2

<sup>&</sup>lt;sup>1</sup> Petroleum was discovered in Pennsylvania in 1859, but no marked development came in production till after the War. Then "to strike oil" soon became a byword for success — equivalent to a "ship come home" in the days of more primitive commerce. In 1872, petroleum ranked among our exports next to cotton, wheat, and meats.

<sup>2</sup> A phrase of President Roosevelt's (§ 454).

through the devious channels of "high finance" so as to avoid grazing the letter of the law.

One ruinous consequence of this lack of moral sense was a general indifference to the *looting of the public domain* by business interests and favored individuals. Thus, the timber on the public lands, with decent care, would have supplied all immediate wants and still have remained unimpaired for future generations. But with criminal recklessness, the people permitted a few individuals not only to despoil the future of its due heritage, but even to engross to themselves the vast immediate profits which properly belonged to present society as a whole.<sup>2</sup> Quaintly enough, this piteous spoliation and waste was excused and commended as "development of natural resources," and laws were made or twisted for its encouragement.

Timber land, especially the pine forests of the Northwest, did not attract the genuine homesteader: too much labor was required to convert such lands into homes and farms, and the soil and distance from market were discouraging for agriculture. Such lands ought to have been withdrawn by the Government from homestead entry. But, as the law was then administered, a man could "enter" a quarter section, clear a patch upon it, appear upon it for a night every few months, and so fulfill all legal requirements to complete title; —after which he had perfect right to sell the valuable timber, which had been his only motive in the transaction. Multitudes, less scrupulous about legal formalities, sold the timber immediately after making entry, without ever "proving up" at all.

But these individual operations were trivial in amount. The big lumber kings extended their effect by hiring hundreds and thousands of "dummy" homesteaders to secure title in this way to vast tracts of forest and then turn it over, for a song, to the enterprising employer. Nor, in

<sup>&</sup>lt;sup>1</sup> Capable students, with access to periodicals, might well be called upon for topics regarding the New York Insurance Companies Scandal of 1905, and the stealings from the custom house by the Sugar Trust, disclosed in 1910. A peculiarly irritating phase of the latter scandal was the calm unconsciousness with which the Sugar Trust, after escaping by a fine, paid back the fine to itself by an increase in the price of sugar to the people.

<sup>&</sup>lt;sup>2</sup> And, in their haste to grasp these huge profits, the big lumbermen wasted more than they pocketed,—taking only the best log perhaps out of three, and leaving the others to rot or, along with the carelessly scattered slashings, to feed chance fires into irresistible conflagrations, which, it is estimated, have swept away at least a fourth of our whole forest wealth.

early years, did any one see wrong in this process. Condemnation, none too severe anyway, was reserved for those lumbermen who took shorter cuts, by forging the entries or by using the same "dummies" more than once, in open defiance of the letter of the law.

Like methods characterized the public sales of lands. Each land office received reports from its "cruisers" as to the timber standing on the various sections. The law forbade the official of the land office himself to bid at the sale; but the general custom was for him to hand lists of choice sections to a friend, with the quiet injunction, "Get all of this that you can." The favored friend, so supplied with inside information, was often able to change dollars into thousands; and at some proper time, unless unusually deficient in gratitude, he divided with his informant. All this was legal, and so society saw no harm in it; and when a few restless agitators sought to amend the laws which had been framed to permit such loot, the interests which fattened by them were long able to interpose delays without society's growing any wiser. In ways similar, but varied as to details, the State lands became the legalized booty of enterprising citizens. This epidemic of plunder and waste found its golden age in the seventies and early eighties; but even after the people began to grumble, the process went on, only a little less boastfully. Finally, in the Roosevelt administration, the government awoke and zealously locked the stable door - upon such few steeds as remained unstolen (§ 454).1

408. Consolidation of capital and management was noticeable first on a large scale in transportation (railroads, above); but it was soon almost equally marked in nearly every line of production and commerce. Small stores merged into department stores; small firms into corporations; corporations into "trusts." The age of small individual enterprise has given way to an age of large combinations.

Between 1880 and 1890, the *number* of woolen mills decreased from 1990 to 1311; iron and steel mills lessened a third in number; and the

Exercise. - Review the land policy of the United States. (See index.)

<sup>&</sup>lt;sup>1</sup> Every high school student should read William Allen White's *A Certain Rich Man*, — a sort of "Pilgrim's Progress" allegory of American life in the decades following the Civil War. The phases, good and bad, of this waste of the public domain, last treated, are pictured graphically in Stewart Edward White's two related stories, *The Riverman* and *The Rules of the Game*.

manufacturies of farm implements sank in number from 1943 to 910; but in each of the three lines, the capital and the output was doubled or trebled. Half as many factories put forth twice as large a product.

The forces back of this movement, and its advantages for the capitalist, have been noted briefly (§ 394). Six milk wagons, belonging to as many different milk companies, following one route, represent a waste of capital and labor: a milk "trust" could save both, with service just as good or better. The village slaughterhouse used to throw away horns and hoofs; the Chicago packing house works all such refuse up into useful by-products. In general, the big enterprise makes it possible to cheapen production.

Be it said once more, this saving ought to be regulated so as to benefit all. But, in actual fact, these combinations have been sheltered from public control, and even from public investigation, by the traditions and legal principles of an outgrown age of individualism, until they have become monopolies whereby the few plunder the many.

Ownership of a water power, or of a mine, or of a pine forest, is a natural monopoly. Another slightly different sort of monopoly is represented by certain kinds of business, like city lighting or street cars, where competition is either altogether impossible, or where at least it would be excessively silly and wasteful, — and so in the long run hurtful to society. Sometimes, in such cases, the government grants an exclusive franchise, and so constitutes a legal monopoly; but these forms of business are usually classed with the "natural monopolies," since they are monopolistic "in the nature of the case." They derive their existence, however, not from nature alone but directly from some franchise grant by society; and so they are more generally looked upon as suitable for social control.

"Big Business" creates a still different sort of monopoly. A great manufacturing "trust" calls for so much capital that a competitor can hardly afford to try to build factories and secure machinery, with the uncertainties of the certain commercial war before it. If the attempt is made, the stronger enterprise kills off the other, if necessary by selling below cost,—recouping itself afterward, of course, at public expense, when it again has the market to itself. This form of monopoly is so recent, and so resembles, in outer form, the competitive business of former days, that society awakened only slowly to the need of regulating it effectively for the common good.

409. "Trusts." — In 1865, the Standard Oil Company was organized in Cleveland, with a capital of \$100,000. Under

the skillful management of John D. Rockefeller it soon began to absorb the other companies in that city — which was already the center of the industry of refining crude petroleum. Thus it grew powerful enough, and its management was unscrupulous enough, to compel railway companies to set up secret discriminations for it, and against its rivals (§ 398). until it absorbed or killed off most of the oil companies in the country. In 1870, the Standard Oil was one of 250 competing companies, and its output was less than one twentieth the whole: in 1877, it controlled nineteen twentieths the output; and of the few remaining companies the leading forty were "affiliated," and took orders from it. A few independent companies, however, were still putting up so stiff a fight that a closer organization seemed needful to insure success for the monopoly; and, in 1882, Rockefeller invented the "trust." The forty affiliated companies turned over their property to one board of nine trustees, each stockholder in an old company receiving proper certificates of stock in the new organization. This board of trustees managed the whole business. arrangement was secret and exceedingly informal and elastic. The trust was not incorporated. The trustees, when convenient, could easily deny knowledge of the doings of subordinate companies, or disayow responsibility for them; and, with better reason, the companies could throw responsibility upon the intangible "trust."

Other industries seized at once upon this new device for consolidating management and capital. It proved eminently satisfactory to the stockholder (though, in the process of organization, many small companies were squeezed out of their property); but it abolished competition, which had always been regarded as the sole safeguard (1) of the consumer, (2) of the small producer of raw material, and (3) of the laborer. The Standard Oil Trust bought from the owner of an oil well at its own price, being practically the only buyer. So the Meat Trust bought from the cattle raiser. Then the Trust sold its finished product at its own rate, — which was sometimes an advance

upon former prices, and which was never reduced enough to correspond with the decreased cost of production. The profits to the corporation have steadily mounted, even when prices have been somewhat lower; and the "cost of living" has been made unduly high.

Sometimes, as with tin and steel plate of some sorts, the absence of competition, together with the prevalent low business morality, led to scandalous deterioration in the goods put upon the market, and so robbed the consumer doubly. Laborers in a "trust" industry found, too, that they had now only one possible employer. They must accept its proffered wage, or starve.

410. Attempts to prevent Monopoly. — The people took alarm. States enacted anti-trust legislation (for the most part, futile); and, in 1882, Congress passed the Sherman Anti-trust Act,1 forbidding "every combination" in restraint of interstate commerce. Again the Standard Oil led the way. With cheap, superficial obedience, it dissolved into twenty companies; but one and the same group of capitalists retained the controlling interest in the stock of each company, and composed the twenty "inter-locking" boards of directors. Other trusts followed this method of maintaining "community of interest and management," as the railways were to do later (§ 400); or they reorganized openly as huge corporations. The term "trust' was abandoned as a technical business term; but it remains properly enough in popular use to describe either of these forms by which aggregated capital monopolizes an industry.

Indeed, the monopolistic movement had only begun. In 1890, there were a score of "trusts" in the United States with an aggregate capital of a third of a billion dollars. In 1899, there were about 150, mostly organized within two years, with a total capital of over three billions. In 1901 came the

<sup>&</sup>lt;sup>1</sup> So-called from Senator John Sherman of Ohio, who, however, had little to do with drafting the law, though he advocated it in ardent speeches.

organization of the United States Steel Corporation, with a capital of \$1,100,100,000, and bonded indebtedness to over three hundred millions more, the capitalization largely water; and between 1900 and 1904 it is generally estimated that the number of trusts was multiplied by eight or nine, and that the capitalization rose from three billions to over thirty billions. Of this immense sum, a huge portion was in seven companies, and these had manifold and intricate ramifications; so that three or four men, perhaps, possessed real control.

In 1899 the Supreme Court undermined the Anti-trust law by holding that it applied only to transportation (commerce), not to the preliminary production and manufacture, although these "industrial" trusts were just what Congress had had in mind. Under compulsion from later legislation and from public opinion this position has been abandoned; but the attitude of the courts has so far (1913) made efforts to punish monopoly vain, even when they have felt constrained to declare it illegal. Finally, in 1911, the Supreme Court again weakened the Anti-trust act by affirming that the words "every combination" in restraint of trade, mean only "every unreasonable combination," and that upon the courts it rests in each case to decide, on a formal trial, whether a given trust is reasonable or not.

This decision, dissented from vigorously by Justice Harlan, as "dangerous judicial legislation," is the more amazing, since an amendment to precisely that effect, strenuously urged by the monied power, had been voted down emphatically in Congress after full debate. The Supreme Court rewrote the law in just the form in which Congress, the constitutional law-making power, rejected it!

True, the decision was part of an order to the Standard Oil Company to dissolve, as an "unreasonable" combination; and that order, outwardly, has been complied with. But few people believe that more has been really accomplished thereby than, years before, by the farcical dissolution of the Northern Securities Company (§ 400), after a similar order. It is not reasonable to suppose that capitalists can be punished for organizing monopolies which may or may not be held "unreasonable" after years of delay and litigation; and, without punishment for infraction of the law, the law is merely a matter of contempt. After long years of litigation and vast public expense, the violators of the law are left in possession of the spoils illegally gained, and the crushed competitors and ruined

lives are neither redressed nor avenged. As with the railroads, the attempt to prevent monopoly, or to regulate it, seems to have failed. New legislation, however, is being attempted.

In yet another way, the Federal courts have protected an avowedly "bad" trust. In 1908, Judge Landis, of the Federal District of Illinois, imposed on the Standard Oil Company fines aggregating more than \$29,000,000, after conviction for repeatedly violating the law against asking and accepting rebates. The judgment was hailed as completing the Roosevelt program (§ 454) against the trusts; but, in 1910, it was set aside, as unreasonably high, by the Federal Court of Appeals. 1

411. Attempts at State regulation of trusts to lessen the evils of monopoly, have taken the form of State laws which permit incorporation only on condition that there shall be no stockwatering, that publicity of management shall be secured, and that officials may be held strictly to account. But such legislation, though characteristic of nearly every State, was long rendered of no account by three "trust-owned" States, - New Jersey, Delaware, and West Virginia. These three merely opened the door wider than before to incorporations of every sort. A corporation organized in any State has constitutional sanction to do business in all, and can be deprived of its charter, the one effective penalty for misconduct, only by the home State. Accordingly, by 1907, 95 per cent of the American trusts had found refuge in these three States. In 1913 their citadel in the favorite State of New Jersey was overthrown by the resolute democracy and honest devotion to the public welfare of the governor, Woodrow Wilson; 2 but their opportunity to pick any one of forty-eight States in which to corrupt a legislature, still makes it almost impossible for other States to control them.

Some States began an attempt to curb the power of monopoly, and to take back for the public at least a small part of its unreasonable

dream

<sup>&</sup>lt;sup>1</sup> A court created in 1890 to take over part of the appellate jurisdiction of the Supreme Court, which was then some twelve hundred cases behind.

<sup>&</sup>lt;sup>2</sup> On his last day of office, after a splendid two-years' battle, Governor Wilson signed seven "anti-trust" bills, which made New Jersey perhaps the most "trust-proof" State in the Union.

profits, by taxing such corporations higher than ordinary individuals were taxed. This line of operation was also stopped at once (1882) by the Supreme Court, under authority of the Fourteenth Amendment. That Amendment forbade a State to discriminate among persons. In the Case of California vs. the Southern Pacific Railroad the Court held that a corporation is a "person," not only in the eye of the law generally, but even in the meaning of the word person in this Amendment to the Constitution, though no one thought of such a thing when the Amendment was being ratified.

Accordingly no taxation can be applied to corporations, even to specially favored public-service corporations, other than to other citizens. In no other civilized land is the government so powerless to deal with aggregated wealth as this decision makes the States of the Union. The Fourteenth Amendment had been robbed of its intent—to protect real persons, of dark skins, by previous decisions of the Court (§ 391). By this decision it was converted into a shield to protect artificial persons, in the shape of dangerous monopolies, from needful regulation by the people. The Southern Pacific Case is to be coupled with the Dartmouth College Case (§ 280) as explaining how the Constitution has been made a shelter to property interests against public control far beyond anything contemplated even by the founders of the Constitution. For the next thirty years the Southern Pacific was "king" in California (§ 459).

Some democratic thinkers recognize that the trust, or at least consolidation of management, is inevitable in various lines of industry. Some such thinkers hold that the present evils will be corrected by the trusts themselves, under the influence of a more intelligent public opinion; and they look with hope to the work of the Bureau of Corporations, established in 1903,—a branch of the government to investigate the organization and conduct of corporations engaged in interstate commerce. The report of this Bureau on the horrible conditions of the beef-packing houses in Chicago justified its establishment (1907) and led to prompt correction of the abuses.

In no branch of the government are there more devoted and capable men than the band of scholarly, energetic, self-denying "soldiers of the commonweal" who compose the working force of this department. But all such investigation will probably prove valuable ultimately only as it may lead to more effective public control, or, in some lines, to public ownership. Very significant is a recent utterance of Attorney General Wickersham at Duluth, —a conservative member of President Taft's conservative Cabinet — that it may become necessary for the government

to fix the prices on trust-controlled goods. It is to be hoped that some way will be found, however, to control trusts which will not so tempt the trusts each day to try to control the government.

412. The Extent of the Problem. - In 1893, according to conservative students, g per cent of the people owned directly 71 per cent of the wealth. By 1910, this estimate was generally put at one tenth the people for nine tenths the wealth. But the control of wealth (the essential thing) is much more concentrated even than direct ownership. In 1908, it was estimated (World's Work, VII, 4259) that the men making up the board of directors of the United States Steel Corporation had a controlling interest in other corporations which together owned one twelfth the wealth of the country. Said Senator LaFollette, on the floor of the Senate, in that same year: "No student of economic changes in recent years can escape the conclusion that the railroads, telegraph, shipping, cable, telephone, traction, express, mining, iron, steel, coal, oil, gas, electric light, cotton, copper, sugar, tobacco, agricultural implements, and the food products are completely controlled and mainly owned by these hundred men." More recently, conscientious students have asserted that seven men, three from the Pierpont Morgan group and four from the Standard Oil group, control the fundamental industries and resources of the United States. Such estimates cannot have scientific accuracy; but no authority doubts that they contain a large element of truth.

This gives added point to the prophetic words of Senator Sherman in the debate on the Antitrust act, in 1890: "If the concentrated powers of this combination [the relatively small trusts of 1890] are intrusted to a single man, it is kingly prerogative, inconsistent with our form of government... If we will not endure a king as a political power, we should not endure a king over the production, transportation, and sale of any of the necessities of life. If we would not submit to an emperor, we should not submit to an autocrat of trade with power to prevent competition and fix the price of any commodity."

The most serious power of such aggregated capital is exercised in indirect ways. It can, at will, withdraw money from circulation, compel banks, therefore, to contract loans; force factories, accordingly, even those not in any way owned by the combination, to shut down or cut down output and discharge workmen; and so bring on business depression and starvation. There seems little doubt but that such power is often used in slight degree and for short flurries, to influence the stock market and favor gambling enterprises there; and it is almost certain

that the power has been used more than once (§ 454) to cause a "panic," in order to intimidate timid reformers from the firing line in the battle for civic righteousness, - which might otherwise soon interfere with the money trust's ownership of judges and congressmen. The same tremendous power, without question, aims intelligently at the control of higher educational institutions and at other chief means of informing and influencing the people. It buys up the "muckraking" magazines, dominates multitudes of newspapers, and exerts great influence over such agencies of information as the Associated Press.1 Two phases of their direct influence upon the lives of the people are particularly significant. They fix labor conditions in many trades, almost at will, and they drain huge revenue from the people to pay dividends on "water" (§ 397). It is estimated that in 1912 thirty billions of corporation stock repreesented merely "water," and that the yearly tribute on this, drawn from the nation, amounted to about \$18 a head, or some \$100 for each family in the land.2

413. Public Service Corporations and Political Corruption. — The first important "public service corporations" were the railways, already treated; but soon after the war the growth of cities, along with new inventions for providing greater comfort in city life, gave tremendous importance to other such corporations, each to serve some need of a single city, — gas companies, electric lighting companies, water companies, telephone companies, street car companies. The tendency toward municipal corruption, already strong before the Civil War, was frightfully augmented by the development of these corporations. Each had to secure the right to use the public streets for tracks or pipes or wires, in order to do business. Usually it tried, in the early decades of the period, to get such a charter as would give it exclusive use of the streets, for its kind of business, for

<sup>&</sup>lt;sup>1</sup> This control over news items is particularly sinister. Practically every large newspaper in the country "featured" Tom Johnson's alleged failure in his fight for three-cent street car fares in Cleveland; but, except for a few radical ones, they ignored, or concealed in some obscure, fine print, three-line item, the fact that his contentions won soon afterward.

<sup>&</sup>lt;sup>2</sup> Progressive leaders hope to check and reduce this "overcapitalization." The trust magnates hope to legalize it permanently.

a long term of years or in perpetuity. At the same time it sought to escape any real public control over its rates or over the service it should render, by making vague the charter clauses bearing on such matters, or by inserting "jokers" to destroy their apparent force.

Shrewd men came to see that such grants would become increasingly profitable with the growth of city population; and, to secure them, some corporations found it profitable to buy up public officials on a large scale. If the charter was by any chance decently just to the city, the corporation often prevented the enforcement of the best provisions for years by getting its own tools elected to legislatures or city councils or judgeships, and by having other tools appointed to the inspectorships which were supposed to see that the company's service was as good as called for in its contract. Standard Oil companies, railway corporations, and their like, worked in similar manner upon the legislatures and judiciaries of State and Nation.

These forces were largely responsible for an increased body of political "grafters" in the governing bodies of State and city, — who were then ready to extend their operations unblushingly to other parts of the public business, as in extorting bribes from business men who wished to secure the furnishing of supplies to the city or the contract for building a city improvement.

Public graft became an organized business. City pay rolls were padded with names of men who rendered no service, sometimes of men who did not exist, but whose salaries were drawn to fatten the income of some "boss". Important offices were turned over to incompetents, favored for political service. The corruption of American city government was exceeded only by its inefficiency. Commonly, too, it allied

<sup>&</sup>lt;sup>1</sup> About 1890, Andrew D. White visited many of the most important European cities. At Constantinople, he wrote, the rotting docks and general evidence of inefficiency made him *homesick*: nowhere else had he been so reminded of American cities (!).

itself not only with public, but also with private<sup>1</sup> crime. Police departments permitted gamblers and thieves and thugs to ply their trades with impunity, so long as they did not become too notorious; and in return the precinct captains collected each week regular pay envelopes from the criminals,—the greater part of which went ultimately to higher officials, chief of police, mayor, or political boss.

The first case of city corruption to catch the public attention was the infamous Tweed Ring, which robbed New York City of a hundred millions of dollars in two years (1869-1870).2 This ring was finally broken up, and "Boss" Tweed was sent to Sing-Sing, largely through the fearless skill of Samuel J. Tilden, soon after the Democratic candidate for the presidency (§ 389). For long it was a pet delusion of multitudes of "respectable" Republicans that the New York scandal was an exceptional case, due to the deplorable fact that New York was controlled by a Democratic organization (Tammany); but later it developed that Tammany's methods were coarse and clumsy by the side of those by which a Republican "ring" had looted Philadelphia. Slowly the people have learned that corruption has no party. The biggest "boss" naturally allies himself with whichever party is usually in control in his district; but he has a perfect understanding with corrupt leaders of the other party, upon whom he can call for help against any revolt within his own organization, so "playing both ends against the middle." The surest weapon at the service of these sly rogues is an appeal to the voters to be loyal to the party, - so dividing good men and obscuring real issues in local government. Nor does one house cleaning and the punishment of a few rascals end the matter. Gains are too great. In a few years, New York and Philadelphia were again dominated by rings quite as bad as the first ones. With an occasional spasm of ineffectual reform, such conditions remained characteristic of practically every important city until the rising of the mighty tide of reform about the opening of the new century.

The graduation of corrupted scoundrels from city and State politics into National politics is one cause of the degradation that befell the latter (§ 389). But National politics had also its own troubles. What a street

<sup>&</sup>lt;sup>1</sup> Against individuals, rather than against the city as a whole.

<sup>&</sup>lt;sup>2</sup> One building which should have cost \$250,000 remained unfinished after six years and the expenditure of eight millions—most of which had come back into the pockets of the ring.

car company or a gas company was to a city council or to a State judiciary, a railroad or a Standard Oil Company was to Congress and the Federal bench. Corporations which wish to keep on good terms with the party machinery in State and Nation, have been the main sources of campaign funds. Usually such a corporation has kept on the safe side by contributing to both parties, — somewhat more liberally to the one in power, from which favors are the more likely to come; but of course it contributes not at all to any real reform party. The immense contributions from such sources have been a chief means of political corruption in campaigns. Meantime, the people have to pay these contributions indirectly in higher prices, — since the amounts are charged up to "operating expenses" by the corporations.

This public corruption does not come in any considerable degree from ordinary competitive business. Public corruption comes from the desire to secure special privilege. The public service corporation in the city is the source of municipal corruption: the ordinary business man, who pays a bribe perhaps to secure a city contract, is rather a victim than a first cause. So in the Nation, the railroads, with their land grants or their desire to evade legal control; and, later, the fattened trusts which wish to preserve some tariff "protection," are the source of national corruption. The city or State "boss" who "delivers the goods" to these privileged corporations seems at first sight the front and substance of the corruption; but, in real fact, he is merely an agent, permitted to pay himself in loot, but set in motion and protected by "the man higher up," the respectable head of great business interests.<sup>2</sup> Such 'large interests draw after them the smaller business men, sometimes by brutal coercion, but more commonly by merely playing artfully upon the phrase that any attempt at reform "hurts business." Almost every genuine reform movement in America so far has found its chief foe, after a brief run, in this despicable phrase (cf. § 338).

<sup>&</sup>lt;sup>1</sup>The law of 1911 to compel publicity by the National Committees of all political parties as to the source of all their funds will probably help correct this evil. During the following election (1912), a congressional investigation proved conclusively, by the sworn testimony of the heads of the great "trusts," that there really had existed a close alliance between certain privileged interests and guiding forces in the government, such as the general public had only dimly suspected.

<sup>&</sup>lt;sup>2</sup>Every student should read Judge Ben. B. Lindsay's *The Beast and the Jungle*,—the best and most dramatic portrayal in literature of the truth above stated (Doubleday, 1910, \$1.50).

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# IV. POLITICAL OUTLINE, 1876-1898

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414. From 1876 (§ 389) to 1898, the political narrative can be followed best in connection with the Civil Service, the Tariff, and the Currency. The Spanish War diverted attention to questions of Imperialism (chapter XVII). But, about 1904, politics centered at last more clearly upon the fundamental issues of the day (chapter XVIII). The following table will be convenient for reference.

# Reference Table for Administrations, 1877-1913

REPUBLICAN •	DEMOCRATIO
1877–1881. $Hayes$ $\left\{ egin{array}{ll} \mbox{House Democratic, whole} \\ \mbox{period} \\ \mbox{Senate Democratic, } 1879- \\ \mbox{1881} \end{array} \right.$	
1881-1885. Garfield — Arthur (House Demo-	
cratic, 1883–1885, almost two to	
one)	Cleveland (Senate Republican)
1889-1893. Harrison (House Democratic,	
1891–1893, by 231 to 88)	
1893–1897	Cleveland (Senate and
	House Republican after 1894)
1897–1901. McKinley °	
1901-1905. McKinley — Roosevelt	
1905-1909. Roosevelt	
1909-1913. Taft (House Democratic after	
1910)	
1913	Wilson

## A. CIVIL SERVICE AND THE TARIFF

415. Hayes and Civil Service Reform.—Until the days of the "muckraking" magazines (the "literature of exposure"), and of the Roosevelt administration (§ 454), the average respectable citizen knew little definitely about the corruption in business and in public life, and was usually inclined to dismiss all accusations as groundless. One evil, however, had long been too evident to be ignored. In 1871, public opinion forced Congress unwillingly to pass an Act to reform the Civil Service.

A commission was created, to formulate and administer rules, approved by the President, for appointment to civil office under the government by merit rather than for political spoils. President Grant favored the idea, but, in practice, as has been noted above, he permitted his friends among the spoilsmen in Congress to thwart the Commission and make its work futile. Then, in 1874, trusting to the disgust of the public at the failure, Congress refused to renew the appropriation for the work.

President Hayes was more ardent for reform. His few removals from office were mainly to get rid of spoilsmen at the head of important bodies of public servants, — as in the New York Customs House; and he issued a notable "Civil Service Order" forbidding Federal employees to take part in political conventions or campaigns. But post-office politicians jeered the order; and the people had not yet learned that no reform was possible except upon this basis.

416. Election of 1880. — In 1880, two minor parties were in the field, with real convictions but insignificant numbers, — the Prohibitionists and the Greenbackers (§ 392). So far as the two main parties were concerned, the campaign was a staggle for office between the ins and the outs, to a degree unparalleled since 1824. Neither party took any definite stand upon any question of the day. The Republicans elected James A. Garfield, on their record as "the Grand Old Party that saved the Union and freed the slave."

A feature of the campaign was the open pressure upon officeholders for "voluntary contributions" to the campaign funds. Every Federal official received a circular letter from the Republican National Committee (signed by a prominent United States Senator) assessing him at a certain per cent of his salary. Officials who neglected to pay were "reported" to the heads of their departments for discipline. The vast public service, numbering nearly two hundred thousand men, was turned into a machine to insure victory to the party in power. Unable to bring pres-

<sup>&</sup>lt;sup>1</sup> A desperate attempt in the Republican convention was made to nominate ex-President Grant; but the tradition against a third term was too strong. Grant received from 302 to 312 votes ballot after ballot; but 379 were necessary, and the nomination went finally to a "dark horse." No serious attempt to secure a third term had been made in our history since Jefferson's refusal (§ 258).

sure upon Federal officials, the Democrats took like action upon office-holders in those State governments which they controlled. $^{\rm 1}$ 

417. Garfield and the Spoilsmen ("Star Route" Scandal).—The new President found a third of his time taken up by office-seekers. They "waylaid him when he ventured from the shelter of his home, and followed him even to the doors of the church where he worshiped." A quarrel over patronage led to the spectacular resignation of the two New York Senators. Then, four months after the inauguration, the President was murdered by a crazed applicant for office; and Chester A. Arthur succeeded from the Vice-presidency.

Meantime, more scandal! T. W. Brady, Assistant Postmaster-General, an official who had held over from Grant's time, had conspired with other officials and with a group of contractors, including a United States Senator, to defraud the Government of half a million dollars a year. On certain "star routes" secured by these contractors, the legal compensation had been enormously increased by secret agreements for pretended services, and the surplus was divided between the contractors and the officials. The Post-office Department, too, had been led into wildly extravagant policies, in order to afford a better cover for such robberies. The trial was spectacular.2 Party papers impudently whitewashed the offense; and insolent boasts were made freely that no jury would convict such "high and influential men." The foreman of the jury was indicted for accepting a bribe. The guilt of the officials was shown clearly; but finally the bigger criminals did all escape, through technicalities and the delays of the law. Emile Ourill

418. The Civil Service Act. — These events focused attention again on the need of reform. Congress, however, remained

<sup>&</sup>lt;sup>1</sup>The practice was not new, but it was followed up in this campaign with peculiar shamelessness. Such collections from State and local officers had already often been made the excuse for demanding higher salaries. As always, the people paid.

<sup>&</sup>lt;sup>2</sup>When the investigation began, Brady demanded that Garfield call it off; and, not gaining this favor, he published a letter written by Garfield during the campaign, implicating him unpleasantly in the collection of campaign contributions from officials.

deaf in the session of 1881-1882; and, in the congressional elections of 1882, another assessment letter to Federal officials, urging them to contribute, as the persons "most interested in the success of the party," was signed by three leading Republican statesmen. A volunteer, non-partisan Civil Service Reform League took an active part in arousing the public conscience during the campaign; and popular indignation made itself felt in the elections. The next session of the chastened Congress promptly passed the Civil Service Act (January, 1883), providing that vacancies in certain classes of offices should be filled in future from applicants whose fitness had been tested by competitive examination, and that such appointments should be revoked afterward only "for cause." A Civil Service Commission, to oversee the workings of the law, was established, - to consist of three persons appointed by the President, not more than two of the three from one political party.

It was not expected that the law would apply to heads of large collectorships or post offices, or to any office where the President's nomination requires confirmation by the Senate; and, indeed, it was left to the President to classify from time to time the offices to be protected. President Arthur at once placed some 14,000 positions under the operation of the law. Some subsequent extensions, by succeeding Presidents, will be mentioned in the narrative. It is well to note here, however, that, by 1900, more than half the civil service had been so "classified," - all the clerkships in the departments at Washington, subordinate positions in the post offices and customhouses, and the railway postal clerks. The offices then remaining "unclassified" and unprotected were mainly the small (fourth-class) post offices, with a salary of less than a thousand dollars a year, where it seemed difficult to apply appointment by examination. President Roosevelt, long identified with this reform (§ 421), added even these offices in the Eastern and North Central States, and also applied the principles of the law to appointments to the consular service. President Taft (§ 455), in the closing months of his term, extended the law to nearly all the remaining Federal offices. The heads of important offices remain subject to the spoils system; but an aroused public opinion minimizes the evil even there.

419. Cleveland and the "Mugwumps," 1884. — For nearly twenty years, Mr. Blaine had been the idol of the Republican

masses. So far, however, the "reform" element within the party, aided by the ambition of rival leaders, had kept the presidential nomination from him (§ 389); but in the Republican convention of 1884 his friends were in control. Large numbers of "Mugwumps" (largely college men, bent upon reform) then deserted the party, to support Grover Cleveland, the Democratic candidate. As a courageous reform governor of New York, Cleveland had attracted attention by his fearless attitude toward the corrupt Tammany machine. His friends jubilantly shouted the slogan, — "We love him for the enemies he has made;" and he was elected as a reform President, with the civil service issue in the foreground. For the first time since 1860, the Democrats controlled both executive and Congress.

The great body of Democratic politicians were secretly or actively hostile to civil service reform; and the President's position was more difficult even than Jefferson's had been three generations before (§ 255). Spite of the recent law, every Federal official was still a Republican. The Democratic office seekers were ravening from their quarter-century fast; and their pressure upon the head of their party for at least a share in the public service was overwhelming. With all his unquestioned sincerity and firmness, the President gave ground before this spoils spirit far enough to drive many Mugwumps, in disgust, back to the Republicans. Still, the administration marks a notable advance for a non-partisan service, and the definite establishment, in practice, of the principle of Hayes' Civil Service Order, against pernicious partisanship by officials.

420. Tariff Agitation, 1884-1888. — President Cleveland's chief work was in committing the Democrats to tariff reduction, — though results were slow to follow. In 1873, Congress had enacted a horizontal reduction of ten per cent on the war tariffs; but the panic of the same year was ascribed loudly by protectionists to that threatened decrease, and the law was at once repealed. When Cleveland became President, the war tariffs were still in force. By the trend of our history, too, high protection had become associated in the thought of the North with the preservation of the Union and the freeing of the slave, — a habit of thought of which the special interests, thriving on protection, knew how to take shrewd advantage.

With dogged persistence, Cleveland clung to the task of educating his party. In message after message, he called attention to the dangerous piling up of the surplus from the needless revenue; to the consequent opportunities for extravagance and corruption in appropriations; and especially to the unjust burdens upon the poorer classes of society from such taxation. In December, 1887, his message to Congress was given up wholly to this one topic, denouncing the existing tariff fiercely as "vicious" and "inequitable." During the following summer, the House was spurred into passing the Mills Bill, placing a few important articles on the free-list and reducing the average tax from 47 per cent to 40; but the measure failed in the Senate 2—after the unfavorable election in the fall.

In the "educational campaign" of 1888, for the first time for almost sixty years, the tariff was the leading issue before the people. Mr. Blaine had replied to Cleveland's epochmaking message of '87 by a striking "interview," cabled from Paris, setting up protection as the desirable permanent policy. The Republican party rallied to this standard. The platform declared for reduction of the remaining internal taxes (on whisky), so as to remove opportunity to reduce tariff income. Orators like William McKinley represented tariff reduction as "unpatriotic" and "inspired by our foreign rivals"; and even the Republicans of the Northwest, where Republican conventions in State after State had been calling for reform, were whipped into line by the plea that the tariff, if revised at all, should at least be revised "by its friends."

<sup>&</sup>lt;sup>1</sup> Roger Q. Mills of Texas was the chief author of the measure and one of the few real tariff reformers of the period. The President enforced his argument for the bill by a despotic use of his power over congressional patronage (§ 326).

<sup>&</sup>lt;sup>2</sup> The Senate "substituted" a wholly different measure, by amendment,—to which the House refused to agree. This use of the Senate's power to amend, but not to originate, revenue bills, is a clear infraction of the spirit of the Constitution; but it has been practiced many times.

The debate was marked by a notable shift of ground on the part of protectionists. Clay and the earlier protectionists advocated protection for "infant industries," as a temporary policy. This argument hardly applied now that those industries had become dominating influences in the country. Greeley, in the forties and fifties, had modified it into a plea for protection to higher wages for American workingmen compared with European laborers (§ 321). This now became the general argument. It failed to take account of the higher cost of living to American workmen because of the tariff; nor was evidence submitted to show that the protected industries really paid higher wages in return for their tariff privileges.

421. Harrison's Administration and Civil Service. — The Republicans elected Benjamin Harrison, though he received 100,000 fewer votes in the country at large than did Cleveland. The Republican manager, Matthew Quay, Senator from Pennsylvania, was a noted spoilsman, and had been already under suspicion of corruption in various offices held by him. "Protected" manufacturers were called on for huge contributions to the Republican funds; and, according to general belief, money was spent more freely than ever before in buying votes in doubtful States. One scandal, made public a little later, was long remembered. A member of the National Republican Committee wrote to political lieutenants in Indiana, on which State it was thought the election would turn, — "Divide the voters into blocks of five, and put a trusted man with the necessary funds in charge of each five, and make him responsible that none get away and that all vote our ticket."

The Republican platform had promised an extension of civil service reform; but for months after the victory, the spoils system was rampant. Clarkson, the Assistant Postmaster-General, earned the title of "the Headsman," by decapitating 30,000 postmasters in the first year; and, amid the applause of the Senate, Ingalls of Kansas declared, -"The purification of politics is an iridescent dream; the Decalogue and the Golden Rule have no place in a political campaign." This attitude of prominent leaders was rebuked, however, by the people in the Congressional elections of 1890, and President Harrison was thus encouraged to break with the spoilsmen. He rendered a great service, also, by appointing to the Civil Service Commission Theodore Roosevelt of New York. This fearless young reformer at once injected new energy into the administration of the law, and rallied a fresh enthusiasm among the people to its support by his vigorous use of language. Hitherto, the spoilsmen had enjoyed a monopoly of strong language, and had reviled and ridiculed the mild-mannered gentlemen of the Commission at will: Roosevelt gave

back epithet for epithet, with interest,—affirming, on one occasion, that a great part of the political contributions extorted from reluctant officials was "retained by the jackals who collected it."

422. The McKinley Tariff of 1890 raised rates even above the war standard. The committee in charge of the framing of the bill held "public hearings," at which any one interested might appear, to present his needs and views. In practice, this resulted in hearing the claims of the scores of great manufacturers, but not at all of the millions of small consumers.\(^1\) The special interests really framed the law. Thus the Binding Twine trust secured the power to tax every sheaf of the farmer's grain, by a tariff on twine, in spite of earnest but less organized opposition by the farmers of the country. A special effort, however, was made to conciliate the farmers by a new class of duties on agricultural products, as protection against competition by Canadian farmers.

A novel feature of the bill was its "reciprocity" provisions. Foreign countries, incensed at our exclusion of their products, were threatening retaliatory tariffs on American foodstuffs; and our farmers seemed in danger of a serious indirect loss. Mr. Blaine, a less extreme protectionist than the leaders in control, had criticised the bill sharply, in its original form, on the ground that it failed to "open the market to another bushel of grain or another barrel of pork." Finally, it was arranged that the President might provide by treaty for the free admission of raw sugar, coffee, molasses, and hides, from any country which would admit free our products. Some treaties of this nature were afterward negotiated with Central and South American countries.

A sudden fall in grain values seemed to show that the promised protection to agriculture was a delusion, while a marked and immediate rise in prices on manufactured goods<sup>2</sup> made the law highly unpopular. The congressional elections of 1890 witnessed a "landslide" for the Democrats. Various

<sup>&</sup>lt;sup>1</sup> Cf. John Randolph's warning; § 279.

<sup>&</sup>lt;sup>2</sup> The rise reached many forms of foodstuffs. Thus canned goods were raised because the canners had to pay more for tin plate, on which the tariff had been doubled.

House bills for tariff reduction, however, were buried in the hold-over Senate; and the surplus in the Treasury had been dissipated by a policy of building costly war ships and by a huge increase in pensions for the veterans of the Civil War.

Cleveland's first administration had witnessed a savage raid on the Treasury in the form of thousands of special pension bills. Many of these applied to meritorious cases which even the generous provisions of the general law did not reach; but hundreds of others were gross frauds, which, in many cases, had already been exposed by the regular pension bureau. Cleveland vetoed 233 private pension bills; 1 but still the flood which became law swelled the pension list enormously. Then Harrison's administration saw the pension rolls doubled by a new general law, with an increase of annual expenditure for this purpose from 88 millions to 159 millions. The same four years (1889–1893) saw the yearly expenditure for the navy mount from 17 to 33 millions. The Fifty-first Congress was the first "Billion-Dollar Congress."

Philanthropic enthusiasts had striven to secure the Treasury surplus for the education of the Negro, — whose ignorance, it was argued, was a National peril, and to whom the Nation owed compensation for the miseries of slavery. To avoid constitutional objections, it was proposed to distribute a vast appropriation among the States. To reach the Negro especially, the proportion to each State was to be graded by its illiteracy. States-rights men were jealous of such exercise of power by the Federal government; but a bill passed one or the other House on several occasions, in the eighties. The New South, however, was growing more and more able to bear its own burdens, and the disappearance of the surplus carried this agitation with it.

423. Cleveland's Second Administration. — The rebound against the McKinley Tariff elected Cleveland again in 1892. The Democratic platform had declared frankly for a tariff "for revenue only," asserting that "protection" of specially favored

<sup>&</sup>lt;sup>1</sup> In other respects also, Cleveland gave a new vigor to the veto power. President Johnson, in his Reconstruction quarrel with Congress, vetoed 21 bills, — many more than any predecessor, though several of these vetoes were overridden. Grant used the veto 43 times in his two terms. Up to Cleveland's accession, there had been in all only 132 Presidential vetoes. In his first term Cleveland used the power 301 times—apart from pension matters three times as freely as any previous President. Cf. § 301 for summary of earlier history of the veto.

industries by the government was unconstitutional. During the campaign, however, the leaders felt impelled to promise that reductions from existing rates should be made gradually, so as to permit business to readjust itself safely. Moreover, tariff reform was now hampered by currency questions, which had thrust themselves into the foreground (§ 425 ff.). A "Wilson Bill" did pass the House in form fairly satisfactory to tariff reformers; but in the Senate (where the Democrats had a bare majority anyway) enough members deserted, in order to secure protection for special interests which they represented, so as to transform the bill into what President Cleveland called bluntly a measure of "party perfidy."

Cleveland felt constrained to let the bill become law—as the best thing attainable—though he would not sign it. It reduced the average of the duties from 49 to 40 per cent; and it was accompanied by a sop to the radicals in the shape of a tax of two per cent on all incomes over \$4000. But this intended compensation to the poorer classes was immediately destroyed. The Supreme Court declared the income tax unconstitutional.<sup>2</sup>

424. The Dingley Tariff. — The Republicans won the election of 1896 on the "sound money" issue (§ 430); but President

<sup>&</sup>lt;sup>1</sup> Sugar, in Louisiana; iron, in West Virginia and Alabama; etc. The Senate lost public confidence in great measure, from the disclosure that prominent members had speculated in stocks whose values would be affected by the law they were engaged in framing. Thus Senator Quay confessed that he had bought sugar stock "for a rise."

<sup>&</sup>lt;sup>2</sup> On the ground that it was a direct tax, and therefore to be collected only by apportionment among the States according to population. Such taxes, however, had been collected during the Civil War. In 1895, the question came up before the Supreme Court; and that body divided four to four. On the recovery of a sick Justice, the case was reargued. The member before absent now voted for the tax; but Justice Shiras, who had before voted for it, now changed to the opposition, and made the adverse vote five to four. So grave an authority as Professor Davis Rich Dewey does not hesitate to say:

—"The country was so astonished by these divisions of opinion that interest in the tax itself was lost sight of in the revelations of fickleness and uncertainty in the highest court of the land." It was particularly unfortunate that such shiftiness should have operated as a protection to the wealthier classes only.

McKinley claimed the victory as a mandate to renew the high protection policy with which he had personally identified himself. Accordingly, a special session of Congress enacted the Dingley Tariff, raising the average rate to 57 per cent, — much the highest point reached up to that time.

These exorbitant rates were secured by the extreme protectionists in return for the insertion of a provision for wider reciprocity. It was agreed that, during the two years following, the President might make treaties with foreign countries, abating a fifth of the Dingley rates on their products, in return for concessions by them to American commerce. Such rates would still have been almost up to the McKinley Tariff rates; and the Republican masses regarded the higher figures of the Dingley bill mainly as a club to force reciprocity. But when President McKinley, from time to time, submitted seven such treaties to the Senate for ratification, that body, with an extreme of bad faith, hearkening only to the special interests which controlled the seats or fortunes of many members, failed to ratify. As with the preceding tariff, the bargain by which high rates had been secured was broken; and again the loss fell upon the poor.

Wherever the tariff did shield a raw material from real foreign competition (as with wool), it gave a correspondingly higher protection to the manufacturer who was to use that material. Thus the wearer of woolen goods paid a double tax, - one to the wool grower, and another to the manufacturer. But as a rule, those items which had been added to the bill with a pretence of protecting the farmers proved again deceptive. A duty was placed on hides; but the advantage was monopolized by the packing houses. The cattle raiser got none of it. He had to sell, as before, to the trust at its own price (§ 409); but the trust could now make the shoe manufacturer pay more for leather. And the only noticeable result to the cattle raiser — and to every other "ultimate consumer" was a higher price for shoes and harness. Critics pointed out, too, that the prohibitive duties on many foreign imports made it easier for monopolistic combinations to control prices and output. The years following the enactment of the Dingley Tariff were just the years of most rapid development of such monopolies. "The tariff is the mother of the trusts" became a popular cry.

Manufactures, of course, were tremendously stimulated. They now used most of the raw material produced in America—which, therefore, was no longer dependent upon a foreign market. Indeed American mills forged their way into the

markets of the world, and underbid English and German manufacturers in Russia, India, China, and Australia. American machinery even invaded France and England. To do this, the American manufacturer sold his goods cheaper abroad than at home, and, indeed, was enabled to undersell the foreign manufacturer abroad by means of the unreasonable profits wrung from the American consumer.

For a time the country was entranced by the appearance of "prosperity." But gradually the idea gained ground that this was a manufacturer's prosperity, paid for by the consumer. The cost of living rose so rapidly as to become a byword. Between 1896 and 1904 it was computed to have increased a fourth; and that was by no means the end. This amounted, of course, to a savage cut in wages and all fixed incomes, and rapidly created a serious problem for people of small means,—especially after about 1906, when the effects had become most marked.

### B. CURRENCY AND "FREE SILVER"

425. Silver "demonetized." — From 1890 to 1900, all other public questions were east into the background by an unfortunate agitation for "free silver," — which, indeed, had been a disturbing factor for fifteen years before. Until 1873, any one could present gold or silver bullion at a government mint, and receive back the value in coin, less a small fee. A law of 1834 had fixed the ratio for coinage at sixteen to one. That is, one ounce of gold was worth sixteen ounces of silver in the market; and so the silver dollar was made sixteen times

 $<sup>^1</sup>$  The more conservative figures of the Bureau of Labor place the increase in the period 1890-1909 at  $26\frac{1}{2}$  per cent.

<sup>&</sup>lt;sup>2</sup> For the final stage (to this writing) of the tariff controversy, see § 457. Of course the tariff is only one of several factors in the recent rise of

Of course the tariff is only one of several factors in the recent rise of prices. Another factor is the increased volume of gold—in which prices are measured (§ 435, close). But this last factor operates all over the world,—in England, presumably, as strongly as in America. The rise of prices in England, however, has been only about a third of that in the United States.

as heavy as the gold dollar. After 1850, the gold discoveries in California slightly cheapened the value of gold; and the little silver that was mined between that time and 1870 could be sold more profitably for use in the arts than at the mint, so that very little silver was coined.

But, about 1870, new silver mines in Nevada and Colorado began to flood the markets with silver. Then, in 1873, Congress "demonetized" silver, - ceasing to authorize its coinage, except in small quantities for the oriental trade, and refusing legal-tender character at home to these "trade dollars." about the same time, European countries began to abandon "bimetalism" for an exclusive gold standard. The increased output of silver, together with this decreased demand, forced down its value rapidly.2 The mine owners now called vociferously for coinage at the old rate. Moreover, the farmers of the West and many ardent reformers were persuaded that the "crime of '73" had been manipulated by the money monopolists of Wall Street to reduce the volume of the currency, and so enhance the value of their capital at the expense of the debtor class. This conviction was emphasized by the money stringency of the panic years, 1873-1878. Some advocates of silver believed that its unlimited coinage by the United States would insure a sufficient currency, and would restore silver to its old market value; but the larger body of its supporters were animated by the crude fallacies of fiat money such as had inspired the old Greenback party.

It was quite true that there was not enough gold coined to make a proper basis for the growing business of the country. Consequently, money was *ap*preciating and prices *de*preciating. Creditors profited; debtors, like farmers with mortgages to meet, suffered.

All reformers saw these evils. Some magnified them unduly, and

<sup>&</sup>lt;sup>1</sup> In 1870, the market ratio of the metals was 15.57. A silver dollar would have been worth \$1.03, and they had all been melted down for this profit.

<sup>&</sup>lt;sup>2</sup>By 1876, the ratio of silver to gold had fallen to 17.87; and by 1893 to 28.25. At the latter rate, a silver "dollar" of the old weight was worth 56 cents in gold.

impulsively caught at the proffered remedy of making silver a legal tender at the old rate. Others felt that such a depreciation of the coinage would entail all the disasters of cheap money and bring in evils worse than those to be cured. This unhappy division in the ranks of the reformers seriously delayed correction of other more fundamental troubles in American life.

426. The Bland Act, of 1878, ordered the coinage of silver dollars, at a fixed weight, then worth about 90 cents in bullion, to the amount of from two millions to four millions a month. Such dollars did not pass into circulation; but, in the Treasury vaults, they formed the basis for a new kind of Treasury notes (silver certificates), redeemable only in this specie.

During the next twelve years, three fourths of a billion of dollars in such paper money was added to the currency of the country. Toward the close of the period, silver slumped in the market rapidly, until the coined dollar was worth only about 75 cents. In the same twelve years, nearly half a billion of gold had been coined; but now this began to leave the country rapidly, and many people feared that once more "poor money" would "drive out good." The silver advocates, on the contrary, were sure that silver slumped only because the government refused to take all that was offered, and they insisted that the increase in currency had not kept pace with the marvelous growth of business.

427. The Populists. — Both Republicans and Democrats so far had shirked a positive position as to silver. Accordingly, a new party sprang into prominence. The Grangers (§ 399) had been succeeded by the Farmers' Alliance, which, however, kept out of partisan politics until about 1890, though it had used powerful influence within both parties for free silver. Then, fused with the Knights of Labor (§ 445), it formed the Populist party, with a platform calling for the unlimited coinage of silver at 16 to 1, for a graduated income tax (§ 423), for postal savings banks, and for government ownership of railroads and of other natural monopolies. In the Presidential

<sup>&</sup>lt;sup>1</sup> Representative Bland, of Missouri, had secured from the House an absolute "16 to 1" bill. The more cautious Senate added the restrictions as to weight and amount. Even in this form, President Hayes vetoed the measure; but it became law over his veto.

election of 1892, General Weaver, the Populist candidate, secured 22 electors, with more than a million votes, to about five and a half millions to each of the main parties. Two years earlier, the party had captured several State governments in the West and South, and had sent forty representatives to Congress.

428. The Sherman Act of 1890 replaced the Bland Act. It was a slight gain to the silver men. The Treasury was ordered to buy silver in the market, four and a half million ounces each month, paying for it in Treasury notes which should be redeemable on demand in either silver or gold. Enough of the purchased silver was to be coined to redeem these new notes.

The sudden increase in demand raised silver for a brief time almost to its ratio with gold; but soon it fell away again; and in 1893, when the British government demonetized silver in India, it shrank to a lower point than ever before (note to § 425). Gold now was exported with a rush, and that remaining in the country was hoarded.

429. The Crash of 1893. 1—A periodic crisis, due to over investment on credit, seems to have been about due; but undoubtedly it was hastened by widespread distrust of the currency and by uncertainty as to

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<sup>1</sup> The law which had brought about Resumption in 1879 (§ 392), had made it the duty of the President to maintain a gold reserve in the Treasury sufficient to meet any paper money presented for redemption. This reserve was the basis for the credit which kept paper at par. Now, in a few months, nearly half the reserve was drawn out (down to 68 millions) by Treasury notes presented for redemption. The panic had cut down the government's revenues, so that no funds were available with which to buy gold; and so President Cleveland had to increase the National debt by selling bonds. The banks paid gold for these bonds; but, owing to the clumsy confusion of our currency laws, they drew most of this gold out of the Treasury, just beforehand, by presenting Treasury notes there. "What was poured in through the funnel was first drawn out through the bunghole." By a quaint feature of the law, too, the Treasury notes had to be at once reissued. Thus, when the government had again to sell bonds, the same process could be repeated with the same currency, -in the dizziest of vicious circles, - so that to maintain a balance of a few millions of gold the President had to sell 264 millions in bonds. To lessen the evil, he called the Wall Street bankers into conference, to pledge them to take the bonds without withdrawing the gold to do it with; but he was at once accused of granting the money power unreasonable secret privileges.

further action by Congress. Creditors began to insist on payments in gold. Nearly six hundred banks closed their doors, and more than fifteen thousand firms went to the wall, with losses amounting to a third of a billion. Industry was prostrated as at no previous panic. Farmers lost their homes, and the improvements of years, on small mortgages. Cities were thronged with hundreds of thousands of unemployed and desperate men. Every large place had its free "soup kitchen," and many towns, for the first time in America, opened "relief works," to provide the starving with employment. The social unrest found outlet in dangerous strikes and in the ominous phenomena of "Coxey's Army" (§ 446 a).

430. The Campaign of 1896. — President Cleveland had alienated the radical wing of the Democratic party by uncompromising hostility to silver legislation, and in 1896 the party split on that issue. The National Convention afforded a dramatic scene. William J. Bryan of Nebraska, a young man, hardly known in the East, swept the great assembly resistlessly by an impassioned speech of splendid oratory and deep sincerity. The contest between silver and gold he pictured as a contest of wealth against the struggling masses. Turning to the "gold" delegates, he exclaimed, "You shall not press down upon the brow of labor this crown of thorns. You shall not crucify mankind upon this cross of gold." With tremendous enthusiasm, the Convention declared, two to one, for the "unlimited coinage of both silver and gold at the ratio of sixteen to one," and nominated Bryan for the presidency.2 A strong faction of the party, however, took the name of "Gold

<sup>&</sup>lt;sup>1</sup> It is, perhaps, fairer to say that this attitude seemed to the Radicals one more proof of Cleveland's alliance with the "Money Power," seen also, as it appeared to them, in his policy in the Chicago strike (§ 446 b), in his fiscal arrangements (§ 428), and in his delay in calling a special session to carry out his tariff program.

<sup>&</sup>lt;sup>2</sup>To men of conservative tendencies and associations, the new leader seemed a demagogue and adventurer. Later, they tried strenuously to regard him as a jest. But a new force had come into American life. William J. Bryan, defeated three times for the presidency, still molded public opinion during the coming years as only one or two Presidents have ever done, until his principles, then so revolutionary, outside the free silver heresy, have become the common property of every political platform. Cf. § 458.

Democrats" and nominated a ticket of their own; while many more of like feeling voted the Republican ticket, subordinating tariff reform to their conviction of the need of "sound money." The Republicans had nominated William McKinley on an antisilver platform. The "Silver Republicans" of the Western States formally seceded from the organization; but this movement was much less important than the Democratic split.

The Democratic campaign was hampered by lack of money; but the most was made of Mr. Bryan's oratory. Candidates had previously taken small part in campaigning. Mr. Bryan traveled eighteen thousand miles and spoke to vast numbers of people. The Republican coffers were supplied lavishly by the moneyed interests of the country; and the campaign was managed by Mark Hanna, a typical representative of the big business interests. Workingmen were intimidated by posted notices that the factories would close if the Democrats won; and many orders with manufacturers were given with a provision for cancellation in like case. This fear of business catastrophe in case of the election of Bryan (a fear largely manufactured) was a chief factor in the Republican success. But as Cleveland had committed the Democratic party to tariff reform, so Bryan now committed it to the cause of the masses against the "special interests" and "privileged" capital.

Just at this point came an interruption to normal development, — the Spanish War and the question of imperialism.

For Further Reading. — (On this chapter and the next two.) — Dewey's National Problems; Latane's America the World Power; Spark's National Development.

Commons, Trade Unionism and Labor Problems; Bulletins of Commissioner of Labor, 51, 53, 59 (on prices and wages); Adams and Sumner, Labor Problems; Bemis' "The Homestead Strike" (Journal Political Economy, 2: 369); Brooks, The Union Label (Bulletin of Commissioner of Labor, 15); Mitchell, Organized Labor; Adams, "The Granger Movement" (N. Am. Rev., 120:394); Report of the Industrial Commission, Vol. VII (on labor organization).

Taussig, "Tariff of 1909" (Quarterly Journal of Economics, 24: 1-38); Tarbell, "Tariff in Our Own Times" (American Magazine, Vols. 63-68);

Ripley, Trusts, Pools, and Corporations; Ripley, Railway Problems; Meyer, Railway Legislation in the United States; Tarbell, History of the Standard Oil Company.

Dubois, "The Negro Farmer" (Bulletin of Department of Commerce and Labor, 8:69); Washington, Story of the Negro.

Price, The Land We Live In ("Boys' Book of Conservation"); Conference of Governors (Washington, 1909).

Steiner, On the Trail of the Emigrant; Howe, The City the Hope of Democracy; Ross, Changing America; Zeublin, American Municipal Progress; Wilcox, The American City: a Problem in Democracy.

Fiction: Foote, Cœur d'Alene (miners of Idaho); Norris, The Octopus, and The Pit; Richardson, The Long Day; cf. § 407, note, for other even more important titles.

Governos Law ( seonomie law) Poor many will always dries out good money, Shinday

### CHAPTER XVII

#### AMERICA A WORLD POWER

#### I. PREPARATORY TENDENCIES

431. Latin American Relations, 1889–1892. — Several incidents in the ten years preceding the Spanish War pointed to a more aggressive foreign policy, to correspond with our growing commercial interests abroad. In Harrison's administration the energetic Blaine was Secretary of State. A cardinal point in his policy was to extend the influence of the United States over Spanish America. In 1889 he brought together at Washington a notable Pan-American Congress which furthered commercial reciprocity (§ 422) and expressed a desire for standing treaties of arbitration between all American nations. Unhappily, the closer friendship with our neighbors, at which Mr. Blaine wisely aimed, was checked seriously, immediately afterward, by the President's bulldozing policy toward Chile¹—an incident which roused deplorable suspicions of the good faith of the United States among the proud and sensitive Latin-American peoples.

432. Hawaii. — For fifty years, the United States had held close relations with Hawaii. The islands had accepted Christianity from American missionaries; and American planters and merchants were the chief element in a considerable White population. American capital, too, was largely interested in sugar raising in the islands.

The native government, under the influence of foreign ideas, had been brought to the form of a constitutional monarchy. In January, 1893, a revolution deposed the native queen and set up a provisional republic. The leading spirits of the new government were Americans, and they asked for annexation to the United States. The United States minister to the old government ran up the United States flag, virtually declared a protectorate, and secured a force of marines from an American vessel in the harbor to overawe the natives.

President Harrison had only a few weeks of office remaining. He

<sup>&</sup>lt;sup>1</sup> Special Report: Relations with Chile, 1891-1892.

tried to hurry through a treaty of annexation; but President Cleveland, on his accession, withdrew it from the Senate, and sent a special commissioner to the islands to investigate. The report revealed the revolution as a conspiracy, in which the American minister had taken a leading part to overthrow the government to which he was accredited; while the provisional republic, it was shown, was supported by only a small fraction of the population. President Cleveland attempted to undo this "flagrant wrong" to a weak state. Despite the violent outcry of Republican papers, he "hauled down the American flag." Skillfully entrenched in possession by this time, however, the republican government maintained itself, unstably, against the native dynasty; and, a few years later, the question of annexation was revived (§ 434).

433. The Venezuela Arbitration. — For half a century an obscure dispute had dragged along as to the boundary between Venezuela and British Guiana. In the eighties gold was discovered, and English miners began to crowd into the disputed wilderness. By 1895 the quarrel was acute. The English government made it clear to Venezuela that it intended to occupy the territory. Venezuela had already appealed to the United States for protection; and now our government insisted vigorously that England submit the matter to arbitration. Lord Salisbury declined. Then President Cleveland electrified the world by a message to Congress (December 17, 1895) recommending the creation of an American commission to determine the true boundary, and pointing out that war must follow if England should persist in refusing to accept the award.

For the first time the people in England awoke to the fact that a serious quarrel was in progress. People, press, and public men made clear a warmth of friendship for the United States wholly unsuspected by the mass of Americans, and it was immediately evident that even the irritating tone of American diplomacy could not arouse a war feeling. War with the United States on such an issue, said Lord Rosebery, the Liberal leader, "would be the greatest crime on record"; and the Conservative leader in Parliament, Mr. Balfour, added that such a contest would be invested "with the unnatural horrors of civil war." The ministry now offered to accept arbitration, suggesting, however, an international commission, in place of one appointed by our government alone, and the matter was so arranged. It was worth much to have made plain that

<sup>&</sup>lt;sup>1</sup> This aspect of the affair was made more prominent by a remarkable display a few weeks later of war feeling in England against Germany—an antagonist at that time much more to be dreaded than the United States.

<sup>&</sup>lt;sup>2</sup> The commission reported in 1899, favoring the English contention for the most part. This result was perfectly satisfactory to the United States.

the United States would fight to protect the Western continent from outside aggression; but perhaps the incident is even more significant as a prophecy of agreement between powerful nations to compel arbitration of all such disputes.

The English ministry now proposed to the United States a standing treaty for arbitration of future disputes between the two countries. The treaty was drawn up, and was strongly urged upon the Senate by President Cleveland and later by President McKinley. But the Senate, now in its period of degradation, preferred to play politics, and refused to ratify this proposal for an advance in world peace.<sup>1</sup>

#### II. TERRITORIAL EXPANSION

434. The Spanish War. —After 1824, only Cuba and Porto Rico were left to Spain of her once wide-lying American Empire. In Cuba, too, revolt was chronic. After a "Ten Years' Rebellion" (1868–1878), Spain granted Cuba constitutional government, with representation in the Spanish Cortez; but many abuses continued. Taxation was exorbitant; trade was shackled, in Spanish interests; and the natives were despised by Spanish officials. In 1895 the island was again ablaze with revolt, —organized in great measure by a Cuban Junta in the United States and aided materially by filibustering expeditions from our shores. On both sides the war was barbarous. In particular, the cruel policy of the Spanish commander, Weyler, caused deadly suffering to women and children, gathered into reconcentrado camps without proper care or food. The "Gem of the Antilles" was rapidly turning to a desert and a graveyard.

American capitalists had large interests in the sugar industry in the island, and used powerful influences, open and secret, to secure American intervention, with a view to subsequent annexation by Congress. Such forces played skillfully upon the humanitarian sympathies of the American people, and on their traditional inclination to assist any movement on this continent for political independence. In 1897 the country was

<sup>1</sup> Modern History, § 594, for other details.

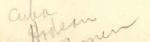
seething with discontent at the continuance of Spanish rule, and Congress was eager for war; but for some months more President McKinley steadfastly held such impulses in check, while he tried to secure satisfactory concessions to Cuba from Spain.

Spain did recall Weyler, and the war was placed upon a "civilized" footing; but a new situation proved too strong for the President's resolution. February 15, 1898, the American battleship Maine, visiting in the Havana harbor, was blown up, with the loss of 260 of her men. The explosion may have come from a submarine mine operated by Cubans to produce the results which followed, or the mine may possibly have been operated by a few Spanish officers. No one now seriously believes that the Spanish government was responsible. At the moment, however, this was the almost universal assumption; and a vengeful cry for blood reinforced irresistibly the previous call for American interference. Congress gave a solemn pledge that the United States would not retain Cuba for herself; and the American army and navy soon completed the task of expelling Spain.

Meantime, a new aspect had been given to the war. Admiral Dewey, in command of a small American squadron in Asiatic waters, destroyed a Spanish fleet in the Philippines, and, some months later, in coöperation with native insurgents, captured Manila. The war was over by August. In the treaty of peace, Spain left Cuba free, and ceded to the United States Porto Rico, Guam (in the Ladrones), and the Philippines, receiving for the last the sum of \$20,000,000.

Other territorial expansion accompanied this acquisition of new territory. In 1897 President McKinley had revived the attempt to annex Hawaii by treaty. The necessary two thirds vote in the Senate could

<sup>&</sup>lt;sup>1</sup> The American navy showed a surprising ability both in sailing and in gunnery. Equally amazing was the disgraceful collapse of the commissariat of land forces. The troops in camp at Tampa (in what should have resembled a pleasant picnic) lost more men by far than fell in battle; and in Cuba the chief losses came from dysentery and fever, much of which was avoidable.



not be secured; but after the opening of the Spanish War, with Dewey in need of reinforcements at Manila, Congress annexed the Hawaiian Islands by a joint resolution—as Texas had been acquired many years before. About the same time, several small islands in the Pacific, not claimed by any civilized power, were seized for naval and telegraph stations; and, in rearrangements at Samoa, due to native insurrections and to conflicting claims by England, Germany, and the United States, this country secured the most important island in that group.

435. "Imperialism" in the Election of 1900. — The decision to hold the Philippines as an Asiatic dependency — as England holds India — was adopted by President McKinley's administration only after considerable hesitation; and the policy was attacked vehemently by the Democrats as "Imperialism." The Anti-imperialists urged that such a policy not only involved bad faith with the Filipinos, but that it contravened the fundamental principles of the Declaration of Independence. The attempt to rule against their consent twice as many people as George Washington had been president over was felt to be repugnant to the genius of our institutions, likely to tend to despotism at home, and sure to divert energy from our own problems.

On the other hand, the Imperialists, or "Expansionists," urged that the United States could no longer shirk responsibilities as a world power. The Filipinos were not fit for self-government; American sentiment would not tolerate returning them to Spain; and Dewey's conquest left America answerable not only for the Philippines themselves, but, more immediately, for European and American settlers and interests at Manila. For a decade, too, many thinkers had been looking with dread to Russia's steady advance in Asia, where she threatened to enforce a "closed door" to the rest of the world, and perhaps to organize the countless millions of China in a world conflict against Western civilization. America in the Philippines would be a factor in the Asiatic question, and with England and Germany might check Russian aggression.\footnote{1} To fulfill

<sup>1</sup> Japan had not yet given promise of the power soon to be shown.

these high duties, it was argued, would help, not hinder, in inspiring courage to grapple with domestic evils. Cheek by jowl with these idealistic forces for expansion, of course, masqueraded mere commercial greed and gross pride of power.

Imperialism was a leading issue in the campaign of 1900; but Mr. Bryan, once more the Democratic candidate, complicated the matter unhappily by forcing into the Democratic platform a declaration for the dying "16 to 1" cause. Again the reform forces were divided. Some radicals believed in "expansion," and others, fearing "imperialism," feared free silver more Hanna, again the Republican manager, made skillful use of returned prosperity under Republican rule, appealing to workingmen with the campaign emblem of "the full dinner-pail." Mr. McKinley was reelected; but in the fall after his second inauguration he was assassinated by an anarchist, and the presidential chair passed to Theodore Roosevelt (§ 459).

One phase in the Nation's outburst of grief for its murdered chief carried ominous implications. Americans had thought it not wholly unnatural that despotic European rulers, unreachable in other ways, should sometimes become a mark for the dagger or bomb; but we had boasted that our free discussion and equality of political opportunity did away with all such danger to the chosen representatives of our people. awakening maddened and dazed. A vengeful cry went up against all who were labeled "anarchists," blindly confusing philosophic thinkers, like the great Tolstoi, who disbelieve in governmental coercion, with the crazed or criminal individuals (anarchists of violence) who preach or practice the murder of heads of governments. Some excited legislatures hurriedly enacted repressive laws imperiling freedom of speech—one of the most precious of American rights; and Congress was assailed with proposals similarly dangerous, especially with regard to the use of the mails. The mass of the people soon recovered their usual sanity; but, in some degree, the deplorable event has strengthened a tendency in police

<sup>&</sup>lt;sup>1</sup> The Socialist Labor party and the Social Democratic party had tickets in the field, and cast together 127,000 votes. There was much apathy and uncertainty; and the total vote was smaller than four years before—though the country contained at least a million more voters.

authorities ever since, especially in great cities, to deal violently, beyond the law, with radical agitation and even with labor unrest.<sup>1</sup>

436. Excursus: The Passing of "Free Silver."—Meantime, the intrusion of the currency question into the campaign had resulted in a law by the victorious Republicans definitely declaring for an exclusive gold standard. At the same time, however (1900), an addition was made to the Nation's currency by an amendment to the law regarding National banks. The bonds, issued during the Civil War at high rates of interest, rose above par soon after the war was over. It was then no longer profitable for a National bank to keep large amounts tied up in such bonds as a basis for its notes: it paid better to withdraw the currency and sell the bonds. Accordingly, the bank note circulation had fallen away, — from 339 millions in 1865 to 162 millions in 1891.

This contraction was a serious grievance to the Free Silver party. In 1900 Congress gave new life to the National bank circulation by (1) permitting a bank to issue notes to 100 per cent of its bond deposit (instead of 90), (2) reducing the tax on bank circulation from 1 per cent to  $\frac{1}{2}$  per cent, and (3) authorizing banks with only \$25,000 capital (instead of \$50,000) in small towns. In the next five years, under this stimulus, bank currency was increased by a third of a billion of dollars.

More important still was another source of currency expansion. In 1898 gold was discovered in Alaska; and soon that wild country was pouring a yellow flood into the mints of the world. Between 1898 and 1904, three quarters of a billion of gold money was coined in the United States. The debtor class could no longer claim that currency was contracting. The question of "free silver," therefore, passed into oblivion.

#### III. DEPENDENCIES AND PROTECTORATES

437. Settlement in Cuba. — During the struggle of the Cubans against Spain, Americans had been wont to compare the leader Gomez and his followers to George Washington and his patriot army. On closer view, many Americans began to doubt whether Cuba was fit for self-government; but, as such things go, the pledge to leave Cuba independent was honorably kept. There was a necessary interval of military occupation. This endured for more than three years (till April, 1902), and con-

 $<sup>^{1}</sup>$  Illustration of this last statement can be gathered for the years 1901–1912 from any labor paper.

ferred great blessings on the island. It not only established order and relieved immediate suffering, but it also organized a permanent and noble system of hospitals and schools, built roads, cleaned up cities, and created adequate water supplies. For the first time in 140 years Havana was freed from yellow fever. The sanitary work of the American government in the pest-ridden island amazed the world. It was in the course of this work that Major Walter Reed, a United States surgeon, proved that yellow fever is transmitted by the mosquito bite, — a discovery which ranks among the foremost achievements of modern science.

Meantime General Wood, the American military governor, had arranged for elections; and a Cuban constitutional convention devised a republican constitution. The convention was compelled to accept certain terms dictated by Congress, consenting that the United States should hold points on the coast for naval stations, and should have the right to interfere in order to preserve the island from outside encroachments or from domestic convulsions.

The first Cuban government represented mainly the educated planters of Spanish descent. The bulk of the people, of mixed Indian and Negro blood, laborers on the great plantations, were excluded from the franchise by educational or property qualifications. These masses were dissatisfied; and, in 1906, they broke out in insurrection. President Roosevelt dispatched American troops to the island, to restore order. This second occupation lasted until 1909. Meantime, Gomez, representing the mass of the Cuban people, became president. It now seems probable that Cuba will be left to work out her own destiny, with somewhat less of anarchy than fell to the older Spanish American republics.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> A census taken by General Wood shows that three fourths of the adult population could not read.

<sup>&</sup>lt;sup>2</sup> The various contests in the United States over the relations of Cuba to the United States have been marked by an unseemly contest between the "Sugar Trust," which wants Cuba annexed so that it may get raw Cuban sugar free of tariff duties for its refineries, and the Beet Sugar combine, which wants to keep Cuba a foreign country so that Cuban sugar may be excluded by a high tariff.

- 438. The Settlement in Hawaii and Porto Rico. In 1900 Hawaii was organized as a Territory, on essentially the usual self-governing basis. Porto Rico with its large Spanish element, civilized but unfriendly, presented a difficult problem. At present, the government contains a representative element; but real control is vested in officials appointed by the United States, somewhat after the analogy of certain British colonies intermediate between "crown colonies" and "responsible governments." 1
- 439. The Philippines contain 115,000 square miles, broken into a thousand islands,<sup>2</sup> with eight million inhabitants. These are distributed in eighty tribes, ranging from primitive savagery (of the poisoned arrow stage) to civilization, and speaking a score of different tongues and dialects. Five sevenths of the whole number are Catholics; the stalwart Moros are Mohammedan; the "wild" half million are divided among primitive superstitions. The centuries of Spanish rule have left much Spanish blood, mixed with native, in the more civilized districts; and commercial interests account for a considerable European population at Manila and some other ports.

In 1896 the islanders attempted one of their many risings against Spanish rule. The Spanish government brought it to a close by promising reforms and paying Aguinaldo and other leaders to leave the islands. The reforms were not carried out, and only a part of the promised money was paid; and when Dewey was about to attack the Spanish in the islands, he invited Aguinaldo to return with him from China, in order to organize a native insurrection to coöperate with the American invasion. The insurgents hailed the Americans as deliverers, and took an active part in the siege and capture of Manila. Soon, however, the American commanders received instructions from Washington not to treat the insurgents as allies, but to assert American sovereignty over them. This led to war. After two years of regular campaigns against 50,000 American troops, the natives took to guerrilla warfare—in which their ferocious barbarities were sometimes imitated all too successfully by the Americans. In 1902 the United States declared the "rebellion" subdued.

The supreme authority is intrusted to an "Insular Commission," appointed by the President, composed mainly of Americans. The islands are marked off into provinces, and these are divided into municipal districts. In each municipal district of the more civilized provinces a coun-

<sup>1</sup> Modern History, § 558, close.

 $<sup>^2</sup>$  Two thirds of these are too small for habitation ; and half the total area is comprised in two islands.

cil is elected by all the people who can read and write either Spanish or English, or who possess a little property; but these local governments



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are mainly administrative, to carry out instructions from above; and they are subject to strict supervision. In each such civilized province, the municipal councils choose a provincial "governor." Two other officials, however, appointed by the Insular Commission, act with the governor, and can overrule him : and this governing board is supervised by the central Commission. In 1907, in accordance with a decree of the American Congress, a Philippine Assembly, with limited powers, was convened.

In spite of these forms of self-government, the Philippine people have no real control yet over even their local affairs; but if they show ca-

pacity to work representative institutions, American feeling will probably insist on passing over to them larger and larger powers, — possibly retaining only a protectorate as to foreign relations, as with Cuba. Imperialism is no longer a party issue. All parties are ready to pledge extension of self-government as rapidly as may be consistent with good order. The victory of Japan over Russia in 1904 removed one of the leading incentives for American intervention in the Orient. It is now apparent that the Oriental peoples will prove masters of their own destinies.

American government has conferred many undoubted benefits upon the Philippines. The choice lands, held by the friars, have been purchased and opened to native acquisition; <sup>1</sup> and the school system that has been introduced merits high praise. On the other hand, Congress has not extended to the people in the dependencies all the civil rights

<sup>&</sup>lt;sup>1</sup> Though, in the administration of President Taft, the Sugar Trust (not a Philippine organization) acquired 65,000 acres of these lands at about a third of what our government had paid for them.

Boyle Rising

of citizens of the United States; and it has definitely rejected the plea that "the Constitution follows the flag" and that such rights are theirs without enactment. It has not even included the islands within the customs boundary of the United States. Various protected interests in America demanded the continuance of a tariff on Porto Rican sugar and on various Philippine products; and Congress complied, — making only slight reductions on the tariffs payable by foreign importations. Such deprivation of the expected American market seems to the islanders a gross injustice, savoring of Spanish methods; but the Supreme Court in a series of decisions, usually by the vote of 5 to 4, has upheld the complete authority of Congress to rule and tax at will these dependencies — since they "belong to," but are not a "part of" the United States.1

## IV. SINCE THE SPANISH WAR

440. Preservation of China.—In 1899 President McKinley's Secretary of State, John Hay, addressed a note to all the powers interested in China, urging an agreement that no power should exclude the citizens of other countries from trade in its "sphere of influence" there. This "open door" policy was opposed to the wish of Russia, and perhaps of Germany, but it had the earnest support of England and the warm approval of the smaller commercial countries, and its announcement by the United States was a much needed help at just that time in preventing threatened grabs of Chinese territory by European powers. After the Boxer risings in China, Secretary Hay again had a first place in preventing the seizure of territorial indemnities from China by other powers. At the opening of the Japan-Russian War (1904), Hay, then Roosevelt's Secretary of State, obtained from the two contestants pledges that they would observe the neutrality of China.

In all this, of course, the immediate incentive of American policy was to prevent the exclusion of American trade from rich Oriental provinces; but at the same time that policy fell in with the interests of civilization and humanity. In 1905, too, President Roosevelt intervened actively to bring about peace between Russia and Japan.

441. European Force to collect Debts from South American States.

—The Latin American States need capital for their development, and sometimes they invite it by granting foreigners valuable franchises and "concessions." These grants are often resented by the natives and

<sup>&</sup>lt;sup>1</sup> Cf. § 260. For a good review of these decisions, see Latane's *The United States as a World Power*, 133-152.

<sup>&</sup>lt;sup>2</sup> Modern History, § 590.

sometimes revoked by succeeding governments. In this, and in many other ways, foreigners acquire claims against these countries which the states are unwilling or unable to pay. The United States has taken the ground that the use of national force to recover such claims for a private citizen is improper. England has usually adhered to the like policy. But other powerful nations have commonly shown a readiness to collect such private debts for their citizens by force or threats of force against a weak country.

In the case of Central and South American states, however, our adherence to the Monroe Doctrine obliges European governments to act with some circumspection, and many of them have expressed the opinion forcibly that if the United States intends to protect semi-anarchic, bankrupt communities, it must itself keep them in order or assume their obligations to the outside world. In 1902 ten European countries had claims, aggregating some \$38,000,000, against Venezuela. Castro, President of the Republic, defied the claimants. Finally Germany and England began a blockade of Venezuelan ports. Through the efforts of President Roosevelt and Secretary Hay, the blockade was soon raised, and the claims submitted to arbitration. This process revealed gross padding and unreasonableness in the claimants: the commissions cut the amounts down to less than eight millions, and, under pressure from this country, provision was made by Venezuela to pay this amount.

During the dispute, President Roosevelt had said that coercion of an American state without seizure of territory would not necessarily infringe the Monroe Doctrine. But the only other practicable form of coercion for the collection of debts seems to be the temporary seizure of customhouses and the appropriation of tariff duties. Such a step might easily lead to indefinite territorial occupation; and many Americans feel that nothing of the sort ought to be permitted. President Roosevelt took the ground that if "chronic wrong-doing" or "impotence" in any American country called for intervention, then it would become necessary for the United States to "exercise an international police power." In pursuance of this doctrine, in 1904, he stepped in to obviate European intervention in bankrupt San Domingo, by virtually making the United States the "creceiver" for that country in behalf of its creditors.

This policy the President carried through by rather arbitrary methods, against the constitutional objections of the Senate; and it has been severely criticized on the ground that it encourages foreign capitalists to engage in the wildest financial schemes in South America, guaranteeing them their claim through United States intervention. Another solution of the whole matter, much in favor among the weaker nations themselves, would be to leave all such claims against a government to arbitration by

withing of count the Hague Tribunal, and to let any capitalist take the risk, if he seeks investments in countries which would not regard such arbitration.

442. The Panama Canal. - In 1881 a French Panama Canal Company began work at the isthmus, but eight years later the project came to an ignoble end in financial scandal, with little to show for the \$260,000,000 expenditure. Secretary Blaine (§ 431) was then earnestly desirous of making the canal the concern of the United States government: but the Clayton-Bulwer treaty (§ 364) made such action practically impossible at that time.

The Spanish War brought the matter forcibly to public attention again. — especially when a battleship much needed to reinforce the American Atlantic squadron had to circle the Horn to get to Cuban waters. The American people began to demand an interoceanic canal, under American control. The extremely cordial attitude of England during the struggle made it easy now to secure from her a waiver of her rights under the ancient treaty. Accordingly, in 1902, the United States bought up the rights of the Panama Company. The government was unwilling, however, to undertake so vast a work unless it could secure sovereignty over a considerable strip of territory, so as to police the route effectively. Colombia refused the treaty urged upon it by President Roosevelt. The American government felt that it was being held up for unreasonable booty. Two weeks later an opportune revolution in the little republic separated Panama from Colombia. American naval forces were so disposed as to assist the revolution materially; and ex-President Roosevelt has acknowledged that the movement was directly manipulated from Washington. The new Panama Republic immediately made the necessarv cession to the United States, and the canal was undertaken as a National project.

443. Arbitration. — The United States took a creditable part at the Hague Conference in 1899 and at the second meeting in 1907. During the years 1903-1905 thirty-three separate treaties between various European powers provided for arbitration of international differences by the Hague Tribunal or some other standing commission. In 1904 ten such treaties negotiated by Secretary Hay with important countries were submitted to our Senate for ratification, with the strong indorsement of President Roosevelt. The Senate, influenced by general factiousness, by dislike of the strenuous and "progressive" President, and by jealousy for its own treaty-making prerogative, rendered the treaties useless by unacceptable amendments, as it had rejected the earlier proposal of like character between England and the United States (§ 433). Some treaties of about the same nature, however, have since been ratified; but during the sessions of 1911 and 1912, the Senate showed marked hostility to another extension of the principle of arbitration strongly urged by President Taft.

International arbitration, which began in the modern form with the Jay Treaty (§232), found its most effective champion for a century in America; and as a matter of national pride it is to be regretted that priority in this great movement has been permitted to pass into other hands.<sup>1</sup>

<sup>1</sup> Cf. Modern History, § 594.

Imploy.

# CHAPTER XVIII

## PEOPLE AND GOVERNMENT TO-DAY

"The chief interest in history lies in the fact that it is not yet finished." — Ashley.

444. Social Unrest.—The modern industrial organization produces wealth with gratifying rapidity, but it fails to distribute wealth properly. America is rich; but too many Americans are horribly poor. Ostentatious affluence, marked by wasteful and vicious expenditure, jostles a cruel and debasing penury. And this modern poverty is harder to bear than the older poverty of colonial times, because it seems less necessary. Then there was little wealth to divide: now there is ample for all, but it is engrossed by a few.

Between 1860 and 1900, the ratio of wealth to population (per capita wealth) was magnified by four; but the average workingman was not four times better off—nor two times. Indeed, great multitudes were worse off than any considerable portion of society in earlier times. Of the vast increase of wealth, some nine tenths went to one tenth the population, while one-fifth of the people were reduced to a stage of poverty where bodily health and moral decency are imperiled.

The careful study of the Bureau of Labor proves that in those forty years (1860–1900), the average real wage rose about one fourth, — though this gain has been largely lost again since 1900 in the rapid rise in the cost of living. There has been, however, a real gain in the standard of living. In the same forty years, the average consumption of wheat per capita rose from 4.7 bushels to 5.8 bushels, and of sugar, from 36 to 71 pounds. This is representative of the gain in necessities and luxuries. Some gain is a certain and satisfactory fact; the absence of proper gain is certain and unsatisfactory.

In 1906 the New York State Association of Charities and Corrections appointed a committee to investigate the standard of living in New York

city. Aided by generous appropriation from the Russell Sage Foundation, this committee during the next two years made careful study of hundreds of typical families in different strata of society among the workingmen. These studies establish definitely the fact that families of five (father, mother, and three children under fourteen) with an income of \$600 or less (two dollars a day for every working day) do not get enough good food to maintain physical efficiency or decent conditions of lodging. Some families, with incomes between \$700 and \$800, by dint of unusual management, do attain a standard of living which prevents deterioration; but the committee concludes that on the average this result cannnot be secured in New York city on less than \$825 a year (\$2.75 a day for every working day). Even then, dentistry and medical care must be sought in free dispensaries for the most part; and no allowance is made for saving. When we remember that in every great city, a large proportion of families possess incomes of only half or two thirds this amount, the serious nature of the situation becomes clear.

Nor is either the upper tenth or the lower fifth of society in its place mainly from its own desert. Social forces beyond the control of single individuals have had most to do with selecting the material for the apex and the base of the pyramid. The tenth contains real captains of industry, but also parasites and pirates; and service to society plays a smaller part in its revenues than do plunder and privilege. The lower fifth contains many men whose poverty results from physical or mental incapacity or moral obliquity, though these qualities are quite as often a result of poverty as a cause; 1 but it contains also multitudes of willing, hard-working, sober men and women who deserve a chance, now denied, at decent, useful, happy lives.

Five recent changes have intensified the social unrest.

a. In the early day, when no man was very rich anyway, there was always one lever within reach to help lessen the inequalities in social condition,—namely, free land at every man's door. Since 1800 this condition has been more remote,—appertaining to a distant frontier. Since 1890 it has disappeared from American life.<sup>2</sup>

<sup>1 &</sup>quot;The destruction of the poor is their poverty." — Proverbs x. 15.

<sup>&</sup>lt;sup>2</sup> Occasionally, an Indian reservation or a patch of irrigated land is still opened to settlement; but the number of people affected at any one time by such "free land" is too small, in proportion to the whole, to affect the conditions of the labor market,—however much a few individuals may be bettered.

- b. The typical laborer is no longer the farmer, working his own fields, but the factory hand, who can have no chance ever to become a capitalist or employer. One third the population in 1900 was still engaged in tilling the soil; but two fifths were engaged in manufactures or transportation.
- c. The relation of factory workers to employers has been transformed. Until the Civil War, the factory owner, as a rule, lived in the factory village, a sort of overlord, with paternal responsibility for the welfare of his employees. In return, he received from them a kind of personal loyalty. But when the individual employer gave way to the corporation and the trust, those semi-feudal relations, good and bad, vanished. The manager resembles the overseer of an absentee landlord; and the relations between capital and labor cease to be personal and become wholly commercial.
- d. Women have invaded the labor market. Much of the industry formerly carried on in the household (weaving, spinning, baking, etc.) came to be carried on instead in factories and mills,—and the women "followed their jobs." Apart from this, however, they have invaded new lines of industry in a constantly growing proportion to the whole army of workers.
- e. The "trust" lessens the chance of the laborer to "compete" in the labor market. The result is a despotism, sometimes kindly disposed and paternalistic, but often cruel, and always nearly absolute. The Steel Trust (§ 410) has been officered by philanthropic gentlemen who found colleges and libraries, build model towns, and strive sincerely to better the condition of their employees. Yet, in actual fact, an investigation by the Bureau of Labor in 1910 showed that of 153,000 employees investigated in the blast furnaces and rolling mills, 50,000 worked seven days a week, and over 30,000 worked twelve hours for seven days, with a twenty-four hour shift once in two weeks,—all this, too, in most terrible and oppressive labor,—while the Trust was paying out many millions each year in dividends on "water."

The moral enthusiasm of the forties and fifties spent itself in the war to free the slave. After the sixties, idealism faded from our public life. Commercialism, vaunting its "prosperity," held the reins. New

<sup>&</sup>lt;sup>1</sup> Even these efforts of paternalistic despotism have a black side. The Steel Trust is lauded for its pension system for its employees. But a closer look shows that these pensions are not given as matter of course, but at the will of the employers—and may at any time be withdrawn. The result is to make the employee more dependent and more anxious to conciliate favor. Pensions of this sort bribe and degrade.

evils grew upon the life of the people with little check, so long as they threw no immediate obstacles in the path of "prosperity's" chariot wheels. For twenty years (1870-1890) society refused to see its shame and its danger: it slept incredulous, or it awoke shameless. But about 1800 a new tide of moral earnestness began to swell in American life. comparable only with that which marked the days of Abraham Lincoln. Again the people heard the call to line up in a struggle for Social Justice against Vested Wrong and Special Privilege, which, like the Slave Power, reaped where they had not sown. The Nation awoke shamed; but it awoke in the dark, enmeshed in a net of intangible chains, and found itself for a time curiously unable to grapple with its enemy. Now, at the end of another twenty years, a new dawn is breaking. The moral sense of the people has grown steadily more and more alert and sensitive and determined. The people have found a gallant group of leaders. who will not repeat the ancient farce of surrender or betraval after victory (La Follette in Wisconsin, Woodrow Wilson in New Jersey, Folk in Missouri, Heney and Hiram W. Johnson in California, Cummins in Iowa, - with many capable lieutenants in these and neighboring States), and, under this guidance, they have begun to fashion weapons for the strife more effectual than were ever before enlisted for freedom. Some victories have been won; but perhaps the most hopeful characteristic of the day is the growing conviction that the first step toward industrial freedom is the restoration to the people of self-government through new machinery, like the referendum, initiative, recall, direct nomination of all officers, and more direct control over the Senate and the Federal courts.

In politics and society, this new moral earnestness embodies itself in various movements, which, for most practical purposes, can well afford to join hands. Three main movements are treated briefly in the following pages: Labor organization; Socialism; and the Progressive movement in politics.

#### I. THE LABOR MOVEMENT

"Laborin' man and laborin' woman hev one glory and one shame: Everythin' that's done inhuman injers all on 'em the same."

- Biglow Papers.

445. Modern Organization of Labor. — The ten years preceding the Civil War, with the new conveniences for communication and combination (§ 362), saw a few trades organize on a

national scale (instead of for localities only); but these first national "unions" were weak, or were confined to trades whose total membership was small. The sixties witnessed a remarkable spread of the movement. The Brotherhood of Locomotive Engineers organized in 1863, the cigar makers in '64, the brickmakers in '65, railway conductors in '68, railway firemen in '69—all strong unions. By 1870 forty trades had achieved national organization. Then the movement received a new impulse from the consolidation of capital, until all skilled trades became so organized. The national "union" is the correlative of the "trust."

Nearly every union has its weekly or monthly organ, *The Carpenter*, *The Fireman's Magazine*, etc.; and, apart from industrial matters, these organizations have exerted a notable influence and training. Many a local "Assembly" conducts its business and debates with a promptitude and skill that would be highly instructive to college faculty or State legislature.

But organization of single trades, even on a national scale, was not enough. In 1869 a few workingmen in Philadelphia founded The Noble Order of the Knights of Labor - to include all workers, skilled or unskilled, - with the motto, "The injury of one is the concern of all." The strike year of '77 (§ 446) popularized the movement; and in '78 it held its first National Assembly, made up of delegates from local and district assemblies. For years this Order exercised vast influence for good, and was the fount of much wholesome legislation in State and Nation (§ 450). It was somewhat discredited by association with disastrous strikes in '86; and the more highly skilled trades, skeptical of fruitful alliance with unskilled men, and desirous of more effective control of their own interests, had already begun to secede. Then the Knights joined the Populists in the Free Silver campaigns, and virtually fell with the failure of that movement 1 — but only to be replaced by a more powerful organization.

<sup>&</sup>lt;sup>1</sup> Especial gratitude is due the Knights of Labor for their early recognition of the right of women to equal pay with men for equal service, and for their

The American Federation of Labor rose, phoenixlike, from the ashes of the Knights. Its units are the national unions of single trades; it does not recognize unskilled labor in its organization. In 1912 it counted some two million men, besides three quarters of a million more organized in railway unions. It has encouraged the formation of Trades' Assemblies (the "Trades-union" of the thirties) in all large places, composed of delegates from the local unions and standing to them somewhat as the National Federation stands to the national unions. The annual convention and the executive council of the American Federation exercise tremendous influence over the separate unions, but have no binding power over them, except authority to levy assessments to sustain a strike approved by the central council.1 Samuel Gompers has been annually reëlected president for some twenty years (1913), and has proven himself a notable leader.

Over against this organization of labor stands organized capital,—the Employers' Associations, the National Association of Manufacturers, and especially the Citizens' Industrial Association of America.

446. Labor War. — As with the earlier organizations of the thirties, so too the modern unions at once asserted hostility between labor and capital. Said the brickmakers, in the preamble to their constitution, in '65:—"Capital has assumed the right to own and control labor for its own selfish ends." The first violent clash came, naturally, in the railway world, — because organization on both sides was first complete there. The railway panic of '73 led many roads to cut wages. The powerful organizations of "skilled" engineers and conductors proved able to ward off such reductions, or at least to secure fair hearing, in most cases, by mere threats of a strike; but the places of firemen and switchmen could be filled more easily, and on these classes fell the most serious reductions of

hearty welcome to world-peace movements. An admirable account of the Order, in brief, may be found in Ely's Labor Movement in America.

<sup>&</sup>lt;sup>1</sup> Contrast this organization with the labor organizations of 1830.

pay. In '77 the fourth cut within five years drove these employees on the Baltimore and Ohio to a strike — which spread like a prairie blaze to many other roads. The strikers sought to prevent the running of freight trains. Riot and bloodshed were widespread, from Baltimore to San Francisco. Pittsburg was in the hands of a mob for days. The crowds of idle and desperate men in the cities, and the thousands of "tramps" in the country (both new features in American life with the '73 panic) added to the violence and disorder. Millions on millions of dollars of railway property were destroyed, and the injury to private business was much more disastrous. militia generally proved unwilling, when called out against the strikers or the mobs; but violence was finally repressed, and peaceful strikers sometimes intimidated, by Federal troops. on the call of State governors or of United States marshals. On the whole, however, the strikers won important concessions 1

The Bureau of Labor computes 34,657 strikes for the following twenty-five-year period, 1881–1905. Over eight million men were directly involved; and the direct cost — apart from the greater indirect cost to the public — was half a billion of dollars. More than one third of these strikes are classed as "successful"; one sixth more as "partially successful"; and nearly half, "unsuccessful." The percentage of success varies from 73 per cent, in 1899, to 34 per cent, in 1886. The latter was a year of a "secondary" crisis, — almost a "panic." It seems to be a general truth that strikes are most likely to succeed "on a rising market," i.e. in times of prosperity, when manufacturers are least willing to stop operations. Over one-third the strikes took place in the last fifth of the period, and some of the most significant ones in our history have come in even more recent years.

It is impossible, of course, to trace in detail this quarter-century of labor war. Two or three incidents only can be mentioned.

<sup>&</sup>lt;sup>1</sup> The success was sufficient to lead to a strike the same summer among the coal miners in western Pennsylvania, where wages had been cut so low, that, with the part-time work (adopted in order to limit output and keep up price), the best workman could hardly earn \$15 a month. Again a considerable measure of success resulted.

- a. The industrial depression of 1893 brought one of the most serious periods of labor disturbances. A picturesque but highly significant feature was Coxey's Army of Unemployed. A successful business man of Ohio, strongly impressed with the lack of public attention to the need of industrial reform, led an "army," of some hundred men only, in an orderly pilgrimage, on foot of course, from central Ohio to Washington, to appeal to the National government for relief. The "army" reached the Capitol on May Day, 1894, and was arrested and jailed for "walking on the grass" on the Capitol grounds.
- b. Of more significance was the great Pullman Strike of the year 1894. The employees of the Pullman Car Company, residents, too, of the Company's village of Pullman, a suburb of Chicago, struck to avoid reduction of wages and to secure redress of various grievances. The American Railway Union, sympathizing with the strikers, demanded that the quarrel be submitted to arbitration; and, when the Company refused, the sympathizing Union refused to handle Pullman cars on any road. Twenty-three leading roads were involved. The companies had contracts, in most cases at least, making them liable for damages if they did not use these cars; and apart from this fact, they were bitterly resolved to crush the "sympathetic strike" idea. The disorders extended from Cincinnati to San Francisco: but Chicago was the storm center. Hundreds of freight cars were looted and burned by the city mob, which found its opportunity for plunder in the situation; and the loss and crime were charged upon the strikers by many respectable elements of society. Governor Altgeld plainly sympathized with the strike, and declared that the railway companies were paralyzed, not by strike violence. but by a legitimate situation, since they could not secure men to run their cars without Federal assistance. President Cleveland, however, broke the strike by using Federal troops to insure the running of trains - on the ground of preventing interference with the United States mails. and of putting down "conspiracies" which interfered with interstate commerce. The business interests of the country promptly indorsed the President's action, - which, however, was one of the chief reasons why the more radical wing of Democrats were driven into political opposition (\$ 430).
- c. In May, 1902, the coal miners of Pennsylvania struck for an increase of wages and the recognition of their union. The strike lasted five months and caused a general coal famine. John Mitchell, the head of the miners' union, by his admirable handling of the situation, won recognition as one of the ablest and greatest men America has produced. The operators, consisting of a few railway presidents, who enjoyed a complete monopoly of the anthracite coal trade, lost public sympathy by

an insane "divine right" claim from Mr. Baer, one of the presidents, that the public ought to be content to leave the matter to "the Christian men to whom God, in his infinite wisdom, has given the control of the property interests of the country." Finally President Roosevelt brought the operators and John Mitchell into a conference (October 3). Mitchell offered promptly to submit his case to a board of arbitrators to be appointed by the President, and promised that the miners would return to work at once, without waiting for the investigation, if such a course should be agreed to by the operators. The operators refused arbitration. and instead called on the President for troops. Two weeks later, however, Roosevelt succeeded in bringing to bear pressure from J. Pierpont Morgan, the financial backer and real master of the coal trust. Then the operators agreed to arbitration. Five months later (March, 1903). the board of arbitrators made its report, sustaining the demands of the miners in almost every point. The action of President Roosevelt was acclaimed by the sympathizers of labor everywhere as a happy contrast to the action of Cleveland nine years before at Chicago. Incidentally it is well to note that the mining companies simply added to the price of coal much more than the arbitration had cost them.

447. Government by Injunction. — During the progress of the Pullman strike (July 2, 1894), a Federal District Court issued a "blanket injunction," ordering all members of the American Railway Union to cease interfering with the business of the twenty-three roads (§ 446 b). Eugene V. Debs, president of the Union, continued to manage the strike, and, two weeks later, was arrested for contempt of court, Investigation of the charge did not take place for several months during which Debs remained in jail rather than ask for bail on such a charge — and then he was condemned to six months' imprisonment. In effect Debs was punished by a year's imprisonment for an act which no legislature or jury had ever declared a crime, and he was deprived of his constitutional privilege of a jury trial. The principle was not new; but this sort of "court government by injunction" came into new prominence by this incident. Organized labor, ever since, has made resistance to "government by injunction" one of its cardinal principles. In 1912 an "anti-injunction bill" passed the lower House of Congress, but failed in the Senate.

Debs was already under charge of violating the laws regulating interstate commerce; but on a trial for this offense he would have had a jury. The action of the court deprived him of this right, and removed all the securities of the ordinary law. Says Davis R. Dewey,—the practice tended to make "the courts no longer judicial, but a part of the executive branch of the government"; and eventually to make "the judiciary either tyrannical or contemptible" (National Problems, 296).

The courts have held that an agreement among employees to refuse to work is permissible—in the absence of a definite contract—and that persons directly aggrieved may legally combine to boycott an employer; but they have elaborated a theory that the "sympathetic strike" and the "secondary boycott" are illegal. No statutes so declare, however. This law is wholly judge-made. Nor has any jury ever passed upon it. It is always administered by process of injunction.

In 1907 the Bucks Stove Company refused to recognize Union labor. In March the American Federation declared a boycott against that company, publishing its name in the official organ of the Federation in an "unfair" and "we don't patronize" list. The company obtained an injunction against such publication from a judge of the Federal Court for the District of Columbia, on the ground that the boycott was in violation of law. No attempt was made to punish the boycotters by a regular trial, where they would have had the advantage of a jury. The officers of the Federation denied the justice of the injunction, but pretended to recognize its authority, advertising the fact that they had been enjoined from publishing the name of the Bucks Stove Company on their "unfair" list. For this "contempt of court" in "evading" or disregarding an injunction, three great labor leaders, - Gompers, Mitchell, and Morrison (President, Vice President, and Secretary of the Federation) were sentenced to a year's imprisonment by Judge Wright of the same Federal Court. Judge Wright, who owed his appointment to Boss Cox of Cincinnati, one of the most corrupt political bosses America has ever produced. signalized his decision by what the Outlook (January 2, 1909) condemned as a "passionate attack" upon organized labor. The labor leaders appealed to the Supreme Court, and the decision of Judge Wright was set aside on the ground that the acts of the accused men after the injunction had not amounted to a violation of the injunction.

448. The "Closed Shop" has been a chief aim of labor in all its use of strike and boycott. Labor believes it must have "collective bargaining" in order to deal with capital on any-

thing like equal terms. The individual laborer must accept any terms offered him. Accordingly, members of a union contend that every worker in their trade must be persuaded, or forced, to join the union or leave the industry. The man who stays out gets whatever better conditions may be secured by collective bargaining, without giving his help toward it; and, in time of trial, he becomes a traitor to the cause of labor by underbidding the union standard.

Wherever there is a chance for success, the union man refuses to work on the same job with non-union men, even of different trades. Union plasterers will leave a house on which a non-union carpenter is engaged. A manufacturing company which employs non-union labor may find its output boycotted by all unions in other industries. Or a strike may be declared against a railroad which handles such output.

The traditions of our past age of individualism, and ignorance of the terrible needs of labor, cause many liberal-minded people to look upon the principle of the closed shop as "un-American." It is easily designated as tyranny toward the individual laborer, who is no longer "permitted " to work on his own terms (which in practice means always some employer's terms). Sometimes, too, like all sympathetic strikes, a strike against a fair employer who himself recognizes union labor, but who has contracts with firms that do not, involves serious injustice. The unions, too, fall often into the hands of self-seeking leaders, or of treacherous ones, and are used to bad ends; and the most sincere leaders are no more beyond possibility of error, in their puzzling duties, than other men are. But the sins of organized labor, while often more violent, are usually less dangerous to human progress, than the sins of organized capital which commonly provoke them. From its viewpoint, talk by a "scab" of his individual "right" to bargain his own labor is as much out of place as like vaporings by a deserter in war. Organized labor is the only hope to-day against industrial serfdom. Its victory means better conditions of life for the masses of mankind.

449. Violence and Society. — The public long tried to deceive itself with worn-out platitudes as to identity of interest between labor and capital. Those interests are identical in the production of wealth: in its distribution, under present conditions, they are diametrically opposed. What one gets, the other fails to get. Society has been compelled to open its eyes in

part to the warlike nature of the relation between the two forces; but its sympathies are effectually alienated by the use of violence. The unions know this; and, from policy and principle, they commonly do their best to prevent violence. When the more desperate and ill-controlled strikers, or their sympathizers, do use violence in a strike, well-to-do society promptly calls for troops and declares that "now the time for considering the wrongs of labor has gone: it remains only to restore order." Certainly, order must be maintained: but the fundamental evil in the whole matter lies in the fact that for the people who use this argument most glibly, "the time for considering the wrongs of labor" has never arrived.

Almost every long-continued strike, except in the highly skilled industries, where strikes are rare anyway, does see some violence. The time comes when the leaders can no longer restrain ignorant and passionate followers, some of whom see their homes lost on mortgages, or their children die, for lack of their usual wages. Then come fire and dynamite. The unions assert, too, that sometimes the employers hire ruffians to destroy their own property in order to represent such destruction as the work of strikers; and some instances of this sort, amazing as the fact is, seem authenticated.

More ominous than violence in a stubborn strike is its presence in more ordinary times. On the Pacific coast, the name war is no metaphor for the struggle between capital and labor. The Los Angeles Times has been particularly bitter against labor. October 1, 1910, the Times building was destroyed in an explosion which cost twenty-one lives. Two McNamara brothers (one of them the Secretary of the International Association of Bridge and Structural Iron Workers) were charged with the crime by a skillful detective. The circumstances of their removal from their Indiana home, with disregard of the extradition law's formalities, smacked of kidnaping; and at first the rank and file of organized labor (including such leaders as John Mitchell and Samuel Gompers) believed fiercely that the brothers were victims of a dastardly conspiracy which was taking advantage of a gas explosion to discredit labor. But

with the trial (November, 1911) came a thunderbolt. The brothers pleaded guilty; and apparently they were only part of a group of labor men who have been engaged in similar crime. Capitalist associations broke forth in bitter triumph. Labor, astounded, realized that it had received a desperate wound, from which it may need years to recover. On the other hand, some thinkers hope faintly, that, after the gust of passion has passed, society may awaken to the deep seriousness of the situation.

Society must awaken not only to the wrongs of labor but to its own loss. It foots the bills in every strike. What the employer loses is quickly made good to him by increased prices to the consumer. What the laborer loses is added largely to the cost of prisons and asylums. Even while the strike is in progress, the "innocent bystander" often suffers as bitterly as the combatants—just as the burghers of a medieval city often found their daily marketing interrupted, and sometimes had heads broken or houses burned, in the private wars between lawless barons in their streets. Society must continue to suffer such ills, as medieval society did, until it becomes resolute to compel justice on both sides. A beginning in this direction is attempted in the creation of boards of conciliation and arbitration.

- 450. Gains. The strike and the boycott have been necessary, probably, to maintain existence for organized labor; but the various positive gains have come mainly through peaceful influence upon legislation and public opinion.
- a. Many States compel payment of wages at regular weekly periods and in cash instead of in truck though some of this legislation has been nullified by the courts.

<sup>&</sup>lt;sup>1</sup> This is a good subject for special report. Such boards exist in more than half the States. Their powers, however, are insufficient to secure industrial peace—granted that peace can be found along this line. Some States propose at least to compel each party, before resorting to strike or lockout, to submit its wrongs to full inquiry by such a board, so that the public may have authoritative and impartial information, and so give its sympathies intelligently. Some Australian states have made arbitration of labor disputes compulsory; but it is not yet demonstrated that such a law will work.

- b. After the Civil War, the eight-hour day¹ took the place in labor agitation which the ten-hour day had held thirty years before. In '68 Congress adopted the principle for all labor employed directly by the government. Many States and municipalities have followed this example for public works; and in 1912 Congress enacted that the principle should apply to all work done for the government by contractors as well as to work done directly by its own employees. State legislation regarding the labor day for adult men, except on government work, is impossible so far, because of the disposition of the courts to hold that such legislation interferes with the constitutional right of "freedom of contract"; but some skilled unions have been able to enforce the rule for their members.
- c. This hold-over plea from a past age is honestly meant, probably; but in practice it amounts to using the name of liberty to bow labor before capital. In various States the courts until recently nullified legislation to limit the working day even for women, on precisely the same ground (in Illinois in 1895, and in New York in 1911<sup>2</sup>). Under the

<sup>2</sup>Referring to this decision, in a speech in New York in November, 1911, Theodore Roosevelt declared that experience showed that while the people may be aroused to sound and high thinking, and their legislative and executive officers may try to carry out their purpose, yet the whole movement may come to naught "because certain judges are steeped in some outworn political or social philosophy and totally misapprehend their relation to the people and to the public needs. . . . I am asking you to declare unequivocally that it is for the people themselves to say whether or not this policy [a shorter labor day] shall be adopted, and that no body of officials, no matter how well meaning, nor personally honest, no matter whether they be legislators, judges, or executives, have any right to say that we, the people, shall not make laws to protect women and children, to protect men in hazardous industry, to protect men, women, and children from working under unhealthy conditions or for manifestly excessive hours, and to prevent the conditions of life in tenement houses from becoming intolerable. It is, I believe, an advantage to have fixed

<sup>1&</sup>quot; We mean to make things over; we're tired of toil for nought
But bare enough to live on: never an hour for thought.
We want to feel the sunshine; we want to smell the flowers;
We're sure that God has willed it, and we mean to have eight hours.
We're summoning our forces from shipyard, shop, and mill:
Eight hours for work, eight hours for rest, eight hours for what we will!"

—J. G. Blanchard.

compulsion of public opinion, the courts in these same States have found it well to reverse their earlier decisions, finding sanction for so doing in the "police powers of the State,"—to maintain a reasonable standard of health and public welfare. Radical thinkers look to an extension of the same principle to justify legal limitation of hours for men and even to establish a minimum wage ("living wage") such as to insure each laborer income sufficient to bring up a family under wholesome conditions.

Justice Holmes, in delivering a unanimous opinion of the Federal Supreme Court, has recently said: "The police power extends to all great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or by strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

d. A scientific investigation of labor conditions, by the States, has been one of the wisest demands of labor. In 1869 a Labor Reform party secured a State Bureau of Labor Statistics in Massachusetts. In the eighties the Knights of Labor secured such a bureau in the Federal government and in many States. More than half the States now (1913) have such departments, usually headed by labor representatives and charged with authority to enforce factory legislation. In 1903 the Federal Bureau became an independent Department of Commerce and Labor, with its head a Cabinet officer, and in 1913 the Labor end of this department was made a separate Department of Labor.

e. It has been easier to secure limitation of the working day for children than for adults, because public sympathy was more

in the court the power to state that a legislative act is unconstitutional, but only provided that the power is exercised with the greatest wisdom and self-restraint. If the courts continue to use it with the recklessness that has too often been shown in the past, it is almost inevitable that efforts should be made to amend it. . . . I do believe that this people must ultimately control its own destinies, and cannot surrender the right of ultimate control to a judge any more than to a legislator or an executive."

<sup>1</sup> This has not yet been formally demanded, except by the Socialists. It implies, of course, that to the unemployed in private industries society shall offer employment in making roads, draining swamps, reclaiming deserts, and other public works, such as may quickly add to the productive power of society.

easily aroused and because the common law did not "protect" minors by the "freedom of contract" rule. In 1874 and 1879 Massachusetts, through the influence of organized labor and of the Labor Bureau's statistics, made the first efficient provision in America for limitation of hours of labor for women and children (ten hours a day), with adequate inspection to enforce the law. During the next decade, this example was followed, for children at least, in most of the manufacturing States of that day, with further legislation prohibiting employment of children of school age—at least until a certain proficiency in studies had been attained. Between 1880 and 1890 the number of children in manufacturing establishments fell off a third; but after 1890, the numbers increased once more, with the growth of factories in the South—where proper regulation of this crime against youth is sadly lacking.

f. Factory acts have been enacted in more than half the States (not yet in the South) requiring employers to "fence" dangerous machinery, to arrange for escape from possible fire, and to provide adequate ventilation and freedom from dampness and extreme temperatures. Such legislation is enforced through inspection by the State Labor Bureaus.

g. Compensation to workmen for injuries received in the course of their toil has made less progress, though here too gain begins to show. The Common Law permits an employee to recover by a suit for damages. The cost, however, is too great for poor men in any but the gravest cases; and, if the accident was caused by the carelessness of a "fellow servant," no recovery is possible under the Common Law, as the courts have

<sup>&</sup>lt;sup>1</sup> Labor organizations have expressed desire to coerce these negligent States by Federal law forbidding railways to transport goods produced by child labor. Constitutional authority for such legislation is claimed under the power of Congress to regulate commerce, —a power which has shown itself capable of some remarkable developments in the past. A careful investigation by Hannah R. Sewell (Bulletin of the Bureau of Labor, May, 1904) proves that in many Northern States the laws fixing the age limit are very generally evaded. In 1912 the Federal government created a Children's Bureau to prevent such abuses and to promote children's welfare.

interpreted it. Happily, about half the States, by employers' liability laws, have abolished this vicious principle; and some of them have made compensation almost automatic — without the intervention of legal processes. When the practice becomes general, compensation for accidents will become an item in the general expense account of all factories, — part of the operating expenses, — and will be paid, as it should be, by society, in the price of the goods. At the same time, each employer will have an inducement to precautions, since, by reducing accidents below the average, he will add to his profits.

In this whole matter America, with its constitutional protection to property interests, lags far behind Germany and England. No other industrial country needs such legislation as much as America. No other one has so large a proportion of preventable accidents. In our coal mines alone, in 1908, three thousand men were killed and ten thousand injured. The family wreckage that goes with such loss of life by the breadwinners is even more appalling. Unless this slaughter is checked by law, or by greater sense of responsibility in employers, American industry threatens to become more wasteful of human life and social welfare than ancient war was.

451. Labor and Politics.—The modern labor movement has hesitated to identify itself with a political party. Many think such action unwise, and point to certain historical facts to justify the position. In the '60's a Union Labor party elected representatives to various State

<sup>&</sup>lt;sup>1</sup> An advanced Workingman's Compensation Law has been recently enacted in Wisconsin, and another in Washington. The decision of the Supreme Court in Wisconsin makes a beacon in the movement to emancipate American courts from their ancient trend. A favorite device for rendering Compensation acts nugatory has been for the employer to require his workmen, as a condition of getting work at all, to sign a contract, "contracting themselves out" from the benefits of the law. Courts have always upheld such "free" contracts. The advanced Wisconsin law expressly declares that such "contracting out" shall be illegal and worthless. The Supreme Court of the State, in upholding this excellent provision, says (November, 1911):

<sup>&</sup>quot;When an eighteenth century constitution forms the charter of liberty of a twentieth century government, must its general provisions be construed and interpreted by an eighteenth century mind, surrounded by eighteenth century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon a veritable bed of Procrustes."

legislatures, and in the '70's it held imposing National conventions and nominated a candidate for the presidency. Some favorable legislation was secured, but the conviction that selfish leaders were using the organization to promote personal ambitions wrecked the movement. The Knights of Labor for many years kept out of partisan politics, working instead within both parties for their ends; and when they did identify themselves with the Populist and the free-silver Democrats, they declined in influence.

Accordingly, the American Federation kept free from partisan affiliation until 1908. Then it declared against the Republican candidate for the presidency, because he favored the judicial injunction in labor cases. In 1912, again, the officers favored the Democratic candidate. Some leaders, moreover, believe that organized labor should become a distinct political party, as in England, and they insist that only so can an advance be made upon war by strikes and boycotts. Such men point, too, to the fact that, in the absence of such a party, the "unskilled" labor vote, and much of the "union" vote, is going over rapidly to the Socialists, who now alone claim directly to stand for labor.

## II. SOCIALISTS AND THE SINGLE TAX

452. Socialism. — While the Labor Union has been appealing to skilled workers, Socialism has been making rapid converts among unskilled laborers on the streets and among students in the closet. To-day it is a force to be reckoned with in American life; and therefore it must be understood. The time has gone when ignorant critics could safely and contemptuously dispose of it by invective or by confounding it with either anarchy or communism.

Modern Socialism points out that a few capitalists practically control the means of producing wealth ("the machinery of production and transportation"). This, they argue, is the essential evil in industrial conditions. Their remedy is to have society as a whole step into the place of those few, taking over the ownership and management (1) of land, including, of course, mines, water power, and all right-of-way, (2) of transportation, and (3) of all machinery employed in producing wealth. Private ownership for private enjoyment and consump-

tion would then, they argue, regulate itself without injury to the common life.

For immediate purposes, the party platform is more restricted,—as will appear from the following statement adopted in 1908 by a National Convention and ratified (with amendments) by a membership referendum in that year and in 1909.

#### GENERAL DEMANDS

- 1. The immediate government relief for the unemployed workers by building schools, by reforesting of cut-over and waste lands, by reclamation of arid tracts, and the building of canals, and by extending all other useful public works. All persons employed on such works shall be employed directly by the government under an eight-hour workday and at the prevailing union wages. . . .
- 2. The collective ownership of railroads, telegraphs, telephones, steamboat lines and all other means of social transportation and communication.
- 3. The collective ownership of all industries which are organized on a national scale and in which competition has virtually ceased to exist.
- 4. The extension of the public domain to include mines, quarries, oil wells, forests, and water power.
- 5. The scientific reforestation of timber lands, and the reclamation of swamp lands. The land so reforested or reclaimed to be permanently retained as a part of the public domain.
  - 6. The absolute freedom of press, speech, and assemblage.

#### INDUSTRIAL DEMANDS

- 7. The improvement of the industrial condition of the workers.
- (a) By shortening the workday in keeping with the increased productiveness of machinery.
- (b) By securing to every worker a rest period of not less than a day and a half in each week.
  - (c) By securing a more effective inspection of workshops and factories.
- (d) By forbidding the employment of children under sixteen years of age.
- (e) By forbidding the interstate transportation of the products of child labor, of convict labor, and of all uninspected factories.
- (f) By abolishing official charity, and substituting in its place compulsory insurance against unemployment, illness, accidents, invalidism, old age, and death.

### POLITICAL DEMANDS

- 8. The extension of inheritance taxes, graduated in proportion to the amount of the bequests and to the nearness of kin.
  - 9. A graduated income tax.
- 10. Unrestricted and equal suffrage for men and women, and we pledge ourselves to engage in an active campaign in that direction.
- 11. The initiative and referendum, proportional representation, and the right of recall.
  - 12. The abolition of the Senate.
- 13. The abolition of the power usurped by the Supreme Court of the United States to pass upon the constitutionality of legislation enacted by Congress. National laws to be repealed or abrogated only by act of Congress or by a referendum of the whole people.
  - 14. That the Constitution be made amendable by majority vote.
- 15. The enactment of further measures for general education and for the conservation of health. The bureau of education to be made a department. The creation of a department of public health.
- 16. The separation of the present bureau of labor from the department of commerce and labor, and the establishment of a department of labor.
- 17. That all judges be elected by the people for short terms, and that the power to issue injunctions shall be curbed by immediate legislation.
  - 18. The free administration of justice.

Such measures of relief as we may be able to force from capitalism are but a preparation of the workers to seize the whole power of government, in order that they may thereby lay hold of the whole system of industry and thus come to their rightful inheritance.

Except for the references to the Senate and the Judiciary, this political program finds much sympathy among classes of society who rail at the name Socialism.

The Socialists have usually found their main strength in manufacturing towns. Accordingly, they have turned their attention largely to political contests in such centers. In 1908 they captured the whole city government of Milwaukee, electing *Victor Berger* also to Congress. In 1910 they carried ten cities in Ohio alone. In 1912 they doubled their previous vote for President, reaching a total of nearly 900,000, representing more than four million people. Most significant of all, — they

have shown surprising strength in many small towns in purely agricultural communities.<sup>1</sup>

453. The Single Tax.—In 1879 Henry George published Progress and Poverty. This brilliant book, to its converts, transformed "the dismal science" of political economy into a religion of hope. George teaches that land values are created by the growth of population. They are a social product,—not earned by the individual. Society therefore should take them. It can do so by taxing land up to the rental value of unimproved land equal in location and quality. This taxation would include, of course, the full value of the use of city streets to transportation companies and lighting companies, and of railroad right of way—unless the public chose to keep such enterprises wholly in its own hands. Thus taxation would reach all "natural monopolies."

The advocates believe that such a tax would exceed present public expenditure and make other taxation unnecessary. Therefore it is styled the "Single Tax." Other taxation, it is urged, "penalizes industry." The Single Tax takes from the individual only what he has never earned (the "unearned increment"), and takes for society only what society has created. Incidentally it would put an end to mischievous speculation in land—since no one could then afford to hold land, unused, for a rise—and it would certainly prevent many forms of vicious special privilege. Indeed, its converts usually hold that all special privilege runs back to private ownership of land values.

Apart from the question of exact economic truth, the Single Tax doctrine has been one of the inspiring forces of the century for the betterment of man. *Progress and Poverty* was a trumpet call, for eager youth with faith in humanity, to rally to a contest for truth which should make men free. Its converts, through the ensuing thirty years of reform, have ever been found foremost in movements to lift human life to higher levels.

To-day, in widely scattered parts of the world, the theory is passing into practice, especially in *local* taxation, — as in parts of Australia, Canada, Germany, the British Isles; and its influence has radically reformed old and abusive methods of taxation in parts of America.

<sup>1</sup> Compare Modern History (index) for the movement in Europe.

Socialists believe in public ownership of all the means of production, including machinery; Single-Taxers believe in public ownership only of all natural monopolies. The Socialists agree to the doctrines of the Single Tax, but do not think it goes far enough. The Single-Taxer believes, that, granted the Single Tax, extreme individualism might safely rule all other social relations. They denounce socialism as tyrannical.

# III. THE "PROGRESSIVE" MOVEMENT

## A. IN NATIONAL POLITICS

454. Theodore Roosevelt.—During the closing twenty years of the nineteenth century, a group of aggressive young reformers appeared in public life. The most picturesque of the early group perhaps was Theodore Roosevelt of New York,—police commissioner of New York city, Civil Service Commissioner (§ 421), Colonel of the "Rough Riders" in the Spanish War, Governor of New York. By 1900 Roosevelt had begun to loom up as a possible presidential candidate, to the dread of the Republican machine. In the Republican Convention of that year the bosses (Platt, Quay, and Hanna) joined forces to shelve him by nominating him for the figurehead vice presidency, against his vehement protest. A few months later, the assassination of McKinley made him President; and, for the first time in our history, an "accidental President" took place at once as a popular leader.

In 1904, now himself in control of the machine, Roosevelt was triumphantly re-elected.<sup>2</sup> The seven and a half years of his administration mark an epoch in history. In official papers and public addresses he denounced in startling terms the insolence and criminal greed of aggregated capital, and roused the masses for the first time to the need of action. The actual

<sup>&</sup>lt;sup>1</sup> Since the time of Jefferson, a century before, no Vice President had been elected to the presidency.

<sup>&</sup>lt;sup>2</sup> The Democratic party in 1904 was believed to be controlled mainly by the Eastern and conservative faction, represented by the candidate, Judge Alton B. Parker. The radicals were not satisfied with either candidate; but, on the whole, the Republican was understood to promise most for social progress.

achievements of the administration in its professed work of curbing the trusts and monopolies were less significant. Still the Interstate Commerce Commission was revived by the Hepburn Amendment (§ 402); suits were pressed vigorously against many trusts under the Sherman act and Interstate Commerce law (§ 399); the scandalous conditions in the Chicago stockyards were investigated (§ 411); a Pure Food law brought the National government to the aid of the States in the warfare against noxious adulterations. More important was the new significance given the doctrine of conservation of National resources, formulated by Pinchot, the head of the Forestry Service, and taken up and popularized by his personal friend, the President, with his instinct for graphic phrase and dramatic situation.

The prime service of the energetic President, however, lay in arousing National interest in the "Big Business" problem. He was attacked by certain of the interests as a disturber of "prosperity." But the mass of the people responded to his taking appeal for "a square deal to every man"; and at the close of his term he possessed a hold upon the nation such as no other Presidents have approached, with the exception of Washington, Jefferson, Jackson, and Lincoln. At the same time, extreme radicals disliked his aggressive foreign policy and his inclination to paternalistic despotism. Such critics pointed out (1) that he used his tremendous personal and official power to aid no other real "progressive" in any of the many State contests with Privilege — even when he did not hinder, as with LaFollette in Wisconsin; (2) that his trust prosecutions had not injured any money king; (3) that he had intimate personal relations with some of the trust magnates, heads of what he chose to call "good trusts"; (4) that during his seven

<sup>2</sup> Constitutional sanction was found in the control of Congress over Interstate Commerce.

<sup>&</sup>lt;sup>1</sup>During the preceding administrations of Harrison, Cleveland, and McKinley, there had been in all 16 prosecutions: in Roosevelt's seven years there were 44, though little actual check to the trusts resulted.

years the number of trusts had greatly multiplied and their capitalization vastly increased (§ 410), along with the new device of concentrating power by the system of interlocking directorates; and (5) that he had taken no stand on the tariff question, in which his "good trusts" were deeply interested.

455. The Election of 1908. — President Roosevelt, with all his amazing energy, proved himself a poor judge of men, often selecting for his chief aides those who had little sympathy with his ideas. This quality was manifested conspicuously in 1908, when he forced William H. Taft upon the Republicans as his successor. The Democrats nominated Bryan for the third time. Between the Roosevelt Republicans of that time and the Bryan Democrats there were many points of likeness and sympathy, — especially on the more immediate issues of the day; while within each party a large class was bitterly opposed to these reform policies, and desired a return to the older attitude of the government as a promoter of business prosperity rather than of human welfare. Owing to the general confidence of large masses in Roosevelt, and to the aid given the Republicans by aggregated wealth, Taft was elected overwhelmingly.

As Roosevelt's Secretary of War, Mr. Taft had been a loyal subordinate; but now it soon appeared that he did not himself believe in the Roosevelt policies. Instead, he belonged distinctly in the conservative ranks.

456. Betrayal of the Progressives.—A group of capitalists had been trying to engross the mineral wealth of Alaska, in part by fraudulent entries. Roosevelt had checked the proceeding by temporarily withdrawing the lands from entry—by an arbitrary and possibly lawless, but certainly beneficent, stretch of authority. Richard Ballinger had been the attorney of the grasping ring of capitalists, and previously had served them with information even while in the service of the government. President Taft was induced to appoint this man his Secretary of the Interior, and it seemed as though the grab would then go through under his sanction. The President even dismissed both Pinchot (a devoted public servant and a man of high standing in the nation) and also Louis Glavis, a subordinate of Ballinger, who had gallantly exposed the treacherous designs of his chief with necessary and proper disregard for official

etiquette.¹ Happily, the sacrifice of Glavis, the war waged month after month by Collier's Weekly, and the consequent Congressional investigation, even though by a partial committee, compelled Ballinger to resign, and saved the Alaskan wealth for the nation. No one suspected the President of corrupt motives; but it was plain that the corrupt interests had his ear.

Some other illustrations of his indifference to the progressive movement have been noted (as in § 403, and note). The most direct clash came on the tariff (§ 457).

457. The "Insurgents" and the Payne-Aldrich Tariff. — For some ten years after the enactment of the Dingley Tariff, public attention was engrossed mainly in "Expansion" and in currency and trust problems. Much of the time, however, there had been expectation of pending revision of the tariff; and, in 1908, after the panic of the preceding year, that issue came again to the front.

The Republican platform declared for a thoroughgoing revision, promising a special session of Congress for that purpose, and asserting that duties ought only to "equal the difference between the cost of production at home and abroad, together with a reasonable profit for American industries." Moreover, Mr. Taft waged his campaign largely on definite pledges for tariff reduction. Shrewd observers doubted somewhat whether the politicians of the party were not too thoroughly in the grip of the trusts to make any real inroad upon the protected interests; and the result justified the skeptical Democratic prophecies that any Republican revision would be a revision upward. The Payne-Aldrich Tariff of 1910, while making improvements at a few points, actually aggravated the evils which the nation had expected to have remedied. It was a brazen

<sup>&</sup>lt;sup>1</sup> Glavis' "insubordination" consisted in a noble patriotism which led him to show fealty to the American people rather than to a traitorous superior in office. Such patriotism, more needed than daring on the battle field, cannot be praised too highly.

<sup>&</sup>lt;sup>2</sup> Somewhat more definitely, the Democratic platform declared for immediate reduction of duties on necessaries and for placing on the "free list" all "articles entering into competition with trust-controlled products."

defiance of party pledges in the campaign. The House committee, which framed the bill, was itself notorious, made up, almost to a man, of representatives of beneficiaries of protection - a clear case of turning the place of sheep dogs over to wolves. The bill and the committee were attacked fiercely by a great number of the more independent Republican papers and leaders. Even President Taft called the woolen schedule "indefensible"; and showed so sensitive a feeling regarding the outrageous betrayal of party pledges that for a time it seemed possible he might redeem the party honor, and his own, by a veto. great body of Republican Congressmen, however, it was soon clear, would "stand pat" for the "System." A radical section then broke away in a definite "Insurgent" movement. In the House, the "System" Speaker, "Uncle Joe" Cannon, aided by the necessary number of "System" Democrats, easily forced the bill through, with brief consideration. In the Senate, where debate could not so easily be muzzled, insurgent leaders like LaFollette, Cummins, and Bristow, exposed mercilessly the atrocities of the measure, though they could not hinder its becoming law. And then the compliant President, in attempts to defend his "Standpat" friends from public criticism, declared it the best tariff ever enacted.

458. Elections of 1910 and 1912.—The Congressional election of 1910 was a revolution. The overwhelming Republican majority was wiped out by as large a Democratic majority; and in various impregnable Republican districts, Insurgents succeeded Standpatters. Even in the slowly changing Senate, Democrats and Insurgents together mustered a clear majority.

President Taft called a special session of the new Congress promptly on the expiration of the old one (April, 1911), to secure passage of his favorite measure of reciprocity with Canada—which he advocated with strong free-trade arguments. The Insurgents, largely from agricultural States, felt that this sort of tariff reduction fell too exclusively on the farmers, where there was least need for reduction. The Democrats, however, took up the measure, as a good beginning, and passed

it,¹ along with compensation to the farmers in a "Farmers' Free List Bill (to lessen the cost of farm implements and machinery). This compensating measure, however, together with various other tariff reductions carried by a coalition of Democrats and Insurgents, was vetoed by the President, on the ground that Congress ought to wait for information from a Tariff Board, which had been created by the Payne Tariff Bill to investigate the cost of production in America and abroad.

The split in the Republican party resulted in the organization of a Progressive Republican League, which hoped to secure control of the party machinery in the elections of 1912. League, led by the most radical spirits, was overwhelmingly for the nomination of LaFollette for President; but this was made definitely impossible when Theodore Roosevelt, despite previous specific declarations, avowed himself in the field, claiming to be the only representative of the Progressive movement who could hope for success. Mr. Taft, through his control of the Southern State delegations and of the machinery of the Convention, was renominated, after a campaign of disgraceful personal recrimination between him and his former friend. Roosevelt, however, had been the choice of most Republican States, especially of those with popular primaries (§ 461); and, declaring that his opponent had "stolen" the nomination, he called a mass meeting to organize a new party.

Meantime, the Democratic Convention, in session for nine days at Baltimore, made significant history. In this party, too, the preceding campaign had been a bitter, though disguised, contest between open progressives and more or less secret reactionaries. Professing loud allegiance to progressive principles, the old bosses were actually in control of a majority of votes when the convention met. They made plain their intention to organize the meeting in their interest by putting forward for the temporary chairmanship Judge Alton B. Parker. Mr.

<sup>&</sup>lt;sup>1</sup> Canada finally rejected reciprocity, by the election of a new parliament on that express issue.

Bryan had steadily declined to be a candidate for the presidency again, and he now stepped forward as a courageous and skillful champion of the progressive element, waging a contest that finally wrested control from the bosses and turned over the machinery of his party to the real democracy. No other convention ever witnessed so many dramatic episodes.

Bryan first appealed to all the leading candidates for the presidential nomination, urging them to oppose the bosses' choice for chairman,—a man "conspicuously identified, in the eyes of the public, with the reactionary element." Of the various candidates, Woodrow Wilson alone stood this "acid test." Others evaded, or pleaded for harmony, to avoid offending possible supporters. Wilson frankly and cordially approved Bryan's purpose. Thus the issue was drawn, and Wilson was marked, even more clearly than before, as the true candidate of the progressives. The bosses seated their man for chairman, but it was a Pyrrhic victory. The Democratic masses throughout the country shouted approval of Bryan and Wilson.

Next Mr. Bryan startled the Convention and the country by a daring resolution — declaring the convention opposed to the nomination of any candidate "who is the representative of or under obligations to J. Pierpont Morgan, Thomas F. Ryan, August Belmont, or any other member of the privilege-hunting and favor-seeking class." Two of the gentlemen named sat in the Convention. In the debate Mr. Bryan said: "Extraordinary conditions need extraordinary remedies. ... There is not a delegate who does not know that an effort is being made right now to sell the Democratic party into bondage to the predatory interests of the country. It is the most brazen, the most insolent, the most impudent attempt that has been made in the history of American politics to dominate a convention, stifle the honest sentiment of a people, and make the nominee the bond slave of the men who exploit this country. . . . No sense of politeness to such men will keep me from protecting my party from the disgrace they inflict upon it." Few delegates dared vote against the resolution. Then as the balloting proceeded slowly day after day, Wilson gained steadily, mainly because of thousands of telegrams from "the people at home," threatening, urging, imploring their representatives to support Bryan's leadership and Wilson's candidacy. On the forty-sixth ballot Woodrow Wilson was nominated. The progressive element, which had failed in the Republican Convention, had conquered in the Democratic.

Soon another progressive ticket was in the field. Roosevelt and his friends proceeded with their new organization, which took the name, the Progressive party, and nominated Roosevelt upon a long and radical platform. Many ardent reformers rallied to this long-desired opportunity for a new alignment in politics (cf. § 228); but a larger number of their old associates, including most of the LaFollette Republicans, felt that the movement was too much dominated by one man's ambition, and that it was ill-timed at best when the Baltimore nomination had offered so admirable an opportunity to progressives. Wilson was elected by the largest electoral plurality in our history, the vote standing, — Wilson, 435; Roosevelt, 88; Taft, 8. Wilson's popular vote exceeded that of Roosevelt by over two million; and Roosevelt's was nearly 700,000 more than Taft's.

# B. IN STATE AND CITY

459. Democratic Political Machinery and the State. — In the Jacksonian period, three generations ago, American democracy triumphed in theory over all enemies. But for all this time the real political practice has fallen far short of true democracy. The new machinery which was devised for Jacksonian democracy suited its needs very imperfectly (§ 323 ff.). It made the people's rule too indirect. Much better it suited the secret rule of Privilege, through corruption of representative bodies and skillful manipulation by its agents, the bosses.

For many years a conviction has been spreading that the first need is more democracy, and more direct democracy, with less power in political "middlemen." Accordingly, the most pressing public questions immediately at issue (1912) concern

changes in political machinery,—direct nominations, by primary elections instead of by bargaining conventions; more direct control of officials after election, by the recall; provision against corruption in elections (by secret ballot, improved systems of registration of voters, publicity of campaign contributions and of campaign expenses, with legal limitations upon amounts to be spent by eandidates); direct legislation, by the initiative and the referendum; direct "home rule" for cities, instead of indirect rule at the State capital; and direct election of United States Senators.¹

Except the last (and, in part, the matter of campaign expenses), all these matters are the concern of State legislation, and the last may be made so. This is fortunate. The advantages of Federal government were never better illustrated. One State moves faster for direct legislation; another State, for provision against corrupt elections; while those States which do not yet move in any matter, and which might have drag enough to prevent any movement in a consolidated nation, must at least look on with interest while their more far-sighted or more reckless neighbors act as political experiment stations. Each of these experiments which proves profitable to democracy will in time force its way into all the commonwealths.

For many years after the Civil War, the State seemed in danger of sinking into a disused organ — a sort of vermiform appendix in the body politic. But since 1890 the State has reawakened, — and, with it, new hope for democracy. The enlargement of State activity in the "good roads" movement, in conservation of natural resources, and yet more in the conservation of human welfare (§ 470), is notable; but here we are concerned more with its progress in reforming political machinery. In 1900, after years of splendid conflict under the leadership of Robert LaFollette, Wisconsin began to shake off the rule of bosses and machine politics, to control railroads, and to build a truly democratic commonwealth, with her great

<sup>&</sup>lt;sup>1</sup> Settled while these pages were at press. Cf. § 468, note.

University for her training school in politics and in nobler living. Then, led by William Uren, Oregon adopted democratic machinery that outran anything before known in America. Oklahoma began its statehood with most of the democratic devices known at the time, and with some novel experiments, in its first constitution. And the elections of 1910 and 1911 witnessed brilliant democratic progress all the way from the redemption of corporation-ridden New Jersey (by Woodrow Wilson) to the redemption of Southern-Pacific-ridden California (by Hiram W. Johnson). Nearly all the reforms indicated above are in successful operation in Wisconsin, Oregon, Oklahoma, Ohio, Arizona, and California, with woman suffrage in three of these States. Many other States have several of these provisions; and active campaigns are on for radical reforms in many more. A true democratic machinery is to be the contribution of the early twentieth century to the history of American democracy.

460. The Australian Ballot 1 was the first of these reforms to win general acceptance. Under earlier practice, the parties and candidates printed tickets in any form they liked, often with deceptive labels or with fraudulent changes of one or more names. Thoughtful voters, who wished to vote independently of party labels, found it difficult to do so; and a purchased voter received his ballot from the bribe-giver, who watched him deposit it. Now in all but two States, there is an official ballot printed by the State. No other can be used. The names of all candidates appear on this ballot; and spaces are left for the voter to write in others if he so wishes. ballot is given out only by the judge of election at the polling place and at the time of voting; and the process of voting is in general as follows: (1) The voter gives his name to the judges of election, and they verify it from the "registration" lists 2 as the name of a legal voter in that precinct. (2) The

<sup>&</sup>lt;sup>1</sup> The system is essentially the English ballot system of 1870, which had been improved in some measure in some of the Australian States.

 $<sup>^2</sup>$  Most States now require that every voter shall "register" some time before election, and no one can vote on election day whose name does not appear

voter then receives from the judge one ballot (and if he mismarks this, so as to require another, the first one must be delivered to the judges and destroyed). (3) He takes this ballot into a screened booth, where he finds a shelf and a pencil, and marks his choice for each office. (4) He then folds the ballot, and it is deposited in the ballot box by an election official under his eyes.

This process discourages buying votes, since the buyer now finds it hard to make sure that the voter "delivers the goods." It also secures absolute secrecy and complete protection against fraud by the voter or upon him. Fraud by election officials is still possible, of course. The law always requires that the election officials must come from different parties; but they are often careless and ignorant, and sometimes corrupt. As a further protection against intimidation of voters, most States forbid electioneering, even by handbills or cards, within a specified distance of the polls.

Henry George and a Workingman's party (§ 453), began the American agitation for the Australian ballot in 1886 in New York. In 1887 a bill for the reform was defeated in the legislature; and three years later, when public opinion compelled the old parties to grant the reform, they managed for a while to deceive the people with a sham. The New York ballot of 1890 did secure secrecy; but it encouraged straight party voting by ar-

on the registration list. This device prevents "repeating" and the importing of voters from other precincts. The registration lists are published before election, so that errors or frauds may be detected. Some States limit the law to large places, since in rural precincts every voter is pretty sure to be known personally to the election judges; and some permit a city voter who has not registered to "swear in" his vote anyway, — but this exception is less and less permitted, because it has been found to open the door to fraud.

¹ This difficulty is evaded ingeniously sometimes in the following manner: A political worker secures a ballot by going to the polls and leaving without depositing his ballot (carrying it with him, in defiance of law). This ballot is then marked as the vote-buyer desires and given to a bribed voter, who is accompanied to the polls by a worker, and who deposits the marked ballot after pretending to mark his own in the secret booth. He receives his money only when he delivers to another worker of the party the unmarked ballot which he received at the polls—as evidence that he deposited the marked one. Then this new ballot is used again with a new voter in a like manner. Thus by sacrificing one vote, a steady string of purchased votes may be "delivered" with absolute certainty as long as the polls are open; and the process may be duplicated at every precinct, and for several voters at each precinct, even before the most scrupulous judges.

ranging that one mark at the head of a ticket should stand for all the candidates of the party selected. Five years later, however, New York secured the true "blanket" ballot. One of the chief advantages of the Australian ballot is that it requires the voter to designate his choice for each office, and so encourages independent voting. The New York plan of 1890 has been a favorite trick of politicians elsewhere.

Some States provide voting machines. Such a machine combines all the advantages of the Australian ballot with certain others. The count is automatic, — obviating errors and corruption by clerks; and the fact that the count is complete (except for copying the results) when the last vote is cast, saves much time and expense. The machine has the full ballot upon it, with a key opposite each name or each question, and the candidate votes his choice by pressing certain keys.

461. Direct Nominations.—It is important to secure a true expression of the people's choice between the nominees of the opposing parties. This was the aim of ballot reform. But it is quite as important that the people shall express their will in selecting the candidates between whom the final choice must be made. This is the aim of a movement for "direct primaries."

The older system of nominations — by precinct caucuses and district conventions — has been described. Under this system, rarely did a tenth of the voters take any part in nominations. The matter was left to the political "machines"; or, if a popular contest did take place, the result was often determined by fraud or trickery, if not by absolute violence. Toward 1890, the State began to step in to check these evils, by bringing the party nominations, like the elections themselves, under the supervision of law. In some States still (1913), the law regulates only the old method of choosing nominating conventions, — by securing a secret ballot at the preliminary "caucuses"; but many States have substituted a wholly new and more democratic system known as direct primaries.

This method was tried in South Carolina in 1888, and soon after in some other Southern States, where practically there was only one political party.<sup>1</sup> It is more complex where the

<sup>1</sup> The method was not unlike that of Massachusetts in early days (§ 78).

party system prevails; but it was soon adopted for county officers in some eastern and middle States; and, in 1901, after trial in the largest county of the State, Minnesota adopted a "State-wide primary."

The Minnesota law already required three registration days, previous to an election, on which days the judges and clerks were present at the polling places to record the names and addresses of voters. Now the law provides that the first of these three days shall be also a "primary election" day, with the same officials to act. All candidates for nomination to any office are required to "file" their candidacy with the county clerk in advance of the primary. The county officials then see to the printing of official ballots for each party. The Republican ticket contains the names of all properly filed Republican candidates; and so with every party which has a ticket at all. At registration, each voter may call for the ticket of the party with which he wishes to act, and vote his choice among its candidates for nomination, under all the safeguards of the Australian ballot. If he chooses not to announce his party, he loses his voice as to nominations.

The system in Minnesota applied to all local offices and even to congressmen, but not to the governor or other executive State officers, nor to members of the State nominating conventions. Its two weak points are: (1) to vote at all in the primary, the voter is obliged to declare his party affiliation publicly; (2) if voters hold this obligation lightly, the members of one party may, and sometimes do, control the nominations of the other party.1 Most attempts to decrease one of these evils increase the other. None the less the advantages of the system are enormous. Results show that the great part of the voters now take active part in the nominating primaries; and the bargaining between candidates in convention is eliminated. Iowa, Kansas, Nebraska, Wisconsin, Oregon, Massachusetts, New Jersey, Louisiana, California, Ohio, and other States have adopted a similar system, and in some cases have extended it to all offices and even to an expression of choice (not legally binding) for United States Senator and to the election of State delegates to the National Conventions of the political parties.

462. Corrupt Practices acts in many States have checked the corrupt use of money in elections. Such laws limit the amount of expenditure

<sup>&</sup>lt;sup>1</sup> In particular, members of a hopelessly minority party in a given district are likely to vote at the primary the ticket of the opposing party.

for each office, forbid wholly many sorts of expenditure under which indirect bribery has been customary, and require a sworn statement of all expenditure from each candidate. Most of these laws fall short, as yet, in two respects. (1) They do not demand that the statement of expenses be sufficiently itemized, and accordingly much corruption is cloaked under lump sums named for innocent purposes; and (2) they do not deprive a successful candidate of his office for a breach of the law by his agent—as the effective English law does.

A recent notable reinforcement to these laws is being made in various States (and also in Federal elections) by requiring *publicity*, before election, *of the source of all campaign funds*, and attempts are being made to forbid contributions by corporations and to limit amounts from individual givers.

463. The Recall. — When the people have made a law, and have chosen servants to enforce it, what if those servants prove recreant and prefer to serve trusts or bosses? Democracy demands that the people shall not only select servants to carry out their will, but also that they shall be able to dismiss those who fail to do so. The "recall" means a provision by which a certain percentage of voters, on petition, can force any official to stand again at any time in opposition to some new candidate.

The advantage of the arrangement over waiting for a new election in one or two years — or several years, in case of judicial officers — is that it concentrates attention upon the one official. At a regular election, the matter is complicated by party issues and by the distractions due to choosing many other officials. Opponents of the recall fear that the people will use a power of recall hastily, especially in pique toward judicial officers, without due understanding of the technical points involved in judicial decisions that have offended. The reply, of course, is that if the people are fit to choose untried men to decide such technical points, they must be fit to choose whether they will keep such men after trial.

Presumably, when the people possess this power, it will not have to be invoked often. So far, it has not been abused (1913). Some conservative papers made much recently of an unwise attempt to invoke the recall against a judge in Oregon for apparent bias in a trial; but they have failed to tell their readers that it proved impossible — strong though the

<sup>&</sup>lt;sup>1</sup> As in hiring men to distribute cards at the polls—at extravagant rates; or in hiring conveyances to carry voters to and from the polls.

provocation was — to secure even half the signatures necessary to compel a new election.

For some years, Oregon was the only State to have the recall in its constitution—though several individual cities had such provisions in their "Home Rule" charters. By 1908, agitation for extension of the measure was noticeable. President Taft's veto of the Arizona Statehood Bill (§ 405) drew particular attention to it. In the following fall elections (1911), Washington adopted a constitutional amendment establishing the recall for all offices except the judiciary. California, which, under the splendid leadership of its Governor, Hiram W. Johnson, had just thrown off the yoke of the Southern Pacific in politics, voted on several constitutional amendments at the same election, including the referendum and initiative. The recall, including application to judges, stood at the head of the poll, carrying by more than 3 to 1. And in 1912 Arizona restored this machinery to its constitution (§ 405).

464. Direct Legislation. — More significant than mere choice of officials is real control by the people over the laws which officials are to carry out. As a rule, even in "democracies," the people govern themselves only indirectly. They choose representatives; and these delegated individuals make the laws, — sometimes with little response to popular desires. Radical democrats demand that the people take a more direct and effective part in lawmaking by the referendum and the initiative.

The referendum is the older device. It consists merely in referring to a popular vote for final confirmation a law which has already passed the legislature or the State convention. The practice originated in Massachusetts, in the ratification of the State constitution, in 1778 and 1780 (§ 152). Since 1820 it has been used almost always in our States for the ratification of new constitutions or constitutional amendments; and there has been a growing tendency to submit to popular vote also, in State or city, questions of liquor licensing, bond issues, and public ownership. For more than a half century, Switzerland, both for the federal and the cantonal governments, has

carried the practice much further. There a certain number of voters by petition may compel the legislature to submit *any* law to popular decision.

Switzerland also developed the true complement to the referendum; namely, the initiative. By 1870, in nearly all the cantons, a small number of voters could *frame* any law they desired, which the legislature then was compelled to submit to a popular vote; <sup>1</sup> and in 1891 this principle was adopted for the Swiss federal government.

The profitable working of these devices in Switzerland has led to a new enthusiasm for them in America; and to-day they are among the most prominent matters on progressive platforms. Up to the present writing, the most notable legislation of this kind is found in Oregon, whose plan, however, has just been adopted in full in several other States.

Mr. William Uren, a leader of the Oregon progressives, in an address before the City Club of Chicago in 1909, described these devices in Oregon as follows:—

- "By the initiative . . . eight per cent of the voters of Oregon are authorized to file with the secretary of state, not less than four months before a general election, their petition demanding the reference to the people of any measure . . . The full text of the measure must be included in the petition, and one petition will take only one measure. It does not go to the legislature at all.<sup>2</sup>
- "The referendum provides that five per cent of the voters, at any time within ninety days after the close of a session of the legislature, may file their petition demanding the submission of any measure passed by that legislature. The law is thereby held up until the next election. It does not take effect until it has been voted on and affirmed by the people;

<sup>&</sup>lt;sup>1</sup> This device also originated in America in Revolutionary days, in the provision for amending the constitution of Georgia (§ 155), but it took no real root at that time.

<sup>&</sup>lt;sup>2</sup> Mr. Uren adds this comment: "We think now that it might be very materially improved if it was sent to the legislature in the first instance and the legislature had opportunity to submit a competing measure if the members were not satisfied to pass the one proposed. The more recent amendments that have been offered in other States usually include that provision. But we did not know that much about it when our amendment was drawn."

and the vote required is a majority of those who vote on the question—not a majority of those who go to the polls." [In 1908 eleven measures were offered by the initiative.]

"In 1908 we had the advantage of the experience of the previous elections in the matter of getting measures before the people. Our statute law for the operation of the initiative and referendum was amended in 1907, providing that the secretary of state should order to be printed and distributed by mail to every registered voter, about three months before the election, a copy of all the measures that were submitted, and all the arguments that were offered for and against them, principally at the expense of the State. Those offering arguments are required to pay the actual cost of the paper, printing, and press work used for their arguments, but not for the measure, so that it costs us about seventy-five dollars a printed page for argument. It made a book of a hundred and twenty pages with all we had last year, and the people read it."

Thus, at the expense of the State and of interested political organizations, Oregon provides her people with the best political education yet offered any great people. California (1911) has adopted this feature of the Oregon plan.

465. Home Rule for Cities. — The State constitution always makes the State government supreme over the local units, — towns, cities, school districts. Whatever authority may be possessed by these units is delegated by the central State government, either by "general laws," applying to all units of one class, or by "special acts" applying to single units. Such delegated power may at any time be resumed or modified by the State; and that supreme authority too often manages directly many matters which really concern the local units. This practice is especially vicious when exercised in "special acts."

One aim of the new democratic movement is to give the people of the cities more control in governing themselves. From the Civil War to about 1900, American city government was the jest of the world, and a blot on democracy. Early spasmodic attempts at bettering conditions were rather in the direction of less democracy. Limitations were placed by legislatures on the taxing power of cities, to guard paternally against its mis-

use; and vast authority was concentrated in the mayor, with the idea that the people could hold him responsible more easily than it could the numerous council.

By inane imitation of national and State government, most large cities had adopted the so-called "Federal form" of government, —a one-man executive, with large powers, corresponding to those of the President in the Federal government, and a legislative council. The first decided move for reform (about 1890) consisted in giving the mayor extraordinary powers, especially through the appointment of various new "boards" to whom large parts of the former power of the council were turned over. For a few trials, this "new broom" swept clean, chiefly because it was tried only where there was a determined effort at improvement, such as would have brought good results under any system; but soon events proved that it was quite as effective in the hands of professional politicians and bosses.

The present tendency (since about 1900) is to seek help in more democracy—to give each city very complete control over its own affairs. Formerly the State legislature framed charters, by special legislation, and amended them from time to time, with little or no participation by the citizens concerned. Now, in many States, the legislature has passed a general law for "Home Rule" charters. In such States, any city may have a "charter commission" of its own citizens to prepare a charter (and afterward to suggest amendments from time to time), which then must be submitted to a popular vote for ratification. This marks an awakening of the cities no less notable than the awakening of the States (§ 459), so that it has become possible to say "The City the Hope of Democracy."<sup>2</sup>

466. Commission Government. — Some two hundred of the "Home Rule" cities distributed in thirty-two States have adopted a new type of government, known as the "commission form of government" (1912). A small body of men, usually not more than seven, elected, commonly, at large, comprise, with their appointees, the whole city government and hold large discretionary power. So far as this plan does away with possibilities for complexities and deadlocks, it has much to recommend

<sup>&</sup>lt;sup>1</sup>Cf. § 303. <sup>2</sup> The title of the valuable book by Frederick C. Howe.

it — if the discretion of the magistrates is limited — as it usually is in such charters — by provision for the initiative, referendum, and recall. But possibly the main advantage of the commission form over the "federal" or the large-council form, lies in these accessories — which, of course, may be woven into any other form as well. The new charters usually limit the term of any public service corporation grant to fifteen or twenty years, with provision for public purchase at fixed periods; and they commonly contain provision for civil service rules.

467. Preferential Voting. — One radical innovation in several recent "Home Rule" charters is a provision for preferential voting. The voter is given a chance, not merely to vote one choice among the various candidates for an office, but to vote his preferences in order. The sample ballot on the opposite page will teach the conveniences of the method.

This method of voting does away with separate primaries for nominations. Candidates for nomination and election have their names all on one ticket, without party designation. If any candidate has a majority of all ballots in the first column, he is elected. If no one has such a majority, the first and second choices for each candidate are added, and if any one then has a majority, he is elected. If still there is no majority, the votes in the third column for each candidate are added to his previous votes, and the candidate having a plurality is elected. In this way the majority may not get, any more than now, just the man they most want; but they are sure, as they are not now at all, to get a man of the general kind they want, and not to get any man whom they positively do not want. Politicians can no longer trick the people and divide "good government" forces by the ancient scheme of setting up several candidates for them, while the forces of Privilege combine upon one candidate and elect him by a minority vote.

468. Direct Election of Senators and Direct Nomination of President.—For many years there has been unmistakable demand by a great majority of the people for an amendment to the Constitution to provide for direct (popular) election of Senators. Time after time the necessary resolution has passed the Representatives, only to be smothered or voted down in the upper House, which had no desire to be brought closer to the people. In 1911 success seemed certain. Notorious purchase of a Senatorship from Illinois by Big Business for a

# BALLOT ILLUSTRATING PREFERENTIAL VOTING1

INSTRUCTIONS. — To vote for a candidate make a cross (X) in the appropriate space.

Vote your FIRST choice in the FIRST column.

Vote your SECOND choice in the SECOND column.

Vote ONLY ONE FIRST choice and ONLY ONE SECOND choice for any one office.

Vote in the THIRD column for ALL THE OTHER CANDIDATES whom you wish to support.<sup>2</sup>

DO NOT VOTE MORE THAN ONE CHOICE FOR ONE PERSON,

as only one choice will count for any candidate.

If you wrongly mark, tear, or deface this ballot, return it and obtain another.

# ONE MAN TO BE ELECTED FOR EACH OFFICE

SUPERVISOR OF ADMINISTRATION (MAYOR)	FIRST CHOICE	SECOND CHOICE	OTHER CHOICES
Charles E. Hughes			100
Champ Clark			26
George B. McClellan			
Nelson W. Aldrich	JAVIE I L		
Richard Croker			
Tom L. Johnson			
Joseph W. Folk			
Robert M. La Follette		100	
Woodrow Wilson	V.		
William J. Bryan	1	The same	To the least
Chauncey M. Depew		Y	
William H. Taft			uni i
Theodore Roosevelt			
SUPERVISOR OF PUBLIC PROPERTY		Sec. 5	
Gifford Pinchot			
Richard A. Ballinger			

<sup>&</sup>lt;sup>1</sup> This ballot (with one change of name here) was used at public meetings in the city of Cambridge, Massachusetts, in 1911, to illustrate this method of voting which was proposed in a new Home Rule charter then before the citizens for adoption.

<sup>&</sup>lt;sup>2</sup>A little practice will show that this provision enables a voter to *vote* against every one to whom he is positively opposed. Let the class or school try such an election to realize better the workings, first informing themselves upon each of the men named.

certain Mr. Lorimer had aroused the country. True, a Senate committee of "Standpatters" made the usual whitewashing report; but it was riddled pitifully by the Insurgents and by the progressive press. Still on the vote to expel, the Standpatters managed to rally the one third vote necessary to save their colleague. A resolution for an amendment to provide for popular election of Senators was then pending, and it was soon after defeated by almost precisely the same vote. Then, in the spring came the extra session of the new Congress (§ 458), with large progressive gains. This time, however, the States-Rights jealousy of the Southern Senators was aroused sufficiently to delay action so long that the measure was finally lost in the shuffle at the close of the session. At the close of the next regular session, however (1912), Lorimer was expelled and the amendment passed. It now waits only the certain ratification of the States.1

Meantime, some States have secured the desired result by indirection through their own legislation. Oregon led the way. In 1904 a law provided that each party might nominate a United States Senator, when one was to be chosen, at the regular party primaries. Then, at the regular election, the people decided between the candidates so nominated. This, of course, was in law only a recommendation. Other States had done this much; but the people's will had been readily disregarded by the legislatures. Oregon went further. At the same election at which the people express their choice for Senator, they choose also the members of their own legislature. Each candidate for the legislature is given a chance at the opening of the campaign to sign "Statement No. 1," promising, if elected, to vote for the people's choice for Senator, or "Statement No. 2," declaring that he will hold the people's expression merely as a recommendation, to be disregarded by him "if the reason for doing so seems to me to be sufficient." Needless to say, in any Senatorial year, the great majority of the State

<sup>&</sup>lt;sup>1</sup>Ratified in April, 1913, while these pages were in press.

legislature are bound in advance by written pledges to vote for the people's choice.

In his Chicago address (§ 464), Mr. Uren explained in detail how this law was intended to "side-step the Constitution," and then added: "That question was voted on directly again last year [1908]. One of the things the opposition had claimed as to this Statement No. 1, was that it was a trick,—that we had inserted it as a 'joker' in the primary law, and that the people did not know it was there. So [the progressives] brought out, on initiative petition, a bill reading like this:

"Be it enacted by the people of the State of Oregon, That we, the people of the State of Oregon, do hereby instruct our representatives and our senators, in our legislative assembly, to always vote as such officers for those candidates for the United States Senate who have received the highest number of the people's votes at the preceding general elections. . . .

"We carried it by 70,000 to 21,000. Then all the politicians and everybody in Oregon knew that the people of Oregon thought they understood Statement No. 1 and intended that it should be obeyed."

In 1909 the principle victoriously withstood the severest possible test. The people had indicated Mr. G. E. Chamberlin, a trusted public servant, as their choice for Senator. Mr. Chamberlin was a Democrat; the legislature was overwhelmingly Republican: then followed the unique episode of a Republican legislature electing a Democrat to the United States Senate.<sup>1</sup>

The plan has spread rapidly. Nowhere else has it received so striking a vindication; but, in this or in some less binding form, Senators are named by popular vote to-day (1912) in more than half the States. A movement is just under way to extend this principle to the nomination of President and Vice President, in order to do away with the manipulation of bosses in National Conventions and to bring the candidates to a closer accountability to the people. Any State with "direct primaries" finds it easy to extend them so that each party

<sup>&</sup>lt;sup>1</sup> Some members of the legislature, who hesitated, were brought to a sense of the binding character of their pledges by a hint that the recall would be put at work.

may name in them its delegates to the National Convention, and at the same time may instruct such delegates for whom to vote. In 1911–1912 several States adopted this plan, while three others have an older and less satisfactory practice aiming at the same end. This, too, is plainly a reform destined for universal adoption within a few years.

469. Democracy in a Chosen Home. — There seems no better way to close this study in American democracy than to summarize recent progress in one of the forty-eight common-For this purpose, no other State is quite so fit as Oregon. In 1891 Oregon adopted the Australian ballot, not in the vicious New York form of that day, but in the best form, without any party designations whatever. In 1899 it supplemented this by an admirable registration law. In 1902 a vote of 62,000 to 6000 adopted the initiative and referendum as part of the State constitution. Then things began to move, most of the subsequent advances having been secured by these agencies, against the will of the bosses and the "interests." In 1904 a direct primary law, proposed by the initiative, was carried by 56,000 to 16,000 — with application to all officers, from constable to the governor and the State supreme court, and, indirectly but effectively, to the United States Senators (§468). In 1905 the legislature, still controlled by the old bosses, refused to extend the initiative and referendum to city governments within the State, but the radicals took the measure to the people directly, and carried it by an overwhelming majority. In that session the legislature, under pressure of public opinion, passed an antipass law, to lessen the control of railroads over legislatures and courts. Because of certain suspected "jokers" and unsatisfactory features, the radicals vetoed the law in a referendum vote, and the next year a better law was secured. The legislature, for two sessions, defeated bills for taxing gross incomes of telegraph and telephone and express companies (having large revenues but little tangible property); but, by the initiative, the bills were carried (1905) by a vote of nearly

12 to 1. In 1906 the initiative secured two constitutional amendments, one providing home rule for cities, and the other placing the "recall" in the constitution, applicable to every public official in the State. A Corrupt Practices act, turned down by the legislature in 1907, was adopted promptly by the people. In 1908 an initiative amendment confirmed the popular election of United States Senators. In 1910 the Presidential primary, and in 1912 woman suffrage were added to the constitution.

With all this democracy, Oregon is one of the States growing most rapidly in population and in property. That commonwealth is a great object lesson to the world. Scholarly critics, with scrupulous academic honesty, point out many possible abuses in the initiative and referendum, forgetting, it would seem sometimes, the certain and proven evils from their absence. In 1911 Woodrow Wilson, once a scholar only, now a practical statesman as well, advocated this "Oregon plan" for his own State. Taxed with inconsistency,—according to much of his earlier writings,—his sufficient reply as a statesman was: "Yes, for fifteen years I taught my classes that the initiative and referendum would not work. I can prove it now. But the trouble is, they do work." This is Oregon's answer to her critics for the other features of her advanced democracy: It does work.

Three centuries ago, Englishmen brought to our Atlantic coasts, in Virginia and in Massachusetts, a fosterling infant in swaddling clothes, — soon to grow into a strapping, troublesome youth, scolded and reviled under its abusive nickname DEMOCRACY. We have followed its long march and its slow development, from stage to stage, throughout this United States, to the splendid vigor of robust and honored manhood in the far Pacific commonwealths.

470. Progressivism and the Common Life. — Outside the field of politics, but in close alliance, the spirit of progressivism is finding many ways to make our common life more sweet and wholesome. To check various forms of *social* disease, — child labor, food adulteration, industrial injuries to workmen,

and the like, — recourse has been taken to democratic politics as a matter of course. A newer development is a like recourse to check physical disease. Thus, in 1903, Dr. Charles W. Stiles, a scientist in the National Bureau of Animal Industry, announced that a vast number of people in the South were suffering from the hookworm. This parasite, he proved, enters the body through the soles of the bare feet, common among the poorer classes in that region, and causes much of the deplorable inefficiency and low vitality supposed formerly to be inherent in the "Poor Whites." The discovery was combated by shouts of ridicule at the "bug of laziness," and then by solemn protests from press and pulpit against so maligning the South and "hurting business." The early stages of the investigation had been assisted by benefactions from Mr. Rockefeller. But now the statesmen-scientists, allied with the discoverer, went straight to the people most interested. "campaign of education," with popular lectures and lantern slides, resulted in a tremendous uprising; and multitudes of local units have taken up the great work of curing the disease, paying the cost out of local funds. In nine years some 150,000 recorded "cases" have been restored to a stronger and happier and more useful life, and the work is going on at a pace constantly accelerating. But, after all, the most significant thing about it is the way in which the movement has led to an extension of the field of self-government. In like fashion communities throughout the land are fighting other physical plagues, such as tuberculosis, the fly, the mosquito.

Even more significant are the community organizations, not to combat disease, but to secure positive advance physically and socially,—as in the playground movement, the social center movement, the extension of rural delivery, the establishment of a parcels post. American democracy, not content to wait the imperfect atonement of philanthropic trust magnates in benefactions to schools and libraries and hospitals, is learning to trust itself for a steadier and more independent progress toward a finer and higher life for all the people.

Exercise. — What is a political party for? When ought a voter to leave his party? When should he vote against some of its candidates?

What are the dates for elections in your State? Does your city elect its government at the general or at separate city elections? What are your laws as to (a) registration; (b) election officers; (c) canvassing the vote? Have you the direct primary? If so, to what officers does it apply? What other democratic features named in §§ 459 ff. has your State?

Has your city a Home Rule charter? If not, is the responsibility upon the city, in your case, or upon the legislature? If you have a Home Rule charter, do you have the "commission form," or what form of city government? Do you have the initiative, referendum, and recall in your city government?

It is desirable that large schools should conduct their school and class elections by the Australian ballot system, with preferential voting, to accustom students to the method.

Explain the political terms—Stalwart, Mugwump, Standpatter, Insurgent, giving the origin and period of each. Make a list of ten other such terms for explanation by the class.

Review the table of contents, to get the interrelation of the parts of the book. What theme sentences from the headings can you quote from memory? Can you trace the application of each in the text?

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one representative

# APPENDIX I

#### THE FEDERAL CONSTITUTION

(Recommended by the Philadelphia Convention to the States, September 17, 1787; ratified by the ninth State, June 21, 1788; in effect, April 30, 1789 (§§210,212). The text is that authorized by the Department of State and printed in the Revised Statutes (1878), except for the footnote references and the brackets used in a few instances to inclose portions of the document no longer effective, and for the omission of numbers for the paragraphs. Interpolated explanatory matter is in the same type as this paragraph, and is placed within marks of parenthesis.)

We the People 1 of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, 2 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 House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.<sup>3</sup>

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 to the

<sup>&</sup>lt;sup>1</sup>Cf. § 211. <sup>2</sup>§ 204 a. <sup>8</sup>Modified by the Fifteenth Amendment; and cf. § 209.

whole Number of free Persons, including those bound to Service for a Term of Years], and excluding Indians not taxed, [three fifths of all other Persons]. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; [and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three].

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 chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen [by the Legislature thereof,] 4 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; 5 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



<sup>&</sup>lt;sup>1</sup>The abolition of slavery has rendered obsolete the clauses within brackets in this paragraph.

 $<sup>^2</sup>$  Cf.  $\S$  205 b. The first census was taken in 1790, the second year of the new government, and one has been taken in the closing year of each decade since.

<sup>&</sup>lt;sup>3</sup> The First Congress made the number 33,000. It is now (1911) 193,284.

<sup>&</sup>lt;sup>4</sup> Superseded by the Seventeenth Amendment.

<sup>&</sup>lt;sup>5</sup> Precedents for this principle of "partial renewals" were found in several State Constitutions.

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.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they 1 be equally divided.

The Senate shall chuse 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.

Section 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 chusing Senators.<sup>2</sup>

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5. 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

<sup>1</sup> What is the antecedent?

<sup>&</sup>lt;sup>2</sup>A law of 1872 requires all Representatives to be chosen on "the Tuesday next after the first Monday in November" in each even-numbered year; and a law of 1871 had already ordered that all such elections should be by ballot. An Act of 1866 provided a uniform method of electing Senators: the legislation of each state (in which such an election is to be made) to vote first in separate Houses, and, if no one candidate received a majority in each House, then thereafter in joint session, taking at least one ballot daily until some candidate received a majority, or until the legislative session came to an end without an election. Forty-seven years later (1913), this law was superseded by the Seventeenth Amendment.

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 Behaviour, 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.

Section 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.<sup>1</sup> They shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

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 encreased 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.<sup>2</sup>

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

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

<sup>&</sup>lt;sup>1</sup> How does this compare with the rule of the Articles of Confederation?

<sup>&</sup>lt;sup>2</sup>This paragraph, designed to prevent corruption by direct use of the executive patronage, was vehemently opposed by Hamilton and Gouverneur Morris. Cf. § 200. See also a similar clause in Articles of Confederation.

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.

<sup>&</sup>lt;sup>1</sup>The first veto provision in a State Constitution (New York, 1777) ran as follows:—

<sup>&</sup>quot;Section III. And whereas laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed: Be it ordained that the governor for the time being, the chancellor, and the judges of the supreme court, or any two of them together with the governor, shall be and hereby are constituted a council to revise all bills about to be passed into laws by the legislature . . . [Provision for veto procedure and reconsideration in language essentially the same as in Massachusetts provision given below.]

<sup>&</sup>quot;And in order to prevent unnecessary delays, be it further ordained that if any bill shall not be returned by the council within ten days after it shall have been presented, the same shall be a law, unless the Legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case the bill shall be returned on the first day of the Legislature after the expiration of the ten days."

The Veto Provision in Massachusetts Constitution of 1780 ran: -

<sup>&</sup>quot;Article II. No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revisal; and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whatsoever the same shall have originated, who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve; but if after such reconsideration, twothirds of the said senate or house of representatives shall, notwithstanding the objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, when it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of law; but in all such cases, the vote of both houses shall be determined by yeas and nays; and the names of the persons voting for or against the said bill or resolve shall be entered upon the public records of the Commonwealth.

<sup>&</sup>quot;And in order to prevent unnecessary delays, if any bill or resolve shall not

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 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,<sup>2</sup> and uniform Laws on the subject of Bankruptcies throughout the United States;

be returned by the governor within five days after it shall have been presented, the same shall have the force of law."

The Virginia Plan recommended essentially the New York method. The Massachusetts delegates at Philadelphia, however, contended strenuously for the plan in use in their State, and finally carried their point. The "pocketveto" clause (the last provision of the text above) was original in the Federal Constitution.

1 Observe punctuation and paragraphing; and see, for comment, § 204 a.

<sup>2</sup>Citizenship, in practice, comes by birth or by admission by a court of record under authority of a law of Congress. Two classes of people are citizens by birth: (1) according to the Fourteenth Amendment, all who are born within the limits of the United States (except children of official representatives of foreign states, of a foreign army occupying part of our territory); (2) according to a law of Congress, all who are born of parents who are American citizens but who were temporarily residing abroad. No one not included in one of the above classes can become a citizen except by (1) a special Act of Congress, or (2) by admission by a court of record under authority of the general law passed by Congress. That law has varied from time to time (cf. index, for some of the more important variations); but the usual period of residence required for an alien, previous to admission, has been five years, which is also the present requirement (1913). The present law (passed in 1906) requires also a two-years' previous "notice of intention," and excludes all who cannot "speak" English (unless homesteaders), all polygamists, and all who disbelieve in "organized government." Some States, however, permit aliens to vote after receiving their "first papers," -i. e. after making the preliminary "declaration of intention" before a clerk of court. The final 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 Buildings; — And

To make all Laws which shall be necessary and proper <sup>1</sup> 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.

admission rests with a judge,— who may make his examination of the applicant rigid or a mere matter of form. The power has been sometimes abused for political purposes, both in excluding and in admitting unfit aliens.

 $<sup>^1</sup>$ For comment and reference, see §§ 204 b, 222, 280 b. Cf. also with enumeration of powers in Articles of Confederation.

Section 9. [The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.]

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 herein before 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.<sup>2</sup>

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.

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; 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 Controul 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,

<sup>&</sup>lt;sup>1</sup> Modified, so far as "direct" income taxes are concerned, by the Sixteenth Amendment.

<sup>&</sup>lt;sup>2</sup> With what clause in Section 8 might this paragraph have been combined?

or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.<sup>1</sup>

(Exercise on Article One. - Are the names in Section I new in American history? Can Congress constitutionally provide for woman suffrage by law? If a Senator from your State were to die to-morrow, how would his place be filled? Would it have been filled differently, if it had happened at any other time during the year? How long would the new Senator keep his seat? (The same questions as to a Representative.) How many Representatives has your State? When did it last gain or lose one? How many has the largest State in the Union (cf. World Almanac)? How many has the smallest State? Do you need a World Almanac to answer the last question? Under what possible conditions can the presiding officer of the Senate vote even when there is no tie? With what provision in Section 9 is the last paragraph of Section 3 logically connected? If a Representative utters plain treason on the floor of the House, can he Commit to memory Section 8. be punished? How? questions upon naturalization and citizenship, based upon the note on page 756. Write appropriate headings for each section; i.e. for Section 8, "Powers of Congress.")

## 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

<sup>&</sup>lt;sup>1</sup>Additional prohibitions upon the States are contained in the Thirteenth, Fourteenth, and Fifteenth Amendments, just as certain additional prohibitions upon Congress are contained in Amendments 1–8. Compare with Section 10 the summary of prohibitions upon the States in the Articles of Confederation.

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 chuse by Ballot one of them for President: and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having 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 chuse from them by Ballot the Vice President. 11

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of 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.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup>Superseded by Twelfth Amendment, which might have been *substituted* for this paragraph in the body of the document.

<sup>&</sup>lt;sup>2</sup>In 1792 Congress provided that the president pro tem of the Senate should be next in succession, and after him the Speaker of the House. In 1886 (Jan. 19), this undesirable law was supplanted by a new one placing the succession (after the Vice President) in the following order: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, Postmaster General, Secretary of the Navy, Secretary of the Interior. Cannot the student see on what ground these officers are named in this order? Cf. § 215 and note. This provides securely against any interregnum, and (what is almost as important) against a transfer by accident to an opposite political party.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.<sup>1</sup>

Before he enter on the Execution of his Office, he shall take the fol-

lowing Oath or Affirmation: -

"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect, and defend the Constitution of the United States."

Section 2. 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,<sup>2</sup> 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.

Section 3. He shall from time to time give to the Congress Infor-

¹ What is the antecedent of "them"? The salary of George Washington was fixed by the First Congress at \$25,000. This amount remained unchanged until 1871, when it was made \$50,000. In 1909 the salary was raised to \$75,000. Large allowances are made also, in these latter days, for expenses of various sorts,—one item of \$25,000, for instance, for traveling expenses,—which is the reason the salary is commonly referred to as \$100,000.

<sup>&</sup>lt;sup>2</sup> For the development of the "Cabinet," cf. § 215.

<sup>&</sup>lt;sup>8</sup> For different views, at the beginning of the government, as to this clause, and for the settlement in practice, see § 214.

mation of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President, and all civil Officers of the United States shall be removed from office on Impeachment for, and conviction of, Treason, Bribery, or other high Crimes and Misdemeanours.

#### ARTICLE III

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. 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 or another State 1;—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

<sup>&</sup>lt;sup>1</sup>Limited by the Eleventh Amendment to cases begun by a State as plaintiff. Cf. § 218.

Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. 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.1

(On the appellate jurisdiction, cf. §§ 207 a and 217. Section 25 of the Judiciary Act of 1789, still in force, defines that jurisdiction as follows:

"And be it further enacted, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, when is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or when is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of such their validity; or when is drawn in question the construction of any clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision is against the title, right, privilege, or exemption, specially set up or claimed . . . under such clause of the said Constitution, treaty, statute, or commission, may be re-examined, and revised or affirmed in the Supreme Court of the United States upon a writ of error . . ."

On the establishment of "inferior courts," cf. § 217. Such courts at present (1913) are, from the bottom up:—

- 1. District Courts. Over ninety in 1911; the law of 1789 provided for thirteen.
- 2. Circuit Courts. Nine, each three justices. The first law, 1789, provided three circuit courts, but no special circuit judges; a circuit court then consisted of a justice of the Supreme Court "or circuit" and one or more judges of district courts included within the circuit. This remained

<sup>&</sup>lt;sup>1</sup>The last three paragraphs of this section might have been included advantageously in a "bill of rights." What preceding paragraphs might have been so disposed of?

the rule with a brief attempt at change in 1801, as described in § 240, until 1866, when separate circuit justices were provided.

- 3. Circuit Courts of Appeals: One for each of the nine circuits, composed of a justice of the Supreme Court and of other Federal judges—not less than three in all, and not including any justice from whose decision the appeal is taken. This order of courts was instituted in 1891, to relieve the Supreme Court which was then hopelessly overburdened with appeals from lower courts. In most cases, now, the decision of the circuit court of appeals is final.
- 4. The Supreme Court. One Chief Justice and eight Associate Justices. Its business now is confined very largely to those supremely important matters specified in the Constitution and in the law of 1789 quoted above.

There are also three special courts, somewhat outside this system: (1) the Federal Court of Claims, to determine money claims against the United States, established in 1855; (2) Court of Customs Appeals, established in 1909; and (3) the Commerce Court, created in 1910, to revise the work of the Interstate Commerce Commission.)

#### ARTICLE IV

Section r. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and immunities of Citizens in the several States.<sup>1</sup>

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 Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due].<sup>2</sup>

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of

<sup>1</sup> Extended by Fourteenth Amendment.

<sup>&</sup>lt;sup>2</sup> Superseded by Thirteenth Amendment so far as it relates to slaves.

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 1 the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

#### ARTICLE V2

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,

 $<sup>^1\,\</sup>mathrm{On}$  the significance of this language as to Territory, cf. § 260 c.

<sup>&</sup>lt;sup>2</sup> Article V, as far as to the brackets, should be committed to memory. Note the *four* varieties of amendment provided. Only one has ever been used (1913). Congress has always proposed, and State legislatures ratified. On the amending clause in general, cf. index.

any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.1

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.

(Exercise. — Write headings for each Article in the Constitution. Restate Sections 1 and 2 of Article IV in form appropriate for insertion in Section 10 of Article I. Cf. with corresponding provisions in the Articles of Confederation and in the Constitution of the New England Confederation (Source Book, if accessible). Can you restate Sections 3 and 4 so as to fit them for insertion under any preceding Article? Observe that Articles I, II, III, and V give the framework. Article VII, highly important at the time, was temporary only in significance.)

### **AMENDMENTS**

[i] 2

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.

[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.

<sup>1</sup> On the history of this clause, cf. § 207 a.

<sup>&</sup>lt;sup>2</sup> Originally, the first twelve amendments were not numbered in the official manuscripts.

### [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.

### [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.

### [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.

## [vi]

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

# [vii]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

# [viii]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### [ix]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

## $[x]^1$

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.

### [xi] 2

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.

### [xii] 3

The Electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate: - The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; - The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from

<sup>&</sup>lt;sup>1</sup> These first ten amendments were in force after November 3, 1791. Cf. comment in § 216. They are usually referred to as the Bill of Rights. It is a suggestive exercise to rewrite the "bill of rights," incorporating all those features of that character which are included in the body of the Constitution.

<sup>&</sup>lt;sup>2</sup> Proclaimed to be in force Jan. 8, 1798. For the history, cf. § 217.

<sup>&</sup>lt;sup>3</sup> Proclaimed in force Sept. 25, 1804. Cf. § 241.

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.

### [xiii] 1

Section r. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

# [xiv]<sup>2</sup>

Section r. 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.

Section 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,

<sup>&</sup>lt;sup>1</sup>Proclaimed in force Dec. 18, 1865. On Amendments Thirteen to Fifteen inclusive, cf. §§ 377, 385 ff.

<sup>&</sup>lt;sup>2</sup> Proclaimed in force July 28, 1868.

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.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for 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.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

# [xv] 1

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

# [xvi] 2

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the States, and without regard to any census or enumeration.

<sup>1</sup> Proclaimed in force March 30, 1870.

<sup>&</sup>lt;sup>2</sup> Ratified in 1913, while these pages were at press.

## [xvii] 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.

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 temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

<sup>&</sup>lt;sup>1</sup> Ratified in 1913, while these pages were at press.

# APPENDIX II

#### A SELECT LIBRARY ON AMERICAN HISTORY

- Adams (Brooks). Emancipation of Massachusetts (an anti-Puritan account of the overthrow of Puritan theocracy). Houghton. \$1.50.
- Adams (Henry). History of the United States in the Administration of Jefferson. (This is part of a larger work continuing the story to 1824. In all there are nine volumes. Volumes I and II (\$2.00 each) may profitably be used by students.) Scribner.
- Adams and Sumner. Labor Problems. Macmillan. \$1.50.
- Andrews (C. M.). Colonial Self-government. (American Nation Series.) Harpers. \$2.00.
- The Colonial Period. (Home University Library.) Holt. \$.50.
- Babcock (K. C.). Rise of American Nationality. (American Nation Series.) Harpers. \$2.00.
- Baldwin (S. E.). American Judiciary. (American State Series.) Century. \$1.25.
- Bassett (J. S.). The Federalist System. (American Nation Series.) Harpers. \$2.00.
- Bourne (E. G.). Spain in America. (American Nation Series.) Harpers. \$2.00.
- Bradford (William). History of Plymouth Plantation. (Original Narrative Series.) Scribner. \$3.00.
- Brown (W. G.). Andrew Jackson. Houghton. \$.50.
- Browne (W.H.). Maryland. (American Commonwealth Series.) Houghton. \$1.50.
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