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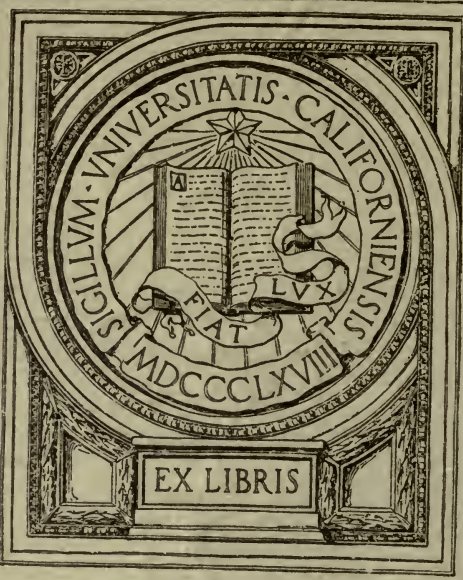
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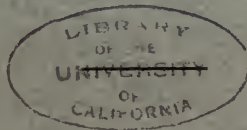
# COMPARATIVE FEDERAL INSTITUTIONS

An Analytical Reference Syllabus

BY

GEORGE ELLIOTT HOWARD, Ph. D.

Head Professor of Political Science and Sociology



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1907



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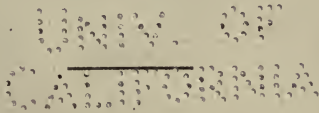
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# A COMPARATIVE HISTORY OF FEDERAL INSTITUTIONS.

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## CHAPTER I.

### INTRODUCTORY STUDY OF FEDERAL INSTITUTIONS IN GREECE, ITALY, AND WESTERN EUROPE.

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#### SECTION I. CHARACTER OF THE COURSE.

- I. Nature and Scope of Institutional History.
  1. What is an institution?
  2. What is a constitution? Relation of constitutional history to general institutional history? To culture-history?
  3. Scientific value of the study of institutions.
- II. Nature and Scope of Federal Institutions.
  1. Definition for historical purposes.
  2. Practical and scientific value of the study of federal institutions.
  3. Examples of federal governments.
- III. The Federal Governments Treated in this Course.
  1. The Achaean League: with a comparative view of the Aetolian League and the lesser examples of federal unions in Greece and Italy.
  2. The United States: origin and constitution.
  3. Switzerland.
  4. Canada.
  5. Australia.
  6. The German Empire.
  7. The Latin American federal governments (a summary).
- IV. Method of Study and Treatment.
- V. Literature (see the "Special Card Catalogue").
  1. Texts and maps.

2. Sources.
3. Secondary authorities.

## REFERENCES.

Freman, *Federal Government*, 1-6; Hart, *Federal Government*, 1 ff.; Jellinek, *Staatenverbindungen*, 3-16.

SECTION II. CHARACTERISTICS AND GENERAL PRINCIPLES OF  
FEDERAL GOVERNMENT AS COMPARED WITH OTHER FORMS  
OF POLITICAL ORGANIZATION.

I. The Problem of Sovereignty (Hart, 11-12; Freeman, 6-13; Jellinek, *Staatenverbindungen*, 3-58, *passim*; *idem*, *Gesetz und Verordnung*; Burgess, *Political Science*, I, 52 ff.; *idem*, in *Pol. Sc. Quart.*, III (1888), 334 ff.; Willoughby, *Nature of the State*, chaps. ix, x, xi, 181-308; Crane and Moses, *Politics*, 33-46; Von Holst, *Constitutional History*, I, 5 ff.; Cooley, *Constitutional Limitations*, 3-4; Story, *Commentaries*, I, secs. 207-208; Bluntschli, *Theory of the State*, 492-512; *idem*, "Sovereignty," in Lalor, *Cyclopedia*, III, 763-67; Austin, *Jurisprudence*, I, 220 ff.; Giddings, "Sovereignty and Government," in *Pol. Sc. Quart.*, XXI, 1-28; Dunning, "Bodin on Sovereignty," in *Pol. Sc. Quart.*, XI, 82-104; Dewey, "Austin's Theory of Sovereignty," in *Pol. Sc. Quart.*, IX, 31-52; Platt, "State, Sovereign, Government," in *Pol. Sc. Quart.*, X, 292-323; Ritchie, in *Annals of Am. Academy* (1891), I, 385-411; Wheaton, *International Law*, Part I, chap. ii; Twiss, *International Law*, secs. 12-23; Calvo, *Droit International*, I, 168 ff.; Bliss, *Of Sovereignty* (1885); Schulze, *Lehrbuch*, I, secs. 15-17; Arndt, *Staatsrecht*, 38 ff., 69, 41; Brie, *Theorie der Staatenverbindungen*, 21, *passim*).

1. Theories of sovereignty.
  - a. Bodin's theory.
  - b. Hobbes's theory.
  - c. Rousseau's theory.
  - d. Bluntschli's theory.
  - e. Jellinek's theory.
  - f. Burgess's theory.
  - g. Willoughby's theory.
  - h. Other theories.

## 2. Special questions.

- a. May sovereignty be divided?
- b. May there exist a "dual sovereignty"? (See Tiedeman, *Unwritten Constitution*.)
- c. How or by whom is sovereignty exercised?
- d. Where is sovereignty located? Is it, for the time being, wholly vested in the government? (See Willoughby, 205 ff.)

## II. Nature of Federal Government.

## 1. Queries as to mode of formation.

- a. Through union of independent states.
- b. Through subdivision of a centralized state.

## 2. Leading theories.

- a. The compact or treaty theory (Calhoun, *Works*, I, 190; Von Holst, I, chap. i).
- b. The constitution theory.
- c. The social or historical theory (as applied to the United States).

## 3. Is federal government always the result of compromise?

## 4. Is a federal government necessarily representative?

III. Forms of the State (Aristotle, *Politics*, III, 4, 5; Burgess, *Political Science*, I, 68-82; Bluntschli, *Theory of the State*, 329 ff.; Willoughby, *Nature of the State*, 351-79).

1. Aristotle's theory.
2. Burgess's theory.
3. Willoughby's theory.
4. Other theories.

## IV. Classification of Combinations of States.

## 1. Non-federal combinations (Hart, 12-16; Jellinek, 63-171, 197-253).

## a. Subordinate states.

- 1) Protectorates and "spheres of influence."
- 2) Colonies and dependencies (Woolsey, *Political Science*, II, 146-59; Burgess, I, 68-82; Freeman, 23-30; Fiske, *American Political Ideas*, 73-85; Bluntschli, 485 ff.; Jellinek, 63-8, 113-116; Twiss, secs. 24-41; Ashley, *American Federal State*, 7 ff.; Willoughby, chap. x).

- b. Conjunctive unions (see literature in Hart, 14, n. 3).
    - 1) The Personalunion (Jellinek, 82-8; Bluntschli, 487).
    - 2) The Realunion: Norway-Sweden, Austria-Hungary, etc. (Jellinek, 197-253; Juraschek, *Personal- und Realunion*, 1878).
  - c. Associations of states.
    - 1) Treaty.
    - 2) Alliance.
    - 3) League.
    - 4) The system of states or balance of powers.
    - 5) The community or family of nations.
2. Federal combinations (Hart, 19-21; Freeman, 8-13; Willoughby, *The State*, chap. x; *idem*, *Am. Const. System*, chap. i; Westerkamp, *Staatenbund und Bundesstaat*; Ashley, 7 ff.; Jellinek, 172-97, 253 ff.; Wheaton, Part I, chap. ii; Twiss, secs. 37, 54; Bluntschli, 487; Woolsey, II, 147-8, 166-170; Wharton, *Commentaries*, sec. 137).
- a. The Staatenstaat: question as to its proper classification? Examples, the Holy Roman Empire, the fief, Turkey, etc.
  - b. The Staatenbund or confederation: action on state governments; example, the United States before 1789. Question of two varieties? (Jellinek, 184 ff.).
  - c. The Bundesstaat or federal union: example, the United States since 1789.
- V. Political Conditions of Federal Government (Hart, 22-26, 180, bibliography).
- 1. How formed: union or segregation.
  - 2. Causes favoring the formation.
  - 3. Advantages and disadvantages.
  - 4. May be monarchical or republican.

## REFERENCES.

Freeman, *Federal Government*, chap. ii, in part; Hart, *Federal Government*, chap. i; Brie, *Theorie*, 52 ff.; Jellinek, *Staatenverbindungen*, as cited; *Federalist*, Nos. 9, 21, 39; Dicey, *Law and the Constitution*, 131-152; Burgess, I, 142-154, 184-252; Mill, *Representative Government*, 301; Ashley, 197 ff.; Bernard, *Lectures on the American War* (1861), 68-72; and the references in the syllabus and in Hart.

## SECTION III. CHARACTERISTICS AND GENERAL PRINCIPLES OF FEDERAL GOVERNMENT (CONTINUED): FREEMAN'S VIEWS.

## I. Characteristics of Federal Government in Greece (Freeman, 15 ff.).

1. Character of the city-state (Bluntschli, *Theory of the State*, 34 ff.).
  - a. Municipal character.
  - b. Either democratic or aristocratic: the tyranny, definition?
  - c. Condition of the dependent city as compared with a member of a federation or with a colony.
  - d. Slight means of incorporation; case of Athens; of Italian cities; of Swiss cantons; of Rome; town autonomy in mediæval Europe, how modified by the empire?
  - e. Varieties of internal constitution and of external and internal relations.
  - f. Advantages of the city-state (Freeman, 29-39).
  - g. Disadvantages (Freeman, 39-49).
2. System of large states compared with that of small states.
  - a. Definition of large states (Freeman, 49-57).
  - b. Position of the capital.
  - c. Representative character of the assembly; exceptions: the Napoleonic universal suffrage; the American president.
  - d. General view: advantages and disadvantages (Freeman, 57-68).

## II. Theory of Federal Government as a Compromise between Small and Large States (Freeman, 13-14, 69-83).

1. Avoids the extreme evils and advantages of small states.
2. Can there be a federal monarchy?
3. As to territory.
4. As to political education.
5. The component state as compared with the kingdom or the consolidated republic.

## III. General Results of Modern Federalism (Freeman, 85-94).

1. In the United States: alleged ease of secession.
2. In Switzerland.

See Freeman, *Federal Government*, chap. ii.

## SECTION IV. FEDERAL INSTITUTIONS IN GREECE: THE LESSER LEAGUES.

## I. The Amphiktyonies.

1. The Amphiktyonic Council at Delphi (Grote, Index; Thirlwall, chap. 61, *passim*; Freeman, chap. iii; Smith, *Dictionary of Antiquities*; Sainte Croix, *Anciens Gouvernemens Federatifs*).
  - a. Error in supposing it to be a federal government.
  - b. It was a religious, not a political body; yet not a clerical body.
  - c. A union of tribes not of cities; votes not fairly distributed.
  - d. Use of representation.
  - e. Examples of the activity of the council.
2. Many lesser Amphiktyonies in Hellas.

## II. The Phokian League.

1. Uncertain date of origin.
2. Why the earlier leagues arose in backward tribes?
3. Phokion, the capitol: why a capital city not chosen?

## III. The Akarnanian League.

1. Evidence of its existence, 431-169 B. C.
2. Places of meeting: Olpai, Stratos, Leukas, Thourion.
3. Constitution.
  - a. Officers: A general (strategos) or president; priest of the Aktian Apollo; secretary of state; other magistrates.
  - b. Senate and assembly.
  - c. Control of diplomatic relations; a non-exclusive federal coinage.

## IV. The Epeirot League (229 B. C.).

1. Early republican development of Chaonia and Thesprotis.
2. Monarchical constitution of Molossis.
3. Evidence of the existence of a federation after 229 B. C.: federal ambassadors, coinage, and generals.

## V. The Boeotian League (Freeman, 120-144).

1. Its lesson for the student of federal institutions.
  - a. Dangerous preponderance of the capital, Thebes.
  - b. Why Boeotia better suited for a Synoikismos or consolidate city-state, like Athens.

## 2. History.

## a. First period, 776-387 B. C.

- 1). Existence of both Amphiktyony and federal league.
- 2) Constitution: subordinate districts; 11 (or 13) boeotarchs; four senates; archon or nominal chief.
- 3) Oppression of the other towns by Thebes; lesson from the treatment of Plataia (519 B. C.), Thespia, and Orchomenos.
- 4) Peace of Antalkidas, 387 B. C.: dissolution of the League by Sparta.

## b. Second period, 387-335 B. C.

- 1) Career of Pelopidas, 379-364.
- 2) Career of Epameinondas, 379-362: frees Boeotia at Leuktra, 371 B. C.
- 3) Federal league revived; treatment of the towns.
- 4) Philip of Macedonia defeats Thebans and Athenians at Chaironeia, 338 B. C.; Thebes destroyed, 335 B. C.

## c. Third period, 335-172 B. C.

- 1) Thebes restored by Kassander, 316 B. C.
- 2) The League restored.
- 3) The new constitution (Freeman, 143).

VI. Various Attempts at Federal Systems (Freeman, 145-154).

VII. The Arkadian League (370 B. C.).

1. League founded by Lykomedes of Mantinea; work of Epameinondas.
2. Foundation of the capital, Megalopolis, 370 B. C.
3. Constitution.

VIII. The Lykian League, 168 B. C., to Claudius, 41-54 A. D.

1. The Lykians not a Greek people.
2. Great importance of the federal constitution.
  - a. Apportionment of votes in the assembly.
  - b. Details of the constitution given by Strabo (XIV, 3).

## REFERENCES.

Freeman, *Federal Government*, chaps. iii-iv; Hart, 27-31, bibliographies; Grote, *History of Greece*, Index at various names; Thirlwall,

*History of Greece*, Vol. II; Freeman, in *Essays*, 1st series, 228-55; Woolsey, *Political Science*, II, 175-194; May, *Democracy in Europe*, I, 48-9, 129-31; Mann, *Republics*, 43-9, 77-8, 118-29, Fiske, *American Political Ideas*, 59, 75-77. For general readings on Greek history, see Bury, *History of Greece*; Cox, *Athenian Empire*; Sankey, *Spartan and Theban Supremacies*; Curteis, *Macedonian Empire* (Epochs series); and other short manuals. For more extended study, see the works of Sainte-Croix, Tittmann, Bürgel, and Kortum.

Freeman's foot-notes are a guide to Strabo, Pausanias, Xenophon, Thucydides, Livy, Polybios, Aristotle, and other sources.

## SECTION V. ORIGIN AND CONSTITUTION OF THE ACHAEAN LEAGUE, 281-146 B. C.

### I. Character of the Later History of Greece (Freeman, 170-184).

1. The literature; Polybios and his age; Thirlwall; Freeman; Niebuhr; Droysen.
2. Comparison with earlier period; marked by the rise of federal institutions.
3. Rivalry of Achaea and the Antigonids of Macedonia; Hellenic patriotism of the Achaean statesmen.

### II. Early History of Achaea; the Old League of 12 Cities (Freeman, 185-191); dissolved, 288, by Antigonos Gonatas.

### III. Formation of the New League, 280, by union of Patrai and Dyme; Joined by Tritaia and Pharai. Aigion Joins, 275 B. C.; Steady Growth to 251 B. C.

### IV. Character of Markos of Keryneia, the Founder; of Iseas, Tyrant of that City; Nature of a Creek Tyranny; the Later Tyrants Supported by Macedon Compared with the Earlier.

### V. The Achaean Federal Constitution (Freeman, 197-251; Dubois, *Les Lagues Étolienne et Achéenne*; Thirlwall, II, 374 ff.).

1. Sources of information. Was the constitution "enacted" as a whole? (Thirlwall, II, 375; Freeman, 198).
2. In character the constitution was democratic and strictly federal.
  - a. The component cities had independent control of internal affairs.
  - b. Some of the cities had dependent districts, for example, Cornith and Megalopolis.



- c. But there was a tendency to assimilate their laws, as in American states.
- 3. The League was a real government in organism and functions; had control of foreign relations.
- 4. The Assembly of the League (Ekklesia?).
  - a. Primary not representative; all citizens of 30 years in all states could attend and vote.
  - b. In theory, democratic; in practice, aristocratic (plutocratic), but not oligarchic: why?
  - c. Votes taken by cities, not by heads: this was the result of a necessary compromise.
  - d. Two regular meetings a year, at Aigion in early period.
  - e. Government practically had the initiative.
- 5. The Senate (Boule).
  - a. Composed of groups of representatives from the cities; not a committee chosen by the assembly.
  - b. The assembly and senate sitting together formed one body (synod): this body was therefore both *primary* and *representative* (see theory of Du-bois, 113 ff.; and Freeman 239-41, 643-45, 651).
- 6. Magistrates or ministers.
  - a. The strategos (general) or president: elected by popular vote; might be citizen of any state.
  - b. The ten ministers (damiourgoi).
    - 1) Chosen, like president, from all the cities; an Achaean "caucus" (Freeman, 222).
    - 2) Formed a cabinet council for president, with seats in assembly.
  - c. The secretary of state, general of cavalry, and under-general.
- 7. Financial system: federal taxes were in form of requisitions on the states; compare with policy of American confederation.
- 8. Comparison of Achaean federal constitution with other systems.
  - a. Great relative importance of the office of strategos or president; Markos the first to hold the office alone (255 B. C.).
    - 1) Comparison of Aratos and Perikles.

- 2) Comparison with American president and English premier.
- 3) Assembly summoned by the general in council.
- 4) Why the ministers, not the general, presided in the assembly?
- 5) Joint action of general and ministers in diplomatic matters.
- 6) His great powers in war.
- 7) The American and Achaean presidential interregnums compared.

b. General comparison of the Achaean League and the United States (Freeman, 243-251; *Federalist*, Nos. xvi, xviii, xxviii, xlv, lxx, and index).

VI. Constitution of the Aetolian League Compared with that of Achaea (Freeman, 252-74).

#### REFERENCES.

Freeman, *Federal Government*, chaps. v, vi; Hart, *Federal Government*, 31-3, and bibliographical foot-notes; Woolsey, *Political Science*, II, 180-193; Thirlwall, *History of Greece*, II, chap. lxi, 374 ff.; Dubois *Les Ligues Etolienne et Achéenne*; *Federalist*, as cited and Index. In general, consult Polybios, Plutarch, Strabo, Livy, and the other sources as cited in Freeman's foot-notes. Compare Schorn, *Geschichte Griechenlands*; Tittmann, *Staatsverfassungen* (1812); Kortum, *Staatsverfassungen* (1821); Droysen, *Hellenismus*; Hermann, *Lehrbuch*, I, secs. 11-14; Gilbert, *Handbuch*, I, 389-417, II, 14, 21-31, 33, 47-57, 104-123, 184, 404-419; Busolt, in Müller's *Handbuch*, IV, 4 (1887), secs. 54-71, 233-48; Schömann, *Antiquities*, 294-539.

SECTION VI. HISTORICAL DEVELOPMENT OF THE ACHAEAN LEAGUE, 281-146 B. C. (Freeman, chaps. vii-ix, 275-556).

I. From the Foundation of the League to the Deliverance of Corinth, 281-243 B. C.

1. General condition of Greece.
  - a. Invasion of the Gauls.
  - b. War between Pyrrhos of Epeiros and Antigonos Gonatas of Macedonia.
  - c. State of Sparta; of Athens.
  - d. Macedonia and her "tyrants" in the Greek cities.
2. Markos and the sole generalship, 255 B. C.
3. Aratos and the annexation of Sikyon, 251 B. C. (Freeman, 278-287).

4. Character of Aratos (see Plutarch).
  - a. His political ideas: merits and faults of character.
  - b. Statesmanship.
  - c. Generalship.
  - d. Relations with Antigonos, Ptolemy Philadelphos, and Kleomenes.
5. Significant events.
  - c. Invasion of Attica by the League, 243 B. C.
  - b. Accession of Corinth, Megara, Troizen, and Epidauros, 243 B. C.
  - c. Invasion of Attica by the League, 243 B. C.
  - d. Vain attempt on Argos; morality of Greek tyrannicide.
  - e. Illustrations of the character of Greek federalism in this period.

## II. From the Deliverance of Corinth to the Annexation of Argos, 243-228 B. C. (Freeman, 305-335).

1. Agis of Sparta, Aratos, and the Aetolian invasion of Peloponnesos, 241 B. C.
2. Unsuccessful attempts on Athens, Argos, and Peiraiæus.
3. Kleonai joins the League.
4. Kynaitha and other Arkadian towns join the League.
5. Megalopolis (the city of Lydiadas, Lykortas, Polybios, and Philopoimen) joins the League, 234 B. C.
6. Character of Lydiadas; his rivalry with Aratos.
7. Accession of Argos to the league, 228 B. C.: conduct of Lydiadas and Aratos compared. Commanding position of the League.

## III. Aratos and Kleomenes, to the Beginning of Negotiations with Macedonia, 227-224 B. C. (Freeman, 335-361).

1. Condition of Sparta; reforms of Agis, 241 B. C.; revolution of Kleomenes, 226-225 B. C.; relations with the League; causes of the war with the League.
2. Kleomenes gains the Aetolian towns in Arkadia, 228 B. C.
3. Generalship of Aristomachos, 228 B. C.: why Lydiadas was not chosen?
4. Kleomenes defeats Aratos at Mount Lykaion, and Aratos surprises Mantinea, 226-225 B. C.: results? (Plutarch, *Kleomenes*, 5; *idem*, *Aratos*, 36).

5. Defeat of Achaeans at Ladokeia, 226 B. C.: death of Lydiadas; cowardice of Aratos; he is censured.
  6. Mantinea revolts to Kleomenes; Kleomenes's victory at Hekatombaion, 224 B. C.
  7. Relative position of Kleomenes and Aratos; the latter appeals to Macedonia (compare Plutarch, *Aratos*. 38, 41, and Polybios, II, 47, *passim*).
- IV. Alliance of Aratos and Antigonos Doseon, 223-221 B. C.
1. The negotiations with Antigonos.
  2. Relations of the two allies with Kleomenes; popularity of the latter; his schemes.
  3. Secession of some towns of the League; lesson as to federal government.
  4. Antigonos invited by the League; and Akrokorinthos surrendered to him; judgment on the conduct of Aratos.
  5. Battle of Sellasia; defeat and exile of Kleomenes; death of Antigonos, 221 B. C.; his character.
- V. The League from the Battle of Sellasia to the Peace of Epeiros, 221-205 B. C. (Freeman, 389-467).
1. Rise of Philopoimen.
  2. The Social war, 221-217 B. C.
  3. Revolution at Sparta, 220-219 B. C.
  4. Congress of Korinth, 220 B. C.; Congress of Naupaktos, 217 B. C.
  5. Death of Aratos, 213 B. C.
  6. First war of Rome with Macedonia.
  7. Character and statesmanship of Philopoimen.
  8. Peace of Epeiros, 205 B. C.
- VI. Federal Greece from the Peace of Epeiros to the Dissolution of the Achaean League, 205-146 B. C. (Freeman, 471-556).
1. The second Macedonian war and the settlement of Greece under Flaminius, 205-194 B. C.
    - a. Character of Philip of Macedonia.
    - b. Alliance of the leagues with Rome.
  2. Work of Philopoimen; his death, 183 B. C.
  3. The Achaean League extended over all Peloponnesos, 191 B. C.; its condition and constitution in this period.
  4. Main events.

## REFERENCES.

The chief sources are Plutarch and Polybios; the leading English writers are Thirlwall and Freeman. See also the book of Dubois above cited.

## SECTION VII. FEDERAL INSTITUTIONS IN ITALY AND WESTERN EUROPE.

A. *Ancient Italy.*

## I. Conditions Favoring Federation; Character of the Sources.

II. League of Etruria (Freeman, 562-565; Hart, 34; Müller, *Etrusker*, I, 131, 136, 350 ff.; Mommsen, *History*, Index; Livy; Dionysios).

1. Composed of "twelve" cities.
  - a. Significance of "twelve" as a political number.
  - b. Had the individual states subject towns?
2. Religious and federal assemblies at the temple of Voltumna: was the political league preceded by an amphiktyony? (Livy, IV, 23, 25, VI, 2).
3. No exact knowledge as to the constitution of the league.
  - a. Kings are mentioned; the aristocracy of historical times probably preceded by royalty.
  - b. Looseness of the federation shown by the states retaining war powers; but war and peace might be declared by the federal government.

## III. League of Samnium.

1. Character of the Samnites; analogy with Aetolians and the Swiss.
2. The federal constitution: absence of detailed information.
  - a. Was there a federal president or head? Who was the *imperator* or *embratur*? (Livy, IX, 1.)
  - b. Evidence for at least five divisions (states).
  - c. Probably a popular assembly and a senate (Freeman, 566, note 1).
  - d. There was a Samnite nation; significance of the long war with Rome, 340-82, B. C.

## IV. The League of Latium.

1. Character of the people and the towns; traditional history of the founding of the League (Dionysios, IV, 25, 26; Freeman, 568).
2. Composed of "thirty" cities.

3. Constitution.
  - a. Dictator: federal head, at least in time of war (Dionysios, V, 74).
  - b. Political and religious meetings, survival of the *Feriae Latinae*.
4. Relations with Rome: Rome a Latin town, but not a mere capital of Latium; significance of the Latin proposal for union, 337 B. C. (Livy, VIII, 3-5, 8). The League dissolved by Rome, 334 B. C.
- V. Federal Elements in the Roman Commonwealth (Freeman, *Federal Government*, 572-592; *idem*, *Comparative Politics*; Fiske, *American Political Ideas*, 77 ff.; Hart, 35-6).
  1. Roman expansion by "incorporation"; significance of the *quasi*-federal elements; analogy with Athenian method of incorporation.
    - a. Stages in the process; the three classes: Romans, Latins, Allies (Italians under Roman sway); the franchise in the provinces; the strife between patrician and plebeian.
    - b. The process of expansion was not federalism: the Roman "alternative" (Freeman, 575-76).
  2. The Social War, 90-89 B. C.: Italy's *first* great opportunity for union (Freeman, 583 ff., 600; Beesly, *The Gracchi*).
    - a. Causes of the struggle; the demand for equal citizenship or for independence.
    - b. Who were the allies; position of Etruscans and Umbrians.
    - c. The constitution of the federation.
      - 1) Corfinium, the capital; renamed Italicum.
      - 2) Officers.
      - 3) Federal senate of 500.
    - d. Success of the allies: the senate tenders the franchise; conditions; Samnium and Lucania refuse; the other allies accept the offer.
  3. The Civil war, 88-82 B. C.
    - a. Causes.
    - b. Rivalry of Marius and Sulla.
    - c. Battle of the Colline Gate: Sulla victorious: Samnium ravaged.
    - d. Italy enfranchised.

*B. Western Europe.*

- I. The Lombard League, 1164-1183; Renewed, 1228, 1239.
  1. Condition of Italy in the 12th century.
    - a. Practically composed of many states: city-states, principalities, papal domains.
    - b. The empire.
      - 1) The German kingdom and the election at Frankfort.
      - 2) The Italian kingdom and the coronation at Monza or Milan.
      - 3) The Holy Roman empire and the coronation at Rome.
  2. Frederic I, Barbarossa (1152-90).
    - a. Character.
    - b. Points of dispute between him and the northern cities of Italy.
    - c. Frederick's first war with the cities, 1154-62: Milan destroyed, 1162.
  3. The League formed, 1164: Italy's *second* opportunity for union.
    - a. The League supported by the eastern emperor, Manuel Komnenos, William, King of Sicily, and Pope Alexander III. Position of Venice?
    - b. Victory of the League, at Legnano, 1176.
    - c. Peace of Constans, 1183.
  4. Character of the League.
    - a. A mere confederation for a special purpose.
    - b. The *Rectores Societatis Lombardiac.*
    - c. Why true federalism did not develop in Italy?
  5. The renewed League, 1228, 1239, compared with the original.
- II. The United Netherlands, 1576-1746.
  1. Origin.
  2. Constitution.
    - a. The states general: real federal powers.
    - b. The Stadtholderate.
    - c. Weakness of the Dutch confederation (Hart, 48).
- III. The Holy Roman Empire, 1526-1806.
  1. A very loose confederation: a Staatenstaat.
  2. Complex organization of courts and diet (Reichstag);

the *itio in partes*, or veto power of religious confessions.

IV. Rhenish Confederation, 1254-1350.

1. *Colloquia* or deliberative assembly.
2. Commission or court of arbitration.

V. The Hansa, 1367-1669.

1. Commercial objects.
2. Political importance: war powers and diplomacy.
3. Organization or constitution.
  - a. Bundestag.
  - b. Courts.

For bibliographies, see Hart, 34-48, notes.



## CHAPTER II.

### ORIGIN AND CHARACTER OF THE FEDERAL CONSTITUTION OF THE UNITED STATES.

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#### SECTION VIII. THE "UNITED COLONIES OF NEW ENGLAND," 1643-1684.

I. General Condition of the Colonies in 1643 (Frothingham, 33-38; Fiske, *Beginnings of N. E.*, 140 ff.; Doyle, *Puritan Colonies*, I, 220 ff.).

1. Relation to the crown and parliament.

a. Direct superintendence by the king and privy council until 1634.

b. Control vested by king in the lords commissioners of foreign plantations, 1634.

c. Control vested by Long parliament in the lords of trade and plantations, April, 1643: a president and 17 councillors (Hazard, *Hist. Coll.*, I, 533); a new board created, 1655.

d. Control vested by king in a council committee for foreign plantations, July 4, 1660 (instructions in *N. Y. Docs. rel. to Col. Hist.* III, 30 f.).

e. Vested by king in lords of trade and plantations, 1675.

f. Vested in the lords commissioners of trade and plantations, 1696: president and eight members, called the "Board of Trade."

2. Population of all the colonies; of the New England colonies.

3. Political condition: ecclesiastical troubles; Indian policy.

II. Motives for the Formation of the Confederation (see pre-  
amble).

1. Settlement of boundary disputes.

2. Settlement of cases of intercolonial jurisdiction.

3. Need of united action regarding Indians, French, and Dutch.
4. Other motives.

### III. Attempts at Union, 1637-1643.

1. Suggested by Connecticut, 1637 (Winthrop, *Hist. of N. E.*, I, 237); articles proposed by Massachusetts discussed, 1638 (*ibid.*, 284); urged by Haynes and Hooker, 1639 (*ibid.*, 299).
2. Proposed by magistrates of Rhode Island, New Haven, and Connecticut, 1640 (Winthrop, II, 21; *Mass. Col. Rec.*, I, 305).
3. Again proposed, 1642 (Winthrop, II, 85).
4. May 19, 1643, the articles were agreed upon in a convention of 13 delegates from Plymouth, Massachusetts, New Haven, and Connecticut (Bradford, 416; Winthrop, II, 99).

### IV. Analysis of the Articles: Example of a Written and Enacted Constitution ("Organic" Law).

1. Preamble giving name and declaring purpose of the league.
2. The "United Colonies" declared a "league of friendship and amytie."
3. Local independence secured.
4. Quotas of men and taxes, how determined; gains from wars, how distributed.
5. Forces how raised to meet sudden invasion; relation of burdens to vote in the council of federal commissioners (*cf. sec. VI*).
6. Commissioners: number; powers; quorum; when matters to be referred to colonies; time, place, and number of meetings; qualifications (*cf. sec. X*).
7. President of commissioners: powers.
8. Powers in intercolonial affairs: extradition of criminals; fugitive slave clause; change of jurisdiction; securing speedy justice.
9. Federal war-powers.
10. When four commissioners may act.
11. Breach of articles: what means of enforcement?
12. Acceptance of the constitution: case of Plymouth?

## V. Chief Defects of the Constitution.

1. Franchise.
2. Some colonies excluded.
3. No action on the individual.

## VI. History of the Confederation.

1. Criticism of the policy of Massachusetts: cases of Miantonomo and Gorton, 1643: action of the commissioners; nullification, 1650, 1653 (Doyle, I, 286-88, 299-301).
2. Services of the confederation.
3. The question of sovereignty.
  - a. An example of a confederacy of "dependencies."
  - b. Complaints by Gorton and others of usurpation of sovereignty.
    - 1) Winslow's defense, 1646-7.
    - 2) Letter of the lord commissioners (*Mass. Col. Rec.*, II, 141).
    - 3) Defense by Massachusetts, 1651 (Hutchinson, *History*, I, 516).
  - c. John Eliot's "Christian Commonwealth" (*Mass. Hist. Coll.*, first series, III, 9).
  - d. Complaints by Breeden, Maverick, and others, 1661 (*Coll. Maine Hist. Soc.*, I, 301; Hutchinson, *Collections*, 339; Chalmers, *Annals*, 178; Frothingham, 51-2).
  - e. Special royal commission, 1664-5 (*Mass. Col. Rec.*, IV, Pt. II, 157 ff.; Frothingham, 53 ff.; Chalmers, *Annals*, 387-88).
    - 1) Proceedings in Massachusetts: action of the other colonies.
    - 2) Defense of the confederation by the committee of the general court of Massachusetts (*Mass. Col. Rec.*, IV, Part II, 231; Frothingham, 61).
4. Decline of the confederacy.
  - a. Effect of the incorporation of New Haven and Connecticut by the charter of 1662 (*Plym. Col. Rec.*, X, 318 ff.).
  - b. New constitution adopted, 1670 (*Plym. Col. Rec.*, X, 340-4).
  - c. Number of meetings (Frothingham, 63, note).

## VII. Significance for Federal Institutions of the Gradual Incorporation of the New Haven, Connecticut, and Rhode Island Towns, respectively, in Colonial Unions?

### REFERENCES.

1. *Text of the articles*: Preston, *Documents*, 85-95; Macdonald, *Select Charters*, 94-101; *New Haven Col. Records*, I, 98-104; *Plym. Col. Records*, IX, 3-8; *American Hist. Leaflets*, No. 7.

2. *Records of the Commissioners*: *Plymouth Colonial Records*, IX, X; Hazard, *Historical Collections*, II.

3. *History and Discussion*: Important passages in Winthrop, Bradford, Hutchinson, Chalmers (*Annals*), and Hubbard, *History of Mass.* (in 2 *Mass. Hist. Coll.*, VI), chap. 53. See also Frothingham, *Rise of Republic*, 33-71; Doyle, *Puritan Colonies*, I, 220 ff., 277-90; Fiske, *Beginnings of New England*, 140 ff., 158 ff.; Fisher, *Colonial Era*, 133 ff.; Thwaites, *Colonies*, 154 ff.; Lodge, *Short History*, 351-352, 375, 377; Bancroft, I, 289-310; Tyler, *England in America*, 297 ff.; Bryant and Gay, II, 49-50, 373-87; Smith, in *Memorial Hist. of Boston*, I, chap. vii; C. F. Adams, *Three Episodes*; Brooks Adams, *Emancipation of Mass.*; J. Q. Adams, in 3 *Mass. Hist. Coll.*, IX, 187.

See bibliographies, in Hart and Channing, *Guide*, 276; Winsor, *Mem. Hist. Boston*, I, 299; *idem*, *Narrative and Crit. Hist.*, III, 354; Andrews, *Colonial Self-Government*, chap. i, ii (how controlled by central authority); *N. Y. Docs.*, III, Introduction, on Boards of Trade.

## SECTION IX. FRANKLIN'S PLAN OF COLONIAL UNION AND THE ALBANY CONVENTION, 1754.

I. Congresses, Plans of Union, and Opinions Disclosing a Nascent Sentiment of Union, 1684-1754 (Frothingham, chaps. iii, iv, 72-131; Howard, *Preliminaries of the Revolution*, 10-15, and the authorities there cited. Cf. Greene, *Provincial America*, 57, and chap. xi; Thwaites, *France in America*, chap. x).

1. Effect of the general government of Andros; of the Leisler incident in New York.
2. July, 1684: convention of officials of Virginia, Maryland, Massachusetts, and New York, to confer with chiefs of the Five Nations.
3. April and May, 1690, congress of delegates from Massachusetts, Connecticut, Plymouth, and New York in New York City to arrange for common defense.
4. Other assemblies (Frothingham, 118-119, note).
5. Plans of union suggested by Penn (1698), Davenant (1698), Livingston (1701), Coxe (1722), Kennedy (1752), and others.

II. The Albany Convention, June 19, 1754 (bibliography of convention in Winsor, V, 611-14; credentials of delegates in *Pa. Archives*, II, 137).

1. The call by the lords of trade, September 18, 1754: to governors of New Jersey, Pennsylvania, Massachusetts, New Hampshire, Virginia, Maryland, and Pennsylvania (*N. Y. Docs.*, VI, 802); their letter to Governor Delancy of New York (*ibid.*, 800).
2. Representation (see map in Howard, 154).
  - a. Chosen by the legislature in Massachusetts, Connecticut, and Rhode Island.
  - b. Appointed by governor, in king's name, in New Hampshire, New York, Pennsylvania, and Maryland.
  - c. 25 delegates in all.
3. Results of negotiations with Indians (see records of proceedings in *New York Docs.*, VI, 853 ff.).

III. Franklin's Plan of Union (text, in Preston, 170-187, with Franklin's comments; Macdonald, *Select Charters*, 253-57; *New York Docs.*, VI, 889-91; Franklin, *Works* (Sparks), III, 36-55 (with his comments); O'Callaghan, *Doc. Hist. N. Y.*, II, 545).

1. The executive: president general, appointed and paid by the crown.
  - a. Absolute veto.
  - b. Other powers.
2. Legislature: grand council.
  - a. Members chosen every three years by colonial houses of representatives.
  - b. Each colony to have 1 to 7 delegates, apportioned according to its share of the federal taxes.
  - c. Meetings: once a year; privileges and wages of members.
  - d. Quorum; speaker: when to have powers of president?
  - e. Functions (with president in some cases).
    - 1) Make laws; subject to royal veto in council in three years.
    - 2) With president, to control all Indian affairs.

- 3) Establish, and make laws for, new settlements on purchased Indian lands; and regulate Indian trade.
  - 4) War powers: build forts, maintain ships and soldiers, and vote taxes therefor.
  - 5) Appoint general treasurer and special treasurers in the colonies.
  - 6) Share in appointment of civil and military officers.
3. Military constitution: summary of provisions.
    - a. Military commissions.
    - b. Defense by each colony in cases of emergency.
    - c. Military establishments of particular colonies to be allowed.
  4. Why the plan was rejected? Significance of the general discussion of it in the colonies?

## REFERENCES.

Proceedings of the Albany Convention, in *New York Docs.*, VI, 853-891; and (in part) in 3 *Mass. Hist. Coll.*, V, 5-74. Several plans of union in *Am. Hist. Leaflets*, No. 14.

In general, besides the works cited, see Frothingham, 131-150; Howard, 13-14; Bancroft, IV, 387; Hildreth, II, 443; Bryant and Gay, III, 261; Greene, *Historical View*, 69; Chalmers, *Revolt*, II, 271; Thwaites, *France in America*, 170-172.

## SECTION X. PROGRESS OF FEDERAL SENTIMENT DURING THE PRELIMINARY REVOLUTION, 1763-1775.

## I. The Stamp Act Congress and Its Lesson.

1. Origin.
2. Number of colonies represented and number of delegates (see map in Howard, 155).
3. Colonial delegates, how chosen.
4. Proceedings and state papers.
5. Ratification; value of the discussions preceding and following the congress.

For bibliography, consult Howard, 120-157, 343. See Frothingham's account.

## II. The First Continental Congress, 1774 (see discussion and bibliography, in Howard, 280-295, 344-345).

1. Origin; why it was the completion of the party-organization developed in the two classes of committees of correspondence?

2. Number of colonies represented, and number of delegates (see map in Howard, 282).
3. Colonial delegates, how chosen.
4. Proceedings and state-papers; the constitution of the "Association."
5. Analysis of Galloway's Plan of Union (text, in Force, *American Archives*, 4th series, 1).

### III. The Second Continental Congress, 1775 *et seq.*

1. Representatives; number and choice (see map in Howard, 282).
2. Gradual assumption of "sovereign" powers.
3. War powers: creation of a federal army and choice of commander-in-chief.

See bibliography in Howard, 345. Cf. Small, in *J. H. U. Studies*, VIII, Nos. 1, 2; and the *Journals of Congress*, I.

## SECTION XI. CHARACTER OF THE CONFEDERATION, 1781-1789.

### I. The Revolutionary Government by the Continental Congress (Fiske, 90: Greene, chap. iii; Frothingham, chap. ix; Hildreth, III, 44 ff.).

1. By what authority it acted? The question of sovereignty.
2. Character of the "Association" of October 20, 1774? In effect it was the "Commencement of the American Union" (Hildreth, III, 46. See the document in Preston, 199-205; Macdonald, 362).
3. What congress accomplished and what it failed to do.

### II. Franklin's Plan of Union, July 21, 1775 (compare with his plan of 1754).

1. States rights: each colony to make and amend its own laws.
- 2. General government the sole authority in war and peace, alliances, commerce, currency, posts, army, navy, Indian affairs, and interstate disputes.
3. Taxes collected by colonies in proportion to numbers.
4. Congress: one body composed of members chosen annually and apportioned triennially according to numbers.

5. Executive to consist of a congressional committee of twelve, one-third renewed each year.
  6. Amendments to be approved by a majority of the colonial assemblies.
  7. Measures decided by majority vote; one-half, a quorum.
- III. Analysis of the Thirteen Articles of Confederation (the so-called Dickinson Plan).
1. Origin: a committee of one from each state to mature a plan of union, appointed June 11, 1776. Its report was submitted July 12, 1776, and approved by congress, November 15, 1777. By July 9, 1778, the articles were ratified by ten states, and by Maryland, the last, March 1, 1781. Through her delay Maryland secured our first national domain (see Adams, in *J. H. U. Studies*, III, 7-54).
  2. Articles 1-3; the league of friendship; style of the union; sovereignty.
  3. Article 4: free inhabitants of all states to have rights of free citizens in each state; extradition; faith and credit in judicial records and proceedings, and acts of magistrates, among states.
  4. Article 5: representation in congress: each state 2 to 7 delegates, paid by state; each state one vote; parliamentary privileges.
  5. Article 6: prohibitions on the states.
  6. Article 7: appointment of regimental officers by the state.
  7. Article 8: requisitions on states instead of national taxes.
  8. Articles 9, 10: powers of congress.
    - a. General powers.
    - b. Measures requiring nine states.
    - c. Settlement of interstate disputes.
    - d. Coinage, weights and measures, posts, etc.
    - e. Duties of the committee of states.
  9. Articles 10-13: admission of Canada and of other colonies; bills of credit; amendments by vote of all states.



## IV. Preliminary View of the Defects of the Confederation.

1. The principal sources of weakness (Fiske, 99; Schouler, I, 16; compare McLaughlin, chaps. iv, v, xi).
  - a. The requirement of a vote of nine states for all important measures; and unanimous consent of all states for an amendment.
  - b. State control of commerce; helplessness of United States in dealing with foreign powers.
  - c. Lack of coercive power; no action of the national government on individual; congress might demand troops and money, but could not enforce the requisition.
2. Evidences of weakness (Fiske, chap. iii).
  - a. Madison's proposed amendment giving the United States power to use military force to compel a "delinquent state to fulfill its federal engagements"; a constitutional convention proposed by William Barton, May, 1781 (Bancroft, *Const.*, I, 24, note 3).
  - b. Military weakness and the cause.
  - c. Financial weakness; interest on foreign debt; dread of the army; the five per cent duty; Colonel Nicola wishes Washington made king; the "Newburg address," March 11, 1783; expulsion of congress from Philadelphia, June 21, 1783.
  - d. The order of the Cincinnati; cause of the violent opposition to it?
  - e. Failure to carry out the treaty of 1783; persecution of the Tories; the New York Trespass Act, 1784; Hamilton and the case of Rutgers v. Wadlington; the Phocion (Hamilton) and Mentor (Ledyard) letters; England retains the western posts.

## REFERENCES.

1. *Text of Articles of Confederation*: Preston, 219; Poore, *Charters*, I, 7 ff.; Macdonald, *Select Documents*, 6-15; Townsend, *Civil Government*, 46-55; Elliot, *Debates*, I, 79-85; Johnston, *Politics*, 280-294; Stearns, *Constitutional History*, 313 ff.; Macy, *Our Government*, 251 ff.; Cooper, *American Politics*, pt. III, 5 ff.
2. *Franklin's Plan*: Bancroft, IV, 243-44; Frothingham, 481, note; Morse, *Franklin*, 206; Draper, *Civil War*, I, 258; Pitkin, II, ch. xi.
3. *Character of the Confederation*: Fiske, *Critical Period*, ch. iii; Frothingham, 481, 517, 569-71, 573-84; Curtis, I, 80, 86 ff.; Preston,

218-19; Schouler, *History of U. S.*, I, 13 ff.; Hildreth, III, 395 ff., 453-54; Von Holst, I, ch. i; Bancroft, V, 199 ff., 439 ff.; *Federalist*, Index at "Confederation"; Elliot, *Debates*, I, 67 ff., 70-78 (Jefferson's notes); Fiske, *Civil Government*, 18-23; Story, *Commentaries*, I, 217-223, *passim*; Crane and Moses, *Politics*, 135-141; Lalor, I, 591-92, 574-76; Schouler, *Const. Studies*, 70-92; Donaldson, *Public Domain*, 59-60; Landon, *Const. Hist.*, 42-62; Macy, *Our Government*, 35 ff.; Morse, Hamilton, I, ch. iv (Confederation), v (Ledyard); Draper, *Civil War*, I, 259 ff; Pitkin, II, ch. xi, xvi; Johnston, *U. S.*, 136. See especially the view of McLaughlin, in his recent book, *The Confederation and the Constitution*; and read Van Tyne, *American Revolution*, chaps. ix, xi.

## SECTION XII. ORIGIN OF THE CONSTITUTIONAL CONVENTION OF 1787.

### A. *The Weakness of the Confederation, 1781-1787.*

#### I. Failure of All Plans to Strengthen the Confederacy.

1. By grant of specific powers.
  - a. Five per cent. scheme, 1781-1783 (*A. H. L.*, No. 28, p. 2).
  - b. Revenue scheme, 1783-1786 (*A. H. L.*, No. 28, p. 12).
  - c. Commerce scheme, 1784-1787 (*A. H. L.*, No. 28, p. 20).
  - d. Minor schemes.
    - 1) Monroe's report, July 13-14, 1785 (Bancroft, *Hist.*, VI, 142-45; *idem*, *Const.*, I, 192-6; *A. H. L.*, No. 28, p. 25).
    - 2) Seven amendments to the Articles of Confederation proposed August, 1786 (Bancroft, *Const.*, I, 260-62; *A. H. L.*, No. 28, p. 26).
2. By grant of coercive powers.
  - a. Washington urges, 1781-1786 (Fiske, 99-100; Madison, *Papers*, I, 81-84).
  - b. New York senate recommends, September, 1780 (Bancroft, *Const.*, I, 12-13).
  - c. Madison proposes in report to congress, March 16, 1781 (Madison, *Papers*, I, 86-90; Bancroft, *Const.*, I, 23; *A. H. L.*, No. 28, p. 3).
  - d. The Virginia resolution, May, 1784; distress on individuals (Bancroft, *Const.*, I, 163).
3. By change in the form of government.
  - a. To a monarchy or dictatorship, 1781-1783 (Fiske, 107-8; Gay, *Madison*, 77-9).

b. To a centralized government, the states to be suppressed or reduced to mere provinces (Gay, 78).

c. To a closer federal union, 1780-1785.

1) Price convention of northeastern states, at Boston, August, 1780, declares for one supreme head and a more efficient legislature, recommends the Hartford Convention (Sumner, *Financier*, I, 92).

2) November 11, 1780, Hartford Price Convention of northeastern states and New York urges need of stronger federal government (Bancroft, *Const.*, I, 14-15).

3) Amendments to Articles of Confederation proposed in report of a congressional committee (Randolph, Ellsworth, Varnum), August 22, 1781 (Bancroft, *Const.*, I, 25-27; *A. H. L.*, No. 28, p. 4).

#### 4. Personal influence.

a. Washington's influence (Curtis, I, 265-273; Bancroft, *Const.*, I, 16-19; Lodge, II, 16 ff.); his letter to Jefferson, etc. (Madison, *Papers*); to Harrison, 1784 (Bancroft, *U. S.*, VI, 115); to J. P. Custis (Bancroft, *Const.*, I, 21-2); great influence of his letter ("legacy") of June 8, 1783 (Fiske, 54; Bancroft, *Const.*, I, 100 ff.); on the Virginia resolves of December 24, 1779 (Bancroft, *Const.*, I, 19-21).

b. Hamilton's influence (Schouler, I, 24 ff.; Lodge, *Hamilton*, 50-57; Curtis, I, 273-82; Morse, *Hamilton*, I, 155-176); letter to Duane, September 30, 1780 (Curtis, I, 138, note, 236-9, note; Bancroft, *Const.*, I, 13); his "Continental" papers (see Hamilton's ed. of *Federalist*; Bancroft, *Const.*, I, 25-6).

c. Madison's influence (Schouler, I, 26-7; Curtis, I, 282-90; Bancroft, *Const.*, I, 81-4).

d. Pelatiah Webster's influence (Bancroft, *Hist.*, VI, 66; *idem*, *Const.*, I, 86; *A. H. L.*, No. 28, p. 7).

e. Noah Webster's influence, 1784-5; a government acting on individuals (Curtis, I, 236; Bancroft,

*U. S.*, VI, 136; *Const.*, I, 184-5; *A. H. L.*, No. 28, pp. 21-24).

f. Patrick Henry's influence (Tyler, *Henry*, 266-278).

## II. Anarchy and Impending Dissolution, 1786-7.

1. Collapse of the national finances.
2. Ruin of foreign commerce.
3. Insurrection (Shays's rebellion) and strife in the states (see the Wyoming, Vermont, and Tennessee troubles).
4. Threatened secession of the West, and of New England (see Mississippi question).
5. Danger of sectional unions.
6. Foreign predictions of failure.

## B. Growth of Popular Sentiment in Favor of a Constitutional Convention.

### I. Early Proposals by Individuals.

1. Hamilton suggests in his letter to Duane, September 30, 1780 (*Curtis*, I, 138, note, 236-9, note; *Bancroft, Const.*, I, 13); and in congress, 1783 (*Curtis*, I, 236, note 3; *A. H. L.*, No. 28, p. 15; *Hamilton, Works*, I, 288-95).
2. Thomas Paine in "Public Good," December, 1780 (*Bancroft, Const.*, I, 13).
3. Greene demands, 1780 (*Bancroft, Const.*, I, 14).
4. William Barton urges in a pamphlet published May, 1781, wrongly ascribed to Pelatiah Webster (*Bancroft, Const.*, I, 24, note 3; cf. *Fiske*, 101, 222; *Curtis*, I, 236, note 3; *Schouler*, I, 24).

### II. Proposals of State Legislatures.

1. New York resolution, 1782, suggested by Hamilton (*Curtis*, I, 236, note 3; *Bancroft, Hist.*, VI, 30-31, V, 559; *idem, Const.*, I, 29, 37-9; *Hildreth*, III, 477).
2. Massachusetts resolution, June-July, 1785 (*Curtis*, I, 225-8; *McMaster*, I, 256-9).

### III. The Virginia-Maryland Commercial Commission, 1784-5.

1. Influence of Washington in formation of plans for commercial intercourse between East and West (*Adams*, in *J. H. U.*, *Studies*, III, 80-102; *Bancroft*,

*Hist.*, VI, 113-114, 125 ff.; Lodge, *Washington*, II, 14-17).

2. Meeting of the commissioners at Mount Vernon, March, 1785. Washington's probable influence (Curtis, I, 230, note 2; Marshall, *Washington*, V, 90; Adams, in J. H. U., *Studies*, III, 41); the commission enlarges its plan; its report (Bancroft, *Const.*, I, 250; Curtis, I, 231; McMaster, I, 277-8).
3. Maryland accepts the suggestion of the commission, November, 1785, and proposes to invite the cooperation of Delaware and Pennsylvania (McMaster, I, 279).
4. Madison secures the Virginia resolution of January 21, 1786, inviting all states to meet in convention to consider federal regulation of trade, and providing for the appointment of seven commissioners; the latter suggests that the meeting be held at Annapolis on the first Monday in September, 1786 (McMaster, I, 279-81; Bancroft, *Hist.*, VI, 183; Curtis, I, 231).
5. New Jersey prepares the way, October 20, 1786, by refusing requisitions until all the states agree on imposts for the federal treasury; her instructions to her delegates included commerce and "other important matters" (Bancroft, *Const.*, I, 256-7; *idem*, *Hist.*, VI, 187).

#### IV. The Annapolis Convention, September 14, 1786 (Bancroft, *Const.*, I, 267 ff.).

1. Five states only represented: New York, Pennsylvania, New Jersey, Virginia, Delaware.
2. Hamilton secures a call for a federal convention, the second Monday in May, 1787; the expressed object being to make improvements in Articles of Confederation, to be ratified by all states.

#### V. The States Accept the Call.

1. Virginia, under guidance of Madison, takes the lead in approving the call, November, 1786; the struggle in New York and other states (Bancroft, *Hist.*, VI, 97-203; *idem*, *Const.*, I, 271-8).
2. Congress sanctions the proposed convention, February 21, 1787.

## REFERENCES.

1. *Failure of the Confederation and Impending Anarchy*: Schouler, I, 19-34; Von Holst, I, 35-48; McMaster, I, 356 ff., 391 ff.; Lalor, *Cyclopaedia*, III, 475-6; Gay, *Madison*, 53-63; Story, *Commentaries*, I, secs. 269-71; Curtis, I, 221 ff.; Draper, *Civil War*, I, 266-77; Woolsey, *Political Science*, II, 245-48; Bancroft, *Const.*, I, chaps. vi, vii; *idem*, *Hist.*, VI, chaps. vi, vii, viii; Lodge, *Hamilton*; especially McLaughlin, chaps. ix, x, xi.

2. *Origin of the Federal Constitution*: The Virginia-Maryland Commission, the Annapolis Commercial Convention, and the call for a federal convention: Bancroft, *Const.*, I, 169-74, 176-77, 249-57, 267-78; *idem*, *Hist.*, VI, 129, 184-85, 195-203; Curtis, I, 277 ff., 389-400; Fiske, *Crit. Period*, 212, 222; Schouler, I, 29-35; Frothingham, *Rise of Republic*, 585-89; Hildreth, III, 477-78; Story, *Commentaries*, I, secs. 272-74; Gay, *Madison*, 47-87; Lodge, *Hamilton*, 50-57; Elliot, *Debates*, I; Roberts, *New York*, II, 444-8; Morse, *Hamilton*, I, 158-76; Lodge, *Washington*, II, 1-29; Landon, 56-66; Hart, 115-28; Smith (Goldwin), *U. S.*, 119-29; McLaughlin, chaps. xii, xiii.

## SECTION XIII. THE FEDERAL CONVENTION: PRINCIPAL PLANS AND COMPROMISES.

I. Theory of the Constitutional Convention (Lalor, *Cyclopaedia*, I, 626-27; Jameson, *Constitutional Convention*, 1-13, 99 ff.).

1. The revolutionary convention.

- a. English examples: the convention-parliaments of 1399, 1688.
- b. French examples: the convention of 1793-95, etc.
- c. American examples: Massachusetts convention, 1689; the state conventions and provincial congresses, 1775-77; the state secession conventions, 1861.

2. The constitutional convention.

- a. An American institution, suggested by the revolutionary convention.
- b. Limitation of its sphere or power:
  - 1) French theory.
  - 2) American theory.
- c. Its function: to enact organic as opposed to statutory law; to formulate a "written constitution."
- d. Call, election, and procedure of a convention (Jameson, 99 ff.).

## II. Organization, Composition, and General Character of the Convention of 1787.

1. The gathering, May 14-25.
2. Organization, May 25: Washington, president; William Jackson, secretary; Nicholas Weaver, messenger; rules adopted May 28; proceedings to be secret (Elliot, *Debates*, I, 139-143; Schouler, I, 36).
3. Difficulties (Fiske, 222-232; Von Holst, I, 49 ff.; Lalor, I, 547; Gay, *Madison*, 89-97; Frothingham, 585-586; Hildreth, III, 584-7; McMaster, I, 418-23; Schouler, I, 36-8; Hart, 121 ff.).
  - a. Popular jealousy of a convention; timidity of the members; Washington's appeal (Fiske, 231-2); lack of experience and difference of interests.
  - b. The limitation of the convention's power as shown by the call of congress and the credentials of members (Elliot, *Debates*, I, 119, 123-139); did the convention transcend its proper authority in preparing a new constitution? (Bryce, I, 18, note).
  - c. Character and ability of the members; education, number of college men; leaders: Washington, Franklin, Hamilton, etc.; Madison, the "Father of the Constitution"; difference in individual views (Fiske, 224-232; Hildreth, III, 484); representative men not members (Fiske, 225).
  - d. Parties and antagonisms.
    - 1) Federalists and anti-federalists (for the "Irreconcilables" and anti-federal leaders, see Fiske, 229).
    - 2) Friends of centralization *vs.* the advocates of state sovereignty.
    - 3) Large states *vs.* small states.
    - 4) Commercial or trade states *vs.* agricultural states.
    - 5) North *vs.* South.
    - 6) East *vs.* West.

## III. The Principal Plans of Government Submitted.

1. The Virginia (Madison's) plan, May 29; centralization; action on individuals (Elliot, I, 143-5, 181-3).

a. Principal features.

- 1) Two houses: lower chosen by popular vote; upper by the lower from nominees of state legislatures.
- 2) In each house individual vote and majority decision.
- 3) Representation according to property or population.
- 4) Executive to be chosen by the national legislature.
- 5) National legislature to nullify unconstitutional state laws.
- 6) National judiciary.

b. Debate on the Virginia plan (Elliot, I, 150 ff.; Fiske, 242-5).

2. The New Jersey (Patterson's) plan; June 15 (Elliot, I, 175-177).

a. Leading features:

- 1) In general, the plan provided for mere amendment of the Articles.
- 2) An executive, in form of council, to be chosen by congress.
- 3) Powers of congress increased but no action on individual; vote by states.

b. Debate on scheme; rejected June 19 (Elliot, *Debates* I, 177 ff.; Fiske, 245-50).

3. Other plans.

a. Plan of Charles Pinckney, May 29 (Elliot, I, 145-50); not genuine.

b. Plan of Alexander Hamilton, June 18; centralization (Elliot, I, 179-80; Schouler, I, 41).

IV. The Three Great Compromises.

1. The first or Connecticut compromise, July 7; state representation (Fiske, 250 ff.; Elliot, V, 248-87, 311-19).

a. Lower house, composed of representatives chosen by popular vote and distributed according to population (one for 30,000).

b. Upper house, composed of two senators from each state, voting as individuals.



2. The second or three-fifths compromise; representation for slaves, July 12 (Elliot, V, 294-310).
  - a. The struggle leading to the compromise.
  - b. Was the compromise just or expedient? Was it open? (Goodell, *Slavery and Anti-slavery*, 222-4; Fiske, 261-2).
3. The third or New England-South Carolina compromise (August, 25): slave trade and federal control of commerce (Elliot, I, 256, 374, 375, V, 545-62, 477-8, 488-92).
  - a. Why the South opposed commercial powers (Fiske, 262).
  - b. Slave trade granted till 1808.
  - c. Opposition of Mason and Virginians.
  - d. Was the compromise necessary?

## REFERENCES.

1. *General References*: Fiske, 222-68; Schouler, I, 36-37; Bancroft, *Const.*, II; *idem*, *U. S.*, VI, 207-70; Frothingham, 589 ff.; McMaster, I, 417-27, 437-53; Bryce, I, 18-25; Jameson, *Const. Convention*, ch. i, iii, iv; Hildreth, III, 482 ff.; Von Holst, I, 49 ff.; Lalor, I, 637-40, 548-49, II, 973-75; Johnston *Politics*, 10-17; Curtis, I, 315 ff.; Hart, 121 ff.; Von Holst, *Const. Law*, 15 ff.; Cooley, *Const. Law*, 15; Goldwin Smith, 121 ff.; Foster, *On the Const.*, I, 19 ff., 80 ff.

2. *The Compromises*: Fiske, 242-68; Bancroft, *Const.*, II, 47-48, 128-32, 141-4, 151-60; *idem*, *U. S.*, VI, 239-69, 299-301, 315-23; Curtis, I, 368, 314 ff.; Von Holst, I, 289-91, 293-9; Hildreth, III, 494-520; Gay, *Madison*, 98-114; Wilson, *Slave Power*, I, 39-53; Elliot, *Debates*, I, V, as cited; Lalor, I, 547-9, II, 973-5; Foster, I, 41-44; Farrand, in *A. H. R.*, IX, 479.

3. *Sources*: Elliott's *Debates; Documentary Hist. of Const.* (3 vols., Wash., 1894); Madison's *Journal*, in Elliot, V; *ibid.*, edited by E. H. Scott (Chicago, 1893); Hunt's edition of *Writings of James Madison*, II (1901).

4. *Pinckney's Plan*: Jameson, in *A. H. R.*, VIII, 509-511; "Sketch of Pinckney's Plan," in *ibid.*, IX, 735-47; Jameson, in *Report of A. H. A.*, 1902, vol. I; McLaughlin, *Confederation and Constitution*, 194-95.

## SECTION XIV. THE FEDERAL CONVENTION: COMPLETION AND RATIFICATION OF THE CONSTITUTION.

A. *The Details of the Constitution.*

- I. Powers of Congress and of the States (Fiske, 268-77).
  1. Powers granted to congress (*Const.*, art. I, sec. 8; art. III, sec. 3; art. IV); the "general welfare" and

- the "uniformity of taxation" clauses; debates on the power to suppress "domestic violence" in a state, etc.
2. Powers denied to congress (art. I, sec. 9; art. III, sec. 3); the debates on power to issue "bills of credit" (Fiske, 273-6; Elliot, V, 130, 378, 434-5).
  3. Powers denied the states (art. I, sec. 14; Fiske, 272).
- II. Debates on the Executive (Fiske, 277-300; Bancroft, *Const.*, II, 166-94).
1. Form: single or plural? Sherman's suggestion.
  2. Tenure: for life or a term of years? Whether re-eligible?
  3. How to be chosen? By congress? ; By the people directly? By an electoral college? Various modes of choice suggested.
  4. The electoral college (Elliot, V, index at "Electors").
    - a. How should it be constituted? Various plans.
    - b. Its intended character and function and the practical result (*Federalist*, 423-8; Bryce, I, 37-41; Tiedeman, 46-51; Fiske, 280-4).
  5. Count of the electoral votes; case of 1877.
  6. Choice of the president on failure of the electors: by the senate or by the house? The compromise.
  7. The question of a privy council for the president (Elliot, V, 150, 442, 446, 462, 525-6; Curtis, I, 575); the senate's share in appointments the result of a compromise. Origin of the American cabinet; comparison with the British.
  8. Was the English kingship the model of the presidency? Was it wise to separate the legislative and the executive departments? (See Fiske, 278, 289-93.)
- III. The Judicial Department (Bancroft, *Const.*, II, 195-206; Bryce, *Am. Commonwealth*).
1. Is the supreme court an original feature?
  2. Is its constitutional function a natural outgrowth of the jurisdiction of the English and colonial courts? (Bryce, I, chap. 23).
  3. Influence of Marshall, 1800-1835 (*Const. Hist. and Am. Law*, 55-120).
  4. Is the constitutional function wise or necessary? (See Smith, *Spirit of the Am. Government*.)

## IV. Stages in the Convention's Work.

1. May 25-29: Organization, rules, credentials, submission of plans.
2. May 30 to July 23: Debates on plans, compromises, and details.
3. July 24: "Committee of detail" appointed and the results of the proceedings of the convention referred to it.
4. August 6: Committee of detail submits a draft of a constitution of the United States (printed in Elliot, V, 376-81; Curtis, I, 721-8).
5. September 8: Committee of five to "revise the style and arrange the articles."
6. September 12: Committee of five reports the final draft in a letter to congress.
7. September 17: Convention dissolved.

## V. Deficiencies of the Constitution.

1. No bill of rights.
2. Annexation of territory not foreseen.
3. Growth of patronage not provided for; hence no proper provision for the civil service.
4. Growth of party organization not foreseen.
5. No provisions for the protection of national elections and for settlement of double returns (case of 1877).
6. No express provision against secession.
7. Faults of the judicial system created.

B. *Ratification of the Constitution* (Fiske, 306-50).

## I. Character of the Struggle and the General Results.

1. Leaders of the opposition and champions of the constitution.
2. Objections to the constitution; to the fundamental plan; to the general coercive powers of the government; to the deficiencies; miscellaneous objections (*Federalist*, 226-8; Story, I, 206-20; Wilson, in Elliot, II, 497 ff.).
3. Formation of parties: federalists and anti-federalists.

## II. Progress of Ratification.

1. Delaware, December 7, 1787 (Elliot, I, 319; Bancroft, *Const.*, II, 248-50).

2. Pennsylvania, December 13, 1787: Objection to two houses; pamphlet war (Elliot, I, 310-20, II, 415-546; Bancroft, *Const.*, II, 238-48). James Wilson expounds the constitution.
3. New Jersey, December 18, 1787 (Elliot, I, 320-1; Bancroft, *Const.*, II, 252-4).
4. Georgia, January 2, 1788 (Elliot, I, 324; Bancroft, *Const.*, II, 254).
5. Connecticut, January 9, 1788 (Elliot, I, 321-2, II, 185-202; Bancroft, II, 255-8).
6. Massachusetts, February 7, 1788 (Elliot, I, 322-3, II, 1-183; Bancroft, *Const.*, 258-76). Influence of John Adams? Of Hancock? Of Nathan Dane? Of King and the clergy? Amendments recommended.
7. Maryland, April 28, 1788 (Elliot, I, 324, II, 547-56; Bancroft, *Const.*, II, 277-84).
8. South Carolina, May 23, 1788 (Elliot, I, 325, IV, 253-342; Bancroft, *Const.*, II, 285-94); Lowndes's speech (Fiske, 332-4; Elliot, IV, 271-2).
9. New Hampshire, June 21, 1788 (Elliot, I, 325-7); amendments suggested.
10. Virginia, June 26, 1788 (Elliot, I, 327, III, entire; Bancroft, *Const.*, II, 225-237, 295 ff.); Henry's influence (Tyler, *Henry*, 270-301; Fiske, 331-2); influence of R. H. Lee and Mason? Of Randolph? Of Madison? Washington? Marshall?
11. New York, July 26, 1788 (Elliot, I, 327-31, II, 205-414); influence of Hamilton; character of the *Federalist*; influence of Clinton, Yates, Lansing?
12. North Carolina, forced in, November 21, 1789 (Elliot, I, 331-2, 333, IV, 1-252); bill of rights ought to be drafted.
13. Rhode Island, forced in, May 20, 1790 (Elliot, I, 334-337); declaration of rights

III. Movement Toward a Second Constitutional Convention (Smith, in Jameson's *Essays*, 46-115).

IV. Character of the Ratification (Hart, *Outline*, 35).

1. Forms: by what persons; in whose name; in what terms; conditions and recommendations (Elliot, I, 319-335).

2. Theory of ratification by "states" (Hayne, in Elliot, IV, 510).
3. Theory of ratification by the people (Lalor, III, 1003, 789; Frothingham, 599-602).
  - a. "The people in independent communities" (Calhoun, in *Works*, VI, 151-2).
  - b. "The people in each of the states" (Madison, *North American Review*, vol. 31, p. 538).
  - c. "The people of the United States" (Webster, in Elliot, IV, 498-9; Story, *Commentaries*, I, secs. 262-3).
4. Theory of ratification by both people and states.

## REFERENCES.

1. *Details of the Constitution*: Fiske, 268 ff.; Curtis, I, 333-609; Landon, 63-82; Bancroft, *Const.*, II, 89-97, 119-164; *idem*, *Hist.*, VI, 255-76, 292-367; Hildreth, III, 485-526; Elliot, *Debates*, V (the table of contents gives a summary for each day's work); *Doc. Hist. of Const.*
  2. *Ratification of the Constitution*: Elliot, II, III, IV; *Federalist*; Von Holst, I, 52-75; Story, I, secs. 281-92; Lalor, I, 99, 606-7, II, 165; McMaster, I, 454 ff.; Curtis, I, 623-97; Bryce, I, 23-5; Harding, *Federal Const. in Mass.*; Hildreth, III, 533-6; Schouler, I, 5-70; Frothingham, 579-603; *Republic of Republics*, 73-147, 433-56; Lodge, *Hamilton*, 65-80; Bancroft, *Const.*, II, 225-367; Gay, *Madison*, 115-27; Morse, *Jefferson*, 92-5; Hosmer, *Samuel Adams*, 392-491; Tyler, *Henry*, 279-301; Landon, 82-96; Bancroft, *Hist.*, VI, 374-462; Morse, *Hamilton*, I, 238-75; Foster, I; *A. H. R.*, IX, 310 ff. (Patterson's papers); Steiner, in *A. H. R.*, V, 207 (Maryland).
  3. *Electoral College and the Executive*: Elliot, V, 334-50, 358-70; Landon, 70-71; Tiedeman, *Unwritten Const.*, 40-51; Bryce, *Commonwealth*, I, 37-41; Curtis, I, 425, 455, 563-6; Bancroft, *Const.*, II, 166-194; *idem*, *Hist.*, VI, 326 ff.; Fiske, 280 ff.; Madison, *Papers*, III, Index at Executive; Story, II, secs. 1410-1488.
- In General*: See Hunt's *Writings of Madison*, IV; and *Documentary History of Constitution*, comparing with Elliot's *Debates*. The latest and fullest discussion of the work of the Convention and the adoption of the Constitution is McLaughlin, *Confederation and Constitution*, 184-317. He has a good bibliography, 332-36.

## SECTION XV. SOURCES AND CHARACTER OF THE CONSTITUTION OF THE UNITED STATES.

- I. What Is a "Constitution"? Definition (Story, I, secs. 339-40; *Const. of United States*, art. 6; Jameson, 67-8; Tiedeman, 16; Cooley, *Const. Limit.*, 4; *idem*, *Principles of Const. Law*, 21).

II. Varieties of Constitutions: Jameson's Classification  
(*Const. Convention*, 67-87).

1. A constitution, considered as a "fact" or organic growth, may be:
  - a. Absolute monarchy or aristocracy.
  - b. Oligarchy.
  - c. Limited monarchy.
  - d. Republic (democratic republic).
  - e. Democracy.
  - f. Federal or non-federal.
2. A constitution, considered as a source of evidence, may be:
  - a. A cumulative constitution
  - b. An enacted constitution
  - c. Unwritten constitution
  - d. Written constitution

}	As to mode of origin.
}	As to characteristic as evidence.

III. Sources of the Federal Constitution (Foster, I, 27-60; Stevens, *Sources of the Constitution*).

1. From the English constitution: the principal elements are a part of our English heritage.
2. From American experience: evolution of the written instrument (see Morey, in *Annals of Am. Acad.*, I, 529-57).
  - a. Commercial charters.
  - b. Charters of government: charters of Rhode Island, 1644, 1663; of Connecticut, 1662; of Massachusetts, 1691.
  - c. Popular constitutions: charters of New Haven, 1638-9; of Connecticut, 1639.
  - d. The state constitutions, 1775-87.
  - e. Experiments in federal government: New England Confederacy, 1643-84; Confederation; Franklin's plans, 1754, 1775; other plans, already discussed.
3. Question of Dutch influence (see Campbell, *The Puritan*, I, 1-89, II, 405 ff., 465-8).
4. Principal features often alleged to be new (*cf.* Robinson, in *Annals of Am. Acad.*, I, 203 ff.).
  - a. Constitutional function of the supreme court (see Bryce's review, *Commonwealth*, I, ch. xxiii;

*Atlantic*, November, 1892, 700; Wilson, H. H., *Unwritten Elements*, 420-3).

- b. The dual statehood or dual sovereignty: relation of the state to the federal government; only the civil war could settle the real sovereignty (Tiedeman, 110-28).
  - c. Popular sovereignty: the subjection of all governmental agencies to the will of the people. This is now threatened (1) by corruption of the ballot; (2) by suppression of free and fair representation; (3) by abuse of courts.
  - d. The system of "checks and balances": this is now breaking down through the encroachments of departments on each other's sphere (Wilson, W., *Congressional Govt.*, 10-14).
5. Practical result: a new and most significant experiment in self-government.

IV. Theory of the Nature of the Constitution (Story, I, 221-72; Elliot, II, 496 ff. (various opinions); Hart, *Formation of the Union*, 133-6; Bryce, I, ch. 28; Wilson, 475-9). . . . .

1. Is the constitution a "social compact" or a "voluntary association"? (Southern view: see Tucker, in Story, I, secs. 310-18; *idem*, I, secs. 306-9, 310-72; *Republic of Republics*, 59-61, 561-571; Elliot, IV, 509 ff., 523, 540-545, 547-8; denied by Wilson, in Elliot, II, 407-9; Cooley, *Principles of Const. Law*, 25-6; Jameson, 69-74; Webster, *Works*, III, 448-505.)

a. Whether the compact was in form:

- 1) A "treaty" or "convention."
- 2) A "league."
- 3) A "contract."

b. Between whom was it a compact?

- 1) Were the states, as distinguished from the people of the states, the only parties? (Hayne, in Elliot, IV, 510; Virginia resolutions, 1778; Kentucky resolutions, 1778-9, in Elliot, IV, 528 ff., 540 ff.; compare *contra*, Story, I, secs. 361-3; Webster, in Elliot, IV, 408-9; Webster, *Works*, III, 346, 440 ff.)

- 2) Were the people of each state, or of the whole United States, a party? (Story, I, secs. 358-60, 365, notes.)
  - 3) Was the federal government a party? (Story, I, secs. 367-8, notes.)
2. Does the constitution rest upon the consent of the people? (Webster, in reply to Hayne, in Elliot, IV, 498 ff.; Webster, *Works*, III, 448 ff.; Wilson, in Elliot, II, 497-9; denied by Hart, *Formation of the Union*, 134.)
  3. Is the constitution an "instrument of government"? (Story, I, secs. 339-40, 372; Draper, *Civil War*, I, 285-6; Von Holst, *Const. Law*, 43-4, 49-66; Cooley, in *Const. History and Amer. Law*, 29-34; *idem*, *Const. Limit.*, 5.)
  4. Are the states sovereign? (For the various arguments, see Calhoun, *Works*, VI, 151-2, 59 ff., 94 ff.; Lalor, III, 788-800; *Republic of Republics*, 325-334; Von Holst, *Const. Law*, 39-47; Webster, in Elliot, IV, 499; Hayne, in Elliot, IV, 509 ff.; Ordranax, *Const. Legislation*, 48-91, 111 ff.; especially Tiedeman, 110-28.)

## V. Growth of the Federal Constitution.

1. Through amendment; difficulty of amendment; more than 1700 amendments have been offered, 1789-1905, only 15 adopted (see Ames, in *Am. Hist. Papers*, V, 19-20).
2. The constitution is not a complete scheme of government; the powers of the state are not expressed.
3. Principles of expansion:
  - a. Is there an "unwritten constitution" in the sense of a common law or custom, superior to the written instrument; and does its sanction rest upon public opinion? (The view of Tiedeman, *Unwritten Constitution*, 1-45, 145-55, *passim*. Cf. Story, I, sec. 400.)
  - b. Is the United States government one of "enumerated" powers (see 10th amendment)? Or may the federal government exercise powers pro-



hibited to the state, but not delegated to the United States? (Tiedeman, 137-44.)

- c. Significant clauses of the constitution favoring expansion: "general welfare" clause; clause relating to laws "necessary and proper" to enforce the powers of congress; commerce clause, etc.
- d. Influence of judicial interpretation: Marshall's decisions (*Const. Hist. and Amer. Law*, 91 ff.; Wilson, H. H., 421-2). Doctrine of "implied powers."
- e. Influence of executive action: Louisiana purchase, Monroe doctrine, etc.
- f. Influence of legislative action.
  - 1) Growth of the speaker's powers (Hart, in *Atlantic, March*, 1891; Follett, *Speakership*).
  - 2) Growth of committee government (Bryce, I, chap. 15; Wilson, *Congressional Government*, 64 ff.).
  - 3) Senatorial patronage, etc.
- g. Elasticity of the unwritten or "customary" constitution of England, as compared with the elasticity of the so-called "rigid" or "paper" constitution of the United States. ✓

## VI. Examples of Unsettled Constitutional Questions (suggested as a guide to study).

1. National status of slavery; meaning of the "fugitive slave," the "three-fifths," and the slave-trade clauses; of the word "persons" (Dred Scott case, 1856-7).
2. Question of "dual" citizenship, state and federal (Calhoun, *Works*, II, 242; Tiedeman, 91-109).
3. Status of the territories (Missouri Compromise, 1820; compromises of 1850: Story II, secs. 1917, 1920-1); recent "insular" decisions.
4. Meaning of "republican form of government" (period of "reconstruction").
5. Extent of power to regulate commerce, "encouragement of manufactures," embargoes, etc.
6. Extent of the powers of the state.
7. Extent of war powers (paper money, suspension of habeas corpus, emancipation, control of corporations).

8. Question of removal from and tenure of office.
9. Question of constructive powers; of police power.

## REFERENCES.

1. *Sources of the Constitution*: Hart, *Formation of the Union*, 5-10, 124-5; Stevens, *Sources of the Const.*; Foster, I, 27-60; Bryce, I, 25-8; Wilson, *State*, 473-5; Cooley, *Const. Limitations*, 32 ff., 7 ff.
2. *Growth of the Constitution*: Tiedeman, *Unwritten Constitution*; Wilson (H. H.), *Unwritten Elements of National Const.*; Wilson (W.), *Congressional Government*; McConachie, *Congressional Committees*; Willoughby, *American Constitutional System*; Borgeaud, *Adoption and Amendment of Constitutions*; *idem*, "Origin of Written Constitutions," in *Pol. Sc. Quart.*, VII, 613-32; Higgins, "The Rigid Constitution," in *ibid.*, XX, 203-22.

## SECTION XVI. JOHN MARSHALL AND THE INTERPRETATION OF THE CONSTITUTION.

## I. Characteristics of John Marshall (1755-1835).

1. Parentage and early education.
2. Services in the Revolution; as a soldier; as a judge-advocate of the army.
3. Legal education (1779-81).
4. At the Bar, 1781-1801.
  - a. State of Virginia law after the Revolution; Marshall's peculiar fitness for his task (Magruder, 28 ff.).
  - b. Personal appearance; style of speaking (Howe, *Historical Collections*, 266; Wirt, in Magruder, 35-37; Gilmer, in Magruder, 66; Adams, *U. S.*, I, 193).
  - c. Prestige as a lawyer; the case of *Ware v. Hilton*, 1796 (3 *Dallas*, 199; *Const. Hist. and Amer. Law*, 67).

## II. Public Services, 1782-1801.

1. In the legislature, 1782, 1784, 1787; in the executive council, 1783.
2. In the Virginia constitutional convention, 1788 (Magruder, 57-87: three speeches, on taxation, militia, and judiciary (Elliot, III, 222, 419, 551-5)).
3. A member of the French mission, 1797-8.
4. In congress, 1799-1801.
5. Refuses appointment as minister to France, attorney

general, judge of supreme court, and secretary of war (1796-1801).

6. Became secretary of state.

7. Appointed chief justice, January 31, 1801.

### III. Marshall and Jefferson.

1. Marshall's "Life of Washington"; and Jefferson's *Anas*.

2. Marshall and the inauguration of Jefferson (Adams, *U. S.*, I, 193).

### IV. John Marshall and the Settlement of the Constitution.

1. Significance of his opportunity: what the constitution "might have been" through a different interpretation.

a. Complexity of his task.

b. Popular sentiment regarding the constitution (Von Holst, I, 62-3, 83; Bryce, I, 223; Bancroft, *Constitution*, II, 363 (Washington); Marshall, *Washington*, V. 33).

2. He reveals the powers of the supreme court.

a. Previous to 1801 less than 100 decisions by the court.

b. Of these decisions, only six involved constitutional questions.

1) *Chisholm v. Georgia*, 1792-4 (2 Dallas, 419, 480; *Const. History*, 70-1).

2) *Hollingsworth v. Virginia* (3 Dallas, 378 ff.).

3) *Fowler v. Lindsey*, 1799 (3 Dallas, 411). *Cf.* Marshall's decision in *Osborn v. U. S. Bank* (9 Wheaton, 846-859).

4) *Hylton v. U. S.*, 1796 (3 Dallas, 171). *Cf.* *Pacific Ins. Co. v. Soule* (7 Wallace, 433-4).

5) *Calder v. Bull*, 1798, relating to *ex post facto laws* (3 Dallas, 386).

6) *Cooper v. Telfair*, 1800 (4 Dallas, 14).

In the last two cases, the court does not decide that it can declare unconstitutional laws void (see *Const. History*, 72-3, and the authorities there cited). Hayburn's case, 1792 (2 Dallas, 410), illustrates the early timidity of the court (*Const. Hist.*, 73-6).

- c. Immense number of Marshall's opinions, 1801-1835.
  - 1) In all, 1215 reported cases.
  - 2) In 1106 of these opinions are filed, Marshall rendering 519.
  - 3) Of these 1106 opinions, 62 involved constitutional points, Marshall rendering 36.

#### V. Some Leading Decisions.

1. *Marbury v. Madison*, 1803 (1 Cranch, 137).
2. "Olmstead case": *United States v. Peters*, 1809 (5 Cranch, 137; Hildreth, III, chap. xxii).
3. *Cohens v. Virginia*, 1821 (6 Wheaton, 264). *Cf.* *Martin v. Hunter's Lessee*, 1816 (1 Wheaton, 304, 323, 362).
4. *McCulloch v. Maryland*, 1819 (4 Wheaton, 416, 421).
5. *Osborn v. Bank of United States*, 1824; *Weston v. Charleston*, 1829 (9 Wheaton, 738; 2 Peters, 440).
6. *American Insurance Co. v. Canter*, 1828 (1 Peters, 511, 542).
7. *Fletcher v. Peck*, 1810 (6 Cranch, 87 135-40; *cf.* Haskins, in *American Historical Association, Papers*, V, 395 ff.).
8. *Dartmouth College v. Woodward*, 1819 (4 Wheaton, 518; *cf.* Van Santvoord, *Lives of Chief Justices*, 394-98).
9. *Ogden v. Saunders*, 1827 (12 Wheaton, 213).
10. The Burr trial (4 Cranch, note B, 473; Adams, *United States*, III, 441-71; Robertson, *Burr Trial* (Philadelphia, 1808); Kennedy, *Life of Wirt*, I, 161-206; Van Santvoord, 364-79).

#### REFERENCES.

Hitchcock, "Constitutional Development of the United States as Influenced by Chief Justice Marshall," in *Constitutional History*, etc., 53-120; Story, *Miscellaneous Writings*, 183-200; Thayer (J. B.), *John Marshall* (Boston, 1901); Dillon (J. F.), *John Marshall* (Chicago, 1903); *Centennial Anniversary* (Philadelphia, 1901), containing, 21-66, J. T. Mitchell's oration; Craighill, in his *Virginia Peerage*, I, 229-84; Flanders, *Lives and Times of the Chief Justices*, 279-550; Lodge, in his *Fighting Frigate*, etc. (New York, 1902); Phelps, in his *Orations and Essays* (New York, 1901); Libby, *John Marshall* (Brunswick, 1901); Draper, *John Marshall and the March of the Constitution* (n. p., 1901); Marshall (John), *Writings on the Federal Constitution* (Boston, 1830; Washington, 1890); Magruder, *John Marshall* (Boston, 1885); Cooley, "Supreme Court," in *Constitutional History*, 27-52; Hart, *Formation of the Union*, 133-5; Carson, *Supreme Court*; Bassett, *The Federalist System*, Index; Channing, *The Jeffersonian System*, Index.

## CHAPTER III.

### ORIGIN AND CHARACTER OF THE FEDERAL CONSTITUTION OF SWITZERLAND.

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#### SECTION XVII. PRELIMINARIES OF SWISS FEDERAL HISTORY.

##### I. Character of the Available Literature.

###### 1. Bibliographies.

Hart (A. B.), *Introduction to the Study of Federal Government* (1891), 45-7, 62-7, 185-87. An excellent bibliographical-historical manual.

McCrackan (405-16) and Vincent (228-39) give lists of authorities.

Special Card Catalogue of the Department of Political Science and Sociology.

###### 2. Source books.

Bluntschli (J. C.), *Urkundenbuch*: being vol. II of his *Bundesrecht* (1875).

Gisi (W.), *Quellenbuch zur Schweizergeschichte* (Band I, 1869).

Oechsli (W.), *Quellenbuch zur Schweizergeschichte* (2d ed., 1901). Relates to institutions.

Oechsli (W.), *Quellenbuch zur Schweizergeschichte*. Neue Folge (1893). Relates to Culture-History.

Text of the Constitution. See later syllabus.

###### 3. Maps.

Freeman (E. A.), *Historical Geography*, I, 268-76, maps XXV-XXXI.

Droysen, *Atlas*, Plate 25.

*Century Atlas*; maps in the standard atlases and encyclopædias.

Maps in the works of Rilliet, Winchester, and Adams and Cunningham.

###### 4. General histories.

Dawson (W. N.), *Social Switzerland* (1897).

Dändliker (K.), *Geschichte der Schweiz* (3 vols., 1892-1902). The best work.

Dierauer (J.), *Geschichte der schweizerischen Eidgenossenschaft* (Bd. I, 1887). An excellent book.

Hug (L.) and Stead (R.), *Switzerland*, in *Story of the Nations* Series (1889). Best short work in English.

Zschokke (H. and E.), *History of Switzerland*. Trans. by Shaw (1855).

5. General works suitable for obtaining a comprehensive view of the whole course.

Adams (F. O.) and Cunningham (C. D.), *The Swiss Confederation* (1889).

Blumer (J. J.), *Staats- und Rechtsgeschichte der schweizerischen Demokratien* (2 vols., 1850-58).

Blumer (J. J.), *Handbuch des schweizerischen Bundesstaatsrecht* (1881).

Bluntschli (J. C.), *Staats- und Rechtsgeschichte der Stadt und Landschaft Zürich* (2d ed., 1856).

Bluntschli (J. C.), *Geschichte des schweizerischen Bundesrechtes* (2d ed., 2 vols., 1875).

Bourlinot (J. G.), *Federal Government in Switzerland Compared with that of Canada* (1890).

Daguet (A.), *Histoire de la Confédération Suisse* (7th ed., 2 vols., 1879-80).

Droz (N.), *Instruction Civique* (1885).

Dubs (J.), *Droit Publique de la Confédération Suisse* (2 vols.).

Lowell (A. L.), *Governments and Parties in Continental Europe* (2 vols., 1896).

McCrackan (W. D.), *The Rise of the Swiss Republic* (2d ed., 1901).

Moses (B.), *The Federal Government of Switzerland* (1889).

Richman (I. B.), *Appenzell* (1895).

Rilliet (A.), *Les Origines de la Confédération Suisse* (2d ed., 1869).

Rüttimann, *Nordamerikanisches Bundesrecht verglichen mit den politischen Einrichtungen der Schweiz* (2 vols., 1867-72).

Vincent (J. M.), *State and Federal Government in Switzerland* (1891).

Vincent (J. M.), *Government in Switzerland*, in *Citizens' Library*.

Winchester (B.), *The Swiss Republic* (1891).

6. Short accounts.

Bluntschli, *Theory of the State*, 440-49; Freeman, *Federal Government*, Index; Bryce, *American Commonwealth*, II, Index at "Swiss Constitution and Government"; Coolidge, in *Britannica*, XXII, 819-835; Freeman, in *Fortnightly Review*, II, 533-48; or in *Essays*, I, 314-72; McCrackan, "Six Centuries of Self-Government," in *Atlantic*, LXVIII (1891), 257-63; Moses, "Antecedents of Swiss Federation," in *Overland Monthly*, XI (1887), 474-88; Woolsey, *Political Science*, II, 208-23; Wilson, *The State*, 301-33; Vincent, "Study in Swiss History," in *American Hist.*

Association, *Papers* (1887), III, 146-164; *idem*, "Switzerland, 1291-1891," in *Nation* (1891), LIII, 119-20; *idem*, "Municipal Problems in Switzerland," in *American Hist. Association, Report* (1902), I, 211-21; *idem*, "Switzerland at the Beginning of the Nineteenth Century," in *J. H. U. S.* (1904), XXII, No. 5.

NOTE.—The literature available in the Library, as noted in the "Special Card Catalogue," will be given as each particular subdivision of the subject is reached.

## II. Characteristics of Swiss Federal History (Freeman, *Federal Government*, 271 ff.; Dändliker, I, 13-30).

1. An example of slow and complex evolution.
2. In its seven phases of development, it represents every variety of combination from the mere "pact" to the "Bundesstaat" on the American model.
3. Consequently it discloses the weakness as well as the strength of the federal type.
  - a. Subject territories of many varieties, often selfishly ruled.
  - b. Oligarchy and aristocracy *versus* democracy.
  - c. Secessions as the result of the sentiment of state autonomy and factionalism.
  - d. Highly developed local self-government with strong central authority (since 1848, 1874).
4. Furnishes examples of city-states uniting with tribal states.
5. Furnishes examples of heroic struggle for free institutions (14th and 15th centuries); and of dignified courage under French encroachments (18th and 19th centuries).

## III. The Antecedents of Swiss Federal History, to 1291 (McCrackan, 13-62; Winchester, 9-11; Moses, 1-14; Vincent, 1-7; *idem*, minor papers above cited; Rilliet, 3-94; Dändliker, I, 31-388; Oechsli, 9-65).

1. Ethnology and earliest notices; lake dwellers.
2. The Helvetians and the Roman occupation.
3. Influence of Rome; Christianity introduced.
4. The sway of Alamanni, Burgundians, Franks; communal institutions.
5. Outline of events to 1291.
  - a. Relations to Austria.
  - b. Geography of Switzerland; ancient Burgundy.

SECTION XVIII. FIRST PHASE OF FEDERAL HISTORY: THE  
LEAGUE OF THREE CANTONS, 1291-1332.

I. The "Pact" of Uri, Schwiz, and Unterwalden.

1. August 1, 1291: The "eternal pact" of the three "Waldstätte" (the text, in Oechsli, 65-66, German; Winchester, 473-477, the original Latin and in English; McCrackan, 87-89, English; Rilliet, 413-15, Latin; Vincent, 191-93; Bluntschli, II, 1-2, Latin).
2. October 16, 1291: The "treaty" between Zurich, Uri, and Schwiz (text, in Oechsli, 67-8; Rilliet, 415-17).

II. Rise of the Privilege of Reichsunmittelbarkeit or Immediate Dependence on the Empire.

1. Uri: Charter of liberty of King Henry (son of Fred. II, d. 1242; K. of Romans), May 26, 1231 (Oechsli, 63; McCrackan, 76); confirmed by Rudolf of Hapsburg, 1273; rescript of Emperor Adolf, November 30, 1297 (Rilliet, 419); confirmation by Henry VII (*idem*, 420).
2. Schwiz: Charter of liberty of Emperor Frederic II, December, 1240 (Oechsli, 63-4; McCrackan, 79-80). Not enforced; therefore a league with Unterwalden formed against Count Rudolf of Hapsburg-Laufenburg, 1245); this followed by the Bull of Innocent IV, August 28, 1247 (Oechsli, 64); Schwiz favored by Rudolf III of Hapsburg-Austria, 1273, who became emperor, 1273-91; rescript of Adolf, 1297; the charter of Frederick II confirmed by Henry VII, June 3, 1309 (Oechsli, 93; Rilliet, 419-420).
3. Unterwalden: liberated by Henry VII, June 3, 1309 (Oechsli, 93; Rilliet, 421).

III. The Battle of Morgarten, November 15, 1315.

1. Causes of the uprising of the cantons (McCrackan, 116-22; Vincent, 7-9; Bluntschli, *Bundesrecht*, I, 66 ff.).
2. Description (Oechsli, 94-7; McCrackan, 123-26; Bluntschli, I, 70).
3. Results..

IV. Renewal of the Pact of the Three Cantons, December 9,



1315 (Oechsli, 97-99; Rilliet, 425-28; Bluntschli, I, 71-2, II, 2-4).

1. Analysis of the 19 sections.
2. What new provisions important for federal constitutions?

V. Peace between Cantons and Austria, 1318; annually renewed, to 1323.

1. Provisions (Bluntschli, I, 72-74).
2. Feudal and manorial privileges of Duke Frederick of Hapsburg annulled and his subjects freed by Lewis of Bavaria, 1324.

VI. Origin of the Swiss Confederation and that of the United States Compared (McCrackan, 111-115).

#### REFERENCES.

Rilliet, 53-165; McCrackan, 1-91, 111-128; Bluntschli, *Bundesrecht*, I, 62-76, *passim*, II, 1-4; Moses, 10-17; Adams and Cunningham, 1-5; Winchester, as cited; Dändliker, I, 368-426, *passim*; Oechsli, as cited.

### SECTION XIX. THE SECOND PHASE OF FEDERAL HISTORY: THE LEAGUE OF EIGHT CANTONS (STATES), 1332-1353.

I. Lucerne Enters the League, 1332.

1. Location of the city and district in ancient Aargau; a fief of the abbey of Murbach in Elsass (Alsace).
  - a. The abbot had feudal territorial rights and jurisdiction in the Meyerhof (mayor's court).
  - b. But the counts of Hapsburg, who were counts of Elsass, were (ca. 1239) granted the rights of Church-Vogt (general steward) for Lucerne; these rights were delegated to the nobles of Rotenburg who as Vögte (local bailiffs) held police courts; and the Church-Vogt may have been represented in the city by a Schultheiss (local magistrate).
2. How the constitution of the city grew out of these conditions: rise of the "Ammann" and the "Rath" or council; the charter of 1252.
3. All rights of the city sold to Austria (House of Hapsburg), 1291.
4. The union of the four forest cantons, 1332 (Oechsli,

- 117-19; compare Vincent, 9-10; Bluntschli, I, 77-87, II, 5-7; McCrackan, 129-135).
5. The alleged conspiracy (Mordnacht) of 1343 (McCrackan, 133-4).
- II. Zurich Enters the League, 1351 (McCrackan, 136-46; Bluntschli, I, 87-96).
1. The four constituent settlements of medieval Zurich (9th century onward).
    - a. A community of free Alamanni at foot of Zürichberg. Subject to the Count of Zürichgau.
    - b. An imperial Pfalz (castle) on the Lindenhof; surrounded by dependents called *fiscalini*. Subject to an imperial bailiff (Reichsvogt).
    - c. A Münster, with canons and cloister-school, on right bank of the Limmat, surrounded by dependents called *ministeriales*. Subject to a steward (Vogt).
    - d. The Abbey of Nuns (Fraumünster), founded 853, on left bank of the Limmat, with its dependents. Subject to a steward (Vogt).
  2. The city gains Reichsunmittelbarkeit and a more liberal constitution.
    - a. The four settlements united under an imperial bailiff (Reichsvogt), first hereditary and then (after Frederick II, 1218) elective by the citizens from the burgher aristocracy.
    - b. Rights of the abbess.
      - 1) Appointed a Schultheiss, a sort of police judge.
      - 2) Council or Rath of advisers chosen from the aristocracy.
      - 3) Large revenues. Commercial importance of the city.
    - c. Zurich becomes a free city through the council mentioned, superseding the powers of the abbess and the Schultheiss and diminishing those of the imperial bailiff. The code or "Brief of Rights," 1304.
  3. The "Brun revolution" of 1336.
    - a. The existing classes: nobles, free burghers, artisans and laborers.

- b. The council of 36; common people not eligible and without vote.
- c. The uprising under Rudolf Brun, June 7, 1336 (Oechsli, 119).
- d. The first democratic constitution or "sworn brief" of July 16, 1336 (Oechsli, 121-27; McCrackan, 141-2; Bluntschli, I, 89).
  - 1) The Rath or council, chosen by the (1) Konstafel; (2) the 13 craft guilds.
  - 2) The Bürgermeister: chosen for life (first was Brun). Great powers.
  - 3) Sometimes a more popular assembly called.
- e. The conspiracy and the Mordnacht of February 23, 1350 (Oechsli, 134-5).
- 4. The Zurich league, May 1, 1351 (Bluntschli, II, 7-12; Oechsli, 135-140).
  - a. General provisions.
  - b. The two dangerous clauses.

III. League of Glarus, June 4, 1352 (Oechsli, 143-45; McCrackan, 147-150; Bluntschli, I, 97-105, II, 12-16).

- 1. Early history and institutions; physical geography. Relations to the Abbess of Seckingen; to House of Hapsburg (after Emperor Rudolf).
- 2. Provisions of the league.
  - a. General provisions.
  - b. Provisions putting Glarus in an inferior position.

IV. The League of Zug, June 27, 1352 (Oechsli, 145-46; McCrackan, 151-3; Bluntschli, I, 106-109, II, 16-21).

- 1. Provisions; Glarus not a party to the league.
- 2. Attack of the Hapsburgers and their allies; and the so-called "peace of Brandenburg," 1352; the power of Vogt of the Duke of Austria (Hapsburg) restored.

V. The League of Bern, March 6, 1353 (Oechsli, 146-150; McCrackan, 154-61; Bluntschli, I, 110-121, II, 21-26).

- 1. Location; old Burgundian land; a military stronghold; a free imperial city.
- 2. Early history: city founded 1191, given the same situation as that of Freiburg in Breisgau: a Schultheiss and a Rath of 12, freely chosen each year by the citizens.

3. The "Goldene Handveste" of 1274: provisions (McCrackan, 155).
4. The new constitution, 1294-5: the "sixteen" and the "two hundred," latter chosen by former; artisans now eligible to the sixteen; guilds prohibited.
5. Summary of events to 1353.
  - a. General aim to create a republic of communities in the Aar valley.
  - b. Various special leagues and wars.
  - c. The battle of Laupen, June 21, 1339 (Oechsli, 127-133; McCrackan, 158-160).
6. The Bern league; modeled on that of Zurich (Oechsli, 146 ff).

## REFERENCES.

Besides the references above, see Vincent, 9-12; Adams and Cunningham, 5; Dändliker, I, 474-683; Bluntschli, *Staats- und Rechtsgeschichte der Stadt und Landschaft Zürich*.

## SECTION XX. HISTORICAL DEVELOPMENT OF THE LEAGUE OF EIGHT CANTONS, 1353-1480.

## I. Military and Other Significant Events.

1. 1364: Zug reconquered from Austria by Schwiz; priest's charter, 1370.
2. Invasion of the Gugler and the feud with Kiburg, 1375, 1382 (McCrackan, 162-6).
3. The battle of Sempach, July 9, 1386 (Oechsli, 155-63; McCrackan, 167-176).
  - a. Causes: union with the Swabian league; hostilities begun by Lucerne and other federal states
  - b. Description; the Winkelried legend.
  - c. Results: the "evil peace," 1386-8.
4. The battle of Näfels, April 9, 1388 (Oechsli, 164-68; McCrackan, 177-183; Dändliker, I).
  - a. Causes: hostile action of Bern against Freiburg; of the other confederates; rebellion of Glarus against Austria and its adoption of a constitution.
  - b. Description (see Oechsli).
  - c. Consequence: seven years' peace; the "third sworn brief" of Zurich; the "Covenant of Sempach"; consolidation of the Swiss nation at the end of

two centuries of war with Hapsburg (McCrackan, 181-3, 190).

5. The liberation of Appenzell and St. Gallen, 1377-1412 (McCrackan, 193-201; Oechsli, 171-75).
  - a. In 13th and 14th centuries, St. Gallen a free city of the empire, with elective magistrates, an imperial steward (Vogt), and guilds on the Zurich plan.
  - b. 1377, the Appenzell league (5 villages) formed and united with the Swabian league; gained a Rath, a Landesgemeinde, and an Ammann.
  - c. 1401, St. Gallen and Appenzell make a 7 years' alliance, and open hostilities with Abbot Kuns von Stoffeln.
  - d. 1403, Appenzell admitted to the *Landrecht* (limited citizenship) of Schwiz, receiving an Ammann from that state. Was the separate alliance unconstitutional? (Oechsli, 171.)
  - e. The battle of Vögelinsegg (Speicher) May 15, 1403 (Oechsli, 172-74).
  - f. The battle of Stoss, June 17, 1405 (Oechsli, 174-75; McCrackan, 196-200).
  - g. "League above the lake" formed under leadership of Appenzell.
  - h. Defeat of Appenzell at battle of Bregenz, January 13, 1408 (Oechsli, 176-7; McCrackan, 201).
  - i. Appenzell enters a subordinate alliance with the Swiss Federation (except Bern), November 24, 1411 (Oechsli, 177-179).
  - j. St. Gallen admitted to a similar subordinate position, 1412.
6. Liberation of Valais, 1375-1419 (Oechsli, 182): Valais enters into perpetual citizenship with Uri, Lucerne, and Unterwalden, 1403, 1416; war with Bern, 1419.
7. Liberation of Graubünden (the Grisons), 1367-1436; relations with the Swiss Confederation? The three leagues?
8. Conquest and subjection of Ticino (Val Leventina) by Uri and Obwalden (part of Unterwalden), 1403, 1440 (from the Duke of Milan); the first conquered territory of the Confederation.

9. Conquest of Aargau, 1415 (Oechsli, 179).
  - a. Sanctioned by the Council of Constance (1414-18) and by the Emperor Sigismund: The Church Schism? Pope John XXIII and Duke Frederick of Austria?
  - b. How the land of Aargau was divided among the victors? The problem of joint control of subject territory?
10. The first civil war, 1442-4: Zurich in league (1442) with Austria against the other Confederates (Oechsli, 187-209).
  - a. Causes.
  - b. Various military events, 1443-4.
  - c. Battle of St. Jacob on the Birs, August 26, 1444 (McCrackan, 213-18; Oechsli, 202-211).
  - d. The award of 1451.
11. The war with Charles the Bold, 1474-77 (Oechsli, 230-53; McCrackan, 219-31; Kirk, *Charles the Bold*, III).
  - a. Causes (Freeman, *Essays*, I).
  - b. Events: Grandson, 1476; Morat (Murton), 1476; Nancy, 1477.
  - c. 1460: Thurgau conquered and conjointly administered.

## II. Development of the Constitution of the Confederation, 1353-1480.

1. Progress of alliances (McCrackan, 184-90, 219).
  - a. Glarus gains equal state's rights, 1450.
  - b. St. Gallen (abbey and town) admitted to closer relations, 1451, 1454 (Oechsli, 211-14).
  - c. Appenzell admitted to like relations, 1452.
2. Great constitutional documents.
  - a. The priest's charter or Pfaffenbrief, October 7, 1370 (Bluntschli, I, 122-6; McCrackan, 104-65, 186-7; Vincent, 16; Oechsli, 152-55).
    - 1) Seizure of Peter Gundoldingen, Schultheiss of Lucerne, by Bruno Brun, provost of the Grossmünster.
    - 2) The "second sworn brief" or democratic amendment to the constitution of Zurich;

followed by an addition to the federal constitution.

- 3) The priest's charter: provisions (agreed to by the confederates, except Bern and Glarus).
  - a) Principle of the majority vote in constitutional amendments introduced.
  - b) The term "Eidgenossenschaft" (confederation) first appears in a constitutional document.
- b. The convention of Sempach, July 10, 1393 (Oechsli, 168-171; Bluntschli, I, 126-9; McCrackan, 181, 188; Adams and Cunningham, 5-7; Vincent, 13).
  - 1) Origin (see above).
  - 2) Provisions: rights of belligerents and of citizens in time of war.
- c. The covenant of Stanz, 1481 (see next syllabus).

#### REFERENCES.

In general, consult Dändliker, I, 546-635, II, 11-249, and many documents in Oechsli, *Quellenbuch*, neue Folge (1893).

### SECTION XXI. THE THIRD PHASE OF FEDERAL HISTORY: THE LEAGUE OF THIRTEEN CANTONS, 1481-1798.

- I. Effects of the Burgundian War and of Sectional Jealousies.
  1. Threatened disruption of the league.
  2. The Diet of Stanz; and the "covenant of Stanz," December 22, 1481 (McCrackan, 232-35; Oechsli, 260-67).
    - a. General provisions.
    - b. Dangerous clause forbidding public meetings.
  3. Freiburg and Solothurn admitted to the league, 1481.
- II. War with the Empire (the "Swabian war"), 1499: Switzerland Gains Practical Independence of the Empire and this Independence Formally Ratified in 1648.
- III. 1501: Basel and Schaffhausen Admitted as the Eleventh and Twelfth States in the League.
- IV. Switzerland Gains the Balance of Power in Europe.
  1. The Swiss as mercenaries.

2. The Italian war (war of the Holy league): Novara, 1513; Marignano (Melegnano), 1515.
  3. Appenzell admitted to the league, 1513.
- V. The Constitution of the League of Thirteen as it Existed before the Long Period of Strife and Decay (McCrackan, 243-247; Adams and Cunningham, 10 ff.; Moses, 23-29; Bluntschli, I, 391-447).
1. The elements of a nation with a compact territory.
    - a. Practical independence.
    - b. Perpetual peace with the Dukes of Austria.
  2. The territorial division (Bluntschli, I, 185 ff.).
    - a. The 13 states or privileged members.
    - b. The allies or *Zugewandte Orte*: each bound to one or more of the thirteen.
      - 1) St. Gallen, the abbey; and St. Gallen, the town (aristocratic republic).
      - 2) Bishoprick of Basel (under a Prince-Bishop).
      - 3) Principality of Neuchâtel (subordinate to Prussia, under a count).
      - 4) Bienne (Biel): allied with Bern, 1352.
      - 5) Mühlhausen in Elsass: aristocratic republic.
      - 6) Rotweil in Swabia.
      - 7) The democratic republic of Valais.
      - 8) The democratic republic of Graubünden.
      - 9) The republic of Gersau on Lake Lucerne, eventually incorporated with Schwiz.

NOTE.—Geneva and Vaud not yet in direct relation with the league.
  - c. The subject or protected lands, the *Untertanenlände*: administered by the states in various combinations.
    - 1) Aargau: administered conjointly by 8 states.
    - 2) Thurgau: administered conjointly by 10 states.
    - 3) Rheinthal.
    - 4) Sargans.
    - 5) Gaster.
    - 6) Utnach.
    - 7) Morat.
    - 8) Grandson.
    - 9) Orbe.



- 10) Echallens.
  - 11) Bellinzona.
  - 12) Lugano.
  - 13) Locarno.
  - 14) Mendrisio.
  - 15) Val Maggia.
  - 16) Abbey of Engelberg (Unterwalden).
  - 17) Wilchingen (Schaffhausen).
  - 18) Entlebuch (under Lucerne).
  - 19) Toggenburg (under Prince-Abbot of St. Gallen).
  - 20) Val Tellina (Ger. Veltlin).
3. Slow development of the Diets or Tagsatzungen and their functions (Moses 23 ff.; Adams and Cunningham, 121).
    - a. Composed of instructed delegates (germ of federal referendum).
    - b. Unanimous vote for laws required.
    - c. No power to execute laws.
  4. Common bailiwicks (e. g. Aargau and Thurgau); and the provisions regarding civil and foreign war concluded with Basel, Schaffhausen, and Appenzell.
  5. Other elements of national administration.
  6. Comparison with growth of the 13 American colonies (McCrackan, 246-7).

#### VI. The Reformation and the Religious Wars and Their Results (ca. 1500-1750).

1. The influence of Zwingli (McCrackan, 251-63).
  - a. As a political reformer; his democratic principles.
  - b. As a religious reformer.
  - c. His influence on Zurich (1519-23).
2. The reformation in St. Gallen under Watt (Vadianus), Basel, Bern (under Haller); in Thurgau, Glarus, and Graubünden.
3. War between the five Catholic cantons (Uri, Schwiz, Unterwalden, Lucerne, Zug), against the Protestants led by Zurich and Bern. Battle of Kappel, 1531: death of Zwingli, who was superseded by Bullinger.
4. Calvin at Geneva (1536-1564).
  - a. Alliance of Geneva with Freiburg and Bern, 1519, 1526.

- b. Farel at Geneva, 1532-35; independence of Geneva from Savoy, 1533-1535, through the aid of Bern.
- c. Calvin; his "*Institutes*" (Basel, 1536); his code and constitution adopted, 1541.
- 5. Vaud conquered from Savoy by Bern, 1536.
- 6. Appenzell divided, 1597: Inner-Rhodes, Catholic; Outer-Rhodes, Protestant.
- 7. General results.
  - a. National decay; Swiss independence by treaty of Westphalia, 1648.
  - b. Development of aristocratic tendencies.
- 8. The eighteenth century renaissance.
  - a. The revival of learning (McCrackan, 289-94); influence of Voltaire and Rousseau.
  - b. The Helvetic revolution, 1798.
    - 1) Causes: policy of Napoleon.
    - 2) Results: overthrow of the league of thirteen.

SECTION XXII. THE SWISS FEDERATION FROM THE HELVETIC REVOLUTION TO 1848: THE FOURTH, FIFTH, AND SIXTH PHASES.

- I. The Helvetic Republic, 1798-1803 (McCrackan, 301-312; Adams and Cunningham, 13-14; Moses, 28-36; Bluntschli, I, 448-59; Oechsli, 545-640).
  - 1. Character of the revolution.
    - a. Napoleon's policy.
    - b. Seizure of the Val Tellina (1797); and occupation of Vaud, which declared independence.
    - c. Leaders of the Swiss in alliance with the French: Peter Ochs of Basel and F. C. La Harpe of Vaud.
    - d. Defeat of the Bernese at Grauholz, 1798.
    - e. Treachery of the French: looting of the cantonal treasuries; enormous taxes imposed (Oechsli, 581).
  - 2. The constitution, April 12, 1798: first draft by Ochs; modeled on that of France (text in Oechsli, 583-595; see Moses, 28-36; Bluntschli, II, 305-22; Blumer, *Handbuch*, I, 19-29.)
    - a. General principles: popular sovereignty; representative democracy; free press; religious liberty; no hereditary powers; feudalism abolished.

- b. Legislature: senate consisting of 4 delegates from each canton with the ex-directors; grand council chosen according to population; at first 8 from each canton.
  - c. Executive: directory of five chosen by legislature; aided by four ministers appointed by the directors.
  - d. Supreme court composed of one judge from each canton; cantonal courts; district courts.
  - e. Cantonal government: appointive prefect, etc.; districts; communes.
  - f. Liberal provisions; subject lands abolished.
  - g. The cantons rearranged.
3. Ordinances: Swiss colors; uniforms, etc.
  4. Resistance of the forest cantons under Alois Reding; resistance of Nidwalden, in battle of Stanz; work of Pestalozzi.
  5. Legislation; the alliance of August 19, 1799.
  6. War and anarchy, 1800-1803.
    - a. The parties of centralizers and federalists: constitution practically ceased to be in force from beginning of 1800.
    - b. Struggle between France and Austria in alliance with Russia on Swiss ground; valor of Suvaroff; generalship of Lecourbe? of Massena?
- II. The Act of Mediation, February 19, 1803 (text in Oechsli, 642-3; see also McCrackan, 319 ff.; Moses, 36-46; Blunt-schli, I, 460-78, II, 22-35).
1. How and by whom was the constitution adopted.
  2. Nineteen cantons embraced in the confederation; the constitutions of these were revised by the act.
  3. Provisions of the constitution.
    - a. Liberal principles.
    - b. The 6 *Vororte*, each providing the Landammann or head of the confederacy in rotation.
    - c. Provisions as to governmental departments.
  4. Switzerland virtually under French protectorate until defeat of Napoleon at Leipzig, 1813; then the Swiss Diet set aside the Act of Mediation; but the six new cantons were retained (Oechsli, 649-65).

5. Period of party strife and negotiations, 1813-15; conditions of "perpetual neutrality" proposed by the congress of Vienna, 1815, and accepted by the Swiss (Oechsli, 653; Bluntschli, II, 371-76).

III. The "Federal Pact" or Bundesvertrag, August 7, 1815 (Oechsli, 656-58; Bluntschli, I, 460-78, II, 358-68; McCrackan, 320-37; Moses, 46-55; Vincent, 24-29; Adams and Cunningham, 15-16).

1. How adopted; applied to 22 cantons.
2. Principle of state's rights accented; a mere *Staatenbund*.
3. Other general principles: territories and constitutions of the several cantons guaranteed; federal army; arbitration of interstate disputes; alliances between cantons not positively prohibited; no central executive; but between sessions of the Diet the *Bürgermeister* of Bern, Zurich, and Lucerne, in turn, administered the government for two years each.
4. General constitutional provisions.
5. History of the pact, 1815-1848.
  - a. Democratic reforms in the state constitutions, 1830.
  - b. December 27, 1830, policy of non-interference as to cantonal constitutions adopted by the Diet.
  - c. Hence, in 1832, the *Siebnnerconcordat* or first Sonderbund of seven cantons formed by the liberal party favoring stronger government in the separate cantons.
  - d. The Sonderbund or League of Sarnen (*Sarnenbund*) formed by conservatives of five cantons (1832-3); the members of this league withdrew from the federal Diet; but the league was dissolved by force, 1833.
  - e. Attempt to revise the constitution, 1833; events leading to the war of the Sonderbund, 1839-45.
  - f. 1843-7: dissolution of the union: a Sonderbund of the Catholic cantons formed 1843-5; and the act of secession, December, 1845; but the rebel league was overthrown in the civil war which followed (1847). Analogies between the Swiss and the American civil wars.

- g. A commission formed a new constitution, February, 1848. This constitution was amended in 1865 and in 1874, bringing it to its present form.

## REFERENCES.

On the period, 1815-48, see Bluntschli, I, 479-512. Important sources are: *Amplische Sammlung der Akten aus der Zeit der Helvetischen Republik* (ed. by J. Strickler, 2 vols.); *Tageblatt der Gesetze und Dekrete der Gesetzgebenden Rathe der Helvetischen Republik* (6 vols., 1800); *Der Schweizerische Republikaner* (ed. by Escher and Usterl, 3 vols., 1798-9). See also Marsouche (L.), *La Confederation Helvetique* (1890); Tillier (A. von), *Geschichte der Helvetischen Republik* (3 vols., 1843); *idem*, *Geschichte der Eidgenossenschaft wahrend der Herrschaft der Vermittlungsakte* (2 vols., 1845-6; *idem*, *Restaurations-epoche* (3 vols., 1848-50); *idem*, *Zeit des sogenannten Fortschritts, 1830-1848* (3 vols., 1854-55); Hilty (C.), *La Neutralite de la Suisse* (trans. by Mentha, 1889); Van Muyden (B.), *La Suisse sous le Pacte de 1815* (1890); Zschokke (H.), *Denkwurdigkeiten der Helvetischen Staatsumwaltung* (3 vols., 1803-5); Dufour (G. H.), *Der Sonderbundskrieg* (1882); De Peyster (J. W.), *Secession in Switzerland and in the United States Compared* (1863); Esseiva (P.), *Fribourg et le Sonderbund* (1881.)

## SECTION XXIII. GENERAL CHARACTER OF THE SWISS CONSTITUTION.

I. In Some Important Parts Modeled on the Constitution of the United States; Influence of Bluntschli and Ruttimann.

II. Plan and Scope of the Constitutional Instrument.

1. The preamble.

a. God in the constitution.

b. General purpose.

2. Chapter I. "General Provisions": comprises 70 "articles," or over one-half of the document.

a. Sovereignty of cantons and confederation; purpose of confederation.

b. Powers granted or denied to the confederation.

c. Powers reserved or denied to the cantons.

d. Provisions constituting in effect a "bill of rights."

3. Chapter II. "Federal Authorities": comprises articles 71 to 117 inclusive.

a. Federal assembly (Bundesversammlung); its powers (art. 84-94).

1) The national council (Nationalrath): a representative body similar to the U. S. house of representatives (art. 72-79).

- 2) The council of states (Ständerath): a senate consisting of 44 members, two appointed by each canton (art. 80-83).
  - b. Federal council (Bundesrath): being the federal executive, consisting of seven members chosen every three years by the two houses of the federal assembly in joint session (art. 95-104); from these are chosen:
    - 1) President of the confederation.
    - 2) Vice-president of the federal council.
  - c. Federal chancery (Bundeskanzlei): at the head is the "chancellor of the confederation," chosen for three years by the federal assembly; is under direction of the federal council; and is in effect the general secretary of state (art. 105).
  - d. Federal court (Bundesgericht): to be organized under a federal statute (art. 106-114).
  - e. Miscellaneous provisions (art. 115-117).
  4. Chapter III. Amendments of the federal constitution (art. 118-123).
    - a. Complete amendments.
    - b. Partial amendments.
  5. Temporary provisions.
- III. Preliminary Comparison of the Swiss and the U. S. Constitutions.

## REFERENCES.

1. *Text of the Constitution*: McCrackan, 373-403; Vincent, *State and Federal Government in Switzerland*, 194-222; *idem*, *Government in Switzerland*, 40 ff., 175 ff.; Lowell, *Governments and Parties*, II, 405-431; Winchester, 44-52; *Old South Leaflets*, General Series, No. 18; Hart, *Federal Government*, 87-174 (the text analyzed in comparison with three other federal constitutions); *Publications of University of Pa., Political Economy and Public Law Series*, No. 8 (1890); Darste, *Constitutions Modernes*, I, 441-68. See also bibliographies of the texts in Hart, 64-65, notes, 185-187.
2. *Discussion*: McCrackan, 346-353; Winchester, 42-4, 52-64; Moses, 56 ff., 30 ff., 38 ff.; Adams and Cunningham, 25 ff.; Borgeaud, *Adoption and Amendment of Constitutions*, 273 ff., 291 ff., 300 ff.; Lowell, *Governments and Parties*, II, 180-82, 184 ff.; Demombynes, *Constitutions Européennes*, II, 304 ff.; Woolsey, *Political Science*, II, 208-23; Freeman, in *Fortnightly Review*, II, 533-48 (Oct., 1865); *idem*, *Hist. Essays* (on Presidency); Vincent, in *Am. Hist. Association, Papers*, III, 160-63.

SECTION XXIV. THE FEDERAL ASSEMBLY (BUNDESVERSAMM-  
LUNG) OR CONGRESS (art. 71-94, *passim*).

A. *The National Council (Nationalrath) or House of Representatives* (art. 72-9).

I. Composition: 147 members at present; one for each 20,000 of population or fraction thereof upwards of 10,000.

1. Each canton or half-canton has at least one representative.
2. Eligible: every Swiss of 20 who has the right to vote, except the clergy, the restriction being aimed at the Catholics.
3. Not eligible: members of council of state and federal council and officials appointed by the latter.

II. Elections.

1. Members chosen every three years by direct vote; absolute majority required for first two trials.
2. Electoral districts; not to be composed of parts of different cantons. There are (laws of 1890) 52 districts with 1 to 6 members each. Question of a Gerrymander?
3. Who may vote: any Swiss of 20 who may vote in his canton.
4. Exercise of the franchise may be regulated by federal law.

III. Organization.

1. Chooses a president and a vice-president for each session.
2. The same person ineligible to these offices for two consecutive regular sessions.
3. These officers have casting vote; and they may vote as other members in elections.
4. Compensation: four dollars a day and 5 cents mileage.

IV. Two Short Sessions Each Year (June and December).

1. The debates: no stenographic reports.
2. Languages used.
3. Joint sessions: for what purposes?

REFERENCES.

See Adams and Cunningham, 38-43; Lowell, II, 211-214; Vincent, *State and Fed. Govt.*, 38-9; *idem*, *Govt. in Switz.*, 175 ff.; Moses, chap. iv; Winchester, 65-69; Demombynes, II, 320.

*B. The Council of States (Ständerath) or Senate (art. 80-83).*

I. Composition: 44 members, 2 from each canton, each half-canton sending one.

II. Functions.

1. No special powers; those of the two houses are coordinate.
2. Why the council's influence has relatively decreased? Compare with U. S. senate.

III. Control of the Cantons.

1. Salary.
2. Tenure: in practice varies from 1 to 4 years.
3. Election: in practice, by the cantonal legislature or by popular vote; latter method growing in favor.

REFERENCES.

See Lowell, II, 208-11; Adams and Cunningham, 43 ff.; Vincent, *State and Fed. Govt.*, 39-40; *idem*, *Govt. in Switz.*, 175 ff., Winchester, 69; Moses, chap. iv; Demombynes, II, 318.

*C. Powers of the Federal Assembly (art. 84-94, passim).*

I. In General Nearly Commensurate with those of the Confederation.

II. Legislative Powers (Lowell, II, 184-91; Moses, chap. iv).

1. Ordinary.
2. Extraordinary; what powers not exercised by U. S. congress (Lowell, II, 187).
3. Restriction on power of taxation.
4. Legislative powers increasing; how and why?

III. Administrative Powers.

1. Measures carried out by the cantons?
2. Union of legislative centralization with administrative decentralization.
3. Direct administration.

IV. Elections: What Bodies Chosen in Joint Session?

V. Supervising Powers (Lowell, II, 186-7).

*D. Procedure in Legislation.*

Vincent, *State and Fed. Govt.*, 41-5; Adams and Cunningham, 45-53; Demombynes, II, 324 ff.



## SECTION XXV. THE FEDERAL COUNCIL (art. 95-104).

## I. Composed of Seven Members Chosen for Three Years by the Federal Assembly: The Executive Department (called Cabinet).

1. Who are eligible? Who not eligible?
2. Vacancies, how and when filled?
3. Quorum: 4 members.
4. Virtually permanent in tenure (Lowell, II, 203); limited range of candidates; what cantons favored.

## II. Officers.

## 1. President of the confederation.

*a.* Chosen for one year; not at once reeligible; has a salary from federal treasury.

*b.* Duties.

- 1) As head of one of the 7 departments.
- 2) Ceremonial functions as chairman.
- 3) Supervisory.

2. Vice-president of the federal council; salary; term; reeligibility? By custom, always chosen president.

## III. Distribution of Administrative Duties (law of 1887); division for convenience, but in theory joint action is required.

1. Foreign affairs.
2. Justice and police.
3. Interior.
4. War.
5. Finance.
6. Industry and agriculture.
7. Post-office and railroads.

## IV. Constitutional Functions.

1. Judicial: in administrative questions (art. 85, sec. 12; 102, sec. 2; 113).

*a.* Relation of its judicial powers to those of the federal tribunal?

*b.* Decisions sometimes arbitrary for political or other reasons (see *Nation*, October 15, 1891; Lowell, II, 196; Winchester, 91).

*c.* Checks upon oppressive action.

2. General executive and administrative functions.

- a. Relations with the cantonal authorities; methods of compelling obedience of cantons (Lowell, II, 197; Winchester, 90-1; Adams and Cunningham, 69-71).
- b. Relations with the federal assembly: in what sense a cabinet?
- ✓1) No veto nor independent sphere of action; can be controlled by assembly.
  - ✓2) The report at each session.
  - 3) Right to speak and make motions in each house; and to initiate measures (bills).
  - 4) As a rule, all bills in final form come from the council; what is the Postulat? (See Adams and Cunningham, 489; Lowell, II, 198-9.)
  - 5) Effect of reversal of its policy by the assembly? Resignation?
    - a) Have no parliamentary responsibility.
    - b) Non-partisan; members from opposite parties; virtually an arbiter between parties.
    - c) Need not agree in policy.
    - d) Does not control policy of the state, that belonging to national assembly.
  - 6) Enumeration of constitutional duties.

V. Real Importance of the Council; Advantages of the Swiss System (Lowell, II, 205-208).

#### REFERENCES.

Consult Lowell, II, 193-208; Winchester, 104-23; Adams and Cunningham, 54-65, Moses, 121-39; Vincent, *State and Fed. Govt.*, 52-57; *idem*, *Fed. Govt.*, 210-19; *Demombynes*, II, 337 ff.

SECTION XXVI. THE FEDERAL CHANCERY (KANZLEI) AND THE FEDERAL TRIBUNAL (BUNDESGERICHT. See art. 105-114).

#### A. *The Chancery* (art. 105).

##### I. Composition.

1. At the head is the chancellor of the confederation chosen for 3 years by federal assembly.
2. Subordinates (provided by law).

## II. Duties.

1. In the assembly.
2. Other duties as general secretary, etc.

*B. The Federal Tribunal.*

## I. Composition.

1. Members and alternates chosen by the assembly, the three languages being represented.
2. There must be a jury for criminal cases (art. 106, 112).
3. The term (6 years), number of judges (14), salary, and number of sections of the court determined by federal law.
4. Who eligible; who not eligible.
5. Held at Lausanne in Vaud.

## II. Jurisdiction.

1. In private law.
  - a.* Civil suits; between confederation and cantons; between cantons; between persons and confederation; between canton and persons, if either petitions; other cases on request.
  - b.* Criminal cases.
    - 1) Crimes and political offenses.
    - 2) Minor offenses.
2. In public law.
  - a.* Between cantons and the confederation; between cantons; complaints of citizens regarding violation of constitutional rights.
  - b.* But administrative cases reserved to federal assembly and federal council.
3. The tribunal made by statute virtually a court of appeal.

## III. Comparison with U. S. Supreme Court (Lowell, II, 218-20).

## REFERENCES.

Lowell, II, 214-220; Winchester; Adams and Cunningham, 66-75; Vincent, *State and Federal Govt.*, 58-61; *idem*, *Federal Government*; Moses, 140-63; Demombynes, II, 343 ff.

SECTION XXVII. AMENDMENTS TO THE CONSTITUTION AND  
MISCELLANEOUS PROVISIONS.

A. *Amendments.*

I. Complete Amendment.

1. Secured through the forms required for passing federal laws.
2. Procedure when the houses do not agree; and when 50,000 citizens demand.
  - a. In either case, the question whether complete amendment shall take place is decided by a majority of the Swiss citizens voting thereon.
  - b. If the vote is in the affirmative, a new assembly is chosen; and this prepares the amendment for submission.

II. Partial Amendment (allowed since 1891).

1. Secured through the forms required for passing a federal law.
2. Secured by initiative through a petition of 50,000 Swiss voters.
  - a. When presented in form of general suggestions.
    - 1) Procedure when the assembly does not agree to the petition.
    - 2) Procedure when the assembly agrees to the petition.
  - b. When presented in form of a finished bill.
    - 1) Procedure when the assembly does not agree to the petition.
    - 2) Procedure when the assembly does agree.

III. The Amended Constitution, Complete or Partial, Has Force When Approved by a Majority of the Swiss Citizens Voting Thereon, and by a Majority of the States.

IV. Comparison of Swiss and U. S. Constitutions with Respect to the Procedure and the Facility of Amendment.

REFERENCES.

Vincent, *State and Federal Government*, 49-50; Adams and Cunningham, 262; Lowell, II, 190.

B. *Miscellaneous Provisions and Questions.*

I. Foreign Affairs (Vincent, *State and Federal Govt.*, 50-1, 67-69; Moses, 164-188).

1. Powers reserved to the confederation (art. 8): war, peace, alliance, treaties.

2. Powers by exception reserved to the cantons (art. 9, 103).

a. Treaties with foreign powers regarding administration of public property, border and police intercourse, if not contrary to the confederation or rights of the cantons.

b. But the official intercourse between cantons and such foreign governments shall be through the federal council; except correspondence with "inferior officials and officers of a foreign state," as to matters above named.

3. Pensions, titles, gifts, salaries, or decorations from foreign governments prohibited; except continuance of pensions to "inferior officials" (art. 12).

4. Political alliances or treaties between cantons forbidden; but "conventions" (concordats) on legislative, administrative, and judicial subjects allowed; how these carried out? (Art. 7. See Adams and Cunningham, 256-259; Vincent, *State and Federal Govt.*, 50-1.)

5. International neutrality guaranteed, 1815.

a. No "military capitulations" (art. 11): *i. e.*, no employment of Swiss as mercenaries by state or federal contract.

b. No foreign titles, etc. (art. 12).

c. Maritime neutral rights under treaty of Paris, 1856.

d. Seat of various international agreements (Winchester, 430 ff.).

6. Functions of the council; how controlled by the federal assembly? Management of the "department" of foreign affairs?

II. The Army (art. 13-22; Adams and Cunningham, 140-161; Vincent, *State and Federal Govt.*, 62-66; Moses, 189 ff.; Winchester, 226 ff.).

1. Confederation may not keep up a standing army (art. 13).
2. Standing force of each canton or half-canton, without federal permission, restricted to 300, besides mounted police (art. 13).
3. Every Swiss bound to perform military service; but certain exemptions (art. 18); cost of equipment? Pensions? Exemption-tax?
4. Control in time of danger, discipline, organization, drill, and equipment of the militia belong to the federal government; military laws enforced by cantonal officers, under federal supervision.
5. Powers and privileges in hands of cantons (art. 19, 20, 21. See Adams and Cunningham, 145-7).
6. The organization of the citizen-army.
  - a. Active force or Auszug: men from 20-32 years.
  - b. First reserve or Landwehr: men from 32-44 years.
  - c. Landsturm or second reserve: all others from 17-50.
7. Characteristics of the Swiss military system.

III. Federal Finance (Vincent, *State and Federal Government*, 70-82; *idem*, *Govt. in Switzerland*, 336 ff.; Moses, 194 ff.).

IV. Social Activities of the Confederation (Vincent, *op. cit.*, 82-96; *idem*, *Govt. in Switzerland*, 256; Adams and Cunningham, 33, 69, 25-37, *passim*; Moses, 247-9, 238-40, 226, 197; Dawson, *Social Switzerland*; Dietler, "The Regulation and Nationalization of the Swiss Railways," in *Annals*, XIII, 143-72, 291-322).

1. Import and export duties.
2. Industrial regulations; matches, gold and silver wares, etc.
3. Factory and employment laws; accidents.
4. Patents, copyright, life insurance; compulsory invalid and accident insurance (art. 34, 1890).
5. Federal law of contracts and bankruptcy.
6. Gambling houses forbidden by constitution (art. 35); lotteries, how dealt with?
7. Capital punishment forbidden; state laws thereon?
8. Posts, telegraphs, telephone, railways, bridges, high-

ways, weights and measures, coinage, divorce and marriage.

9. Education: how divided between federal and state governments? (Vincent *op. cit.*, 90-2, 182 ff.; Adams and Cunningham, 189-209; Moses, 242; Winchester, 253 ff.; Dawson, 243 ff.).
  10. Religion: (Vincent *op. cit.*, 92-6, 173 ff.; Adams and Cunningham, 162-188; Moses, 212 ff.).
    - a. Constitutional safeguards of religious freedom; treatment of Jesuits and monasteries.
    - b. Complexity of the Swiss sectarian problem.
- V. The Confederation and the Individual (Moses, 203 ff.; Vincent, *op. cit.*, 97-101).

## SECTION XXVIII. STATE AND LOCAL GOVERNMENT.

### A. *The Government of the Cantons.*

- I. The State Constitutions and the Federal Constitution.
  1. Nature of state sovereignty; the states rights feeling slowly waning.
  2. Federal guaranty of the cantonal constitution: must be granted on what conditions (Lowell, II, 220-1; *Const.*, art. 6).
  3. Freedom of "revision" of state constitutions: how often in practice; effect as to similarity?
- II. In Two Cantons (Uri and Glarus) and Four Half-cantons (2 Appenzells and 2 Unterwaldens), Supreme Power is in the Landsgemeinde or Mass-meeting (Lowell, II, 221-26; Winchester, 148-64; Vincent, *State and Fed. Govt.*; Freeman, *Growth of Eng. Const.*, chap. i).
  1. Description of the meeting; the procession; office of Landammann.
  2. Extent of functions.
    - a. Business usually prepared by the council.
    - b. On proper notice, the right of private initiative of measures preserved.
      - 1) In all cantons, except Glarus, vote must be yes or no without amendment.
      - 2) In all cantons, except Appenzell-Exterior, debate is allowed.

## 4. The councils.

a. The Landrath or Kantonsrath: a kind of subordinate legislature.

1) Chosen in electoral districts.

2) Duties.

b. The Regierungsrath or Standeskommission.

1) Seven members chosen by the *Landesgemeinde*; sometimes this body is *ex officio* a part of the *Landrath*.

2) Executive functions; chairman is the *Landammann* (White, in *Am. Hist. Ass., Papers*, III, 163).

### III. In the Eighteen Cantons, Without the Landesgemeinden, the Governments Are of One General Type, Similar to that of the Confederation.

1. The "great council" (sometimes called Landrath or Kantonsrath): a unicameral legislative assembly chosen by universal suffrage.

a. Chosen usually for three or four years; in Freiburg, 5 years; in Grisons, 2 years.

b. Functions: laws, taxes, administration, appointments.

2. The executive council or Regierungsrath.

a. Chosen usually for three or four years.

1) By the people (without districts) in 10½ cantons.

2) By great council in 8 cantons.

b. Composed of 5, 7, or 9 (Bern) members; minority representation (except in two cantons).

c. Functions distributed among a corresponding number of departments on the federal plan.

3. Relation in powers of the two councils arranged on the federal plan; non-partisan; reports; postulates.

4. Methods of dissolving the great council: why its tyranny dreaded? No veto; little judicial control.

a. By "recall:" procedure by initiative (petition of 1 to 12 thousand) and referendum (7 German cantons).

b. By constitutional revision through initiative and referendum.



- c. Control by "proportional representation": in five cantons (first tried in 1892): advantages of this method?

IV. The Cantonal Courts (Adams and Cunningham, 125-139; Vincent, 139 ff.).

B. *Local Government.*

I. The Districts: Uses? Not a True Governmental Division.

1. Duties; administrative; represent the state.
2. Officers and council.

II. The Communes (Lowell, II, 235-6; Adams and Cunningham, 98-114).

1. Control by the mass-meeting; distinction between *Einwohner* and *Bürger*.

2. The councils.

a. One executive council in the communes of German cantons; chosen by the people (in Bern a president and at least four others).

b. The French communes usually have each two councils.

- 1) A larger body taking the function of the mass-meeting.

- 2) A lesser executive council.

REFERENCES.

Adams and Cunningham, chaps. viii-ix, 98-139; Lowell, II, 220-37; Vincent, *State and Fed. Govt.*, 105-121, 132-144, 157-172; *idem*, *Federal Govt.*; Winchester, 123-163, 174-191. For the government of particular states, see Demombynes, II, 354-436. Compare Woolsey, II, 214 ff.; Tyson, "Proportional Representation in Switzerland," in *Arena*, XXXIV (1905), 344-47.

SECTION XXIX. SWISS PARTY GOVERNMENT.

I. Party Issues, 1848-1874.

1. General characteristics of parties and party questions during the period.

2. Leading questions.

a. Revolutionary refugees, 1848-50.

b. Military capitulations, 1848-56; radicals *versus* conservatives or strict constructionists.

c. Railroad question, 1852-64.

- 1) Parties of state and private ownership; latter wins in establishment of the Thallinie.

- 2) Parties of monopoly *versus* competition: former called "railroad barons" and "cotton lords." The "Helvetia Society," 1858; the Alps railway.
  - d. The Savoy question; its relation to the railway question.
  - e. The question of revision, 1864-74.
    - 1) The treaty with France, 1864-1866: the question of settlement of Jews in Switzerland.
    - 2) Proposed complete revision, 1872; parties divided on race lines.
    - 3) Successful complete revision, 1874: two councillors resign on the issue.
- II. Party Issues, 1874-1905.
1. Regular party organizations developed.
    - a. The right: Ultramontanes or clericals; most compact and best organized: has two sections, liberals and extremists.
    - b. The centre, called liberal conservatives; successors to the railroad barons; opposed to paternalism; comprise conservative Protestants; less than one-fifth of assembly.
    - c. The left or radicals: opposed to Catholics and orthodox Protestants; have majority in both houses.
      - 1) Older radicals: comprising the section of socialistic Germans, who are in favor of broad construction; and the French section, favoring strict construction, and opposed to state interference.
      - 2) Democrats.
      - 3) Socialists.
  2. Comparison of party history during the two periods (before and after 1874).
  3. Relations of parties to the government: the Swiss government is not party-government; neither
    - a. In the executive; nor
    - b. In the legislative.
  4. No party machinery.
    - a. No caucuses, national committees, nor conventions.

b. No national party leaders; local issues control federal issues.

5. Stability of national and local parties (Lowell, II 314-33).

a. Good effects; comparison with American conditions.

b. Causes of stability.

1) Little patronage and no spoils.

2) Mode of choosing executive; effect of change to popular election? Compare with America.

3) Effect of referendum: not used as party-weapon after 1884; how the call for referenda is organized; how it diminishes the importance of party; relation of representatives to constituents; rejection of laws takes place of change of parties.

4) Character and traditions of the people.

III. Comparison of Athenian, Swiss, and American Democracies (Lowell, II, 333-36).

#### REFERENCES.

Lowell, II, 301-36; Adams and Cunningham, 88-97; Winchester, 83.

#### SECTION XXX. THE REFERENDUM AND INITIATIVE.

Lowell, II, 238 ff.; Vincent, Index; Adams and Cunningham, 76 ff., Index; Moses, 117-20; Winchester, Index.

##### I. The Ancient Referendum.

1. Absence of proper representation in the old league; character of the delegates to the diets?

2. Significance of the old commission of the delegates *ad audiendum et referendum*.

3. Institutions in the Grisons (to 1854); and in Valais (to 1839).

4. The old referendum in Bern and Zurich.

##### II. Origin of the Modern Referendum.

1. Influence of Rousseau.

2. The constitutional referendum of American origin; appears first in Switzerland in 1802.

3. The law referendum is of Swiss origin; first, in form of

veto, in St. Gallen in 1831; its rise in other cantons; to what is the institution due?

4. Two kinds of referenda:

- a. Optional.
- b. Obligatory.

III. Introduction of the Referendum.

1. In the cantons: exists in all but Freiburg (Lowell, II, 250-2, table).

- a. Obligatory.
  - 1) General.
  - 2) For financial measures.

b. Optional: sometimes financial measures excepted.

2. In the confederation, 1874-1907.

a. Obligatory on constitutional revisions.

b. Optional on laws.

1) By petition of 30,000; or on demand of 8 cantons; latter form not used.

2) Urgent matters excepted: how defined in practice.

IV. Use of the Referendum.

1. Number and distribution of referenda.

a. In case of federal laws (optional) and amendments (obligatory), 1874-1895 (Lowell, II, 254 ff.).

b. In particular cantons.

- 1) In German cantons.
- 2) In French cantons.

2. Character of the federal and state referenda (Lowell, II, 254-261).

a. Proportion of negative votes.

b. Tendency to reject radical measures; alignment of parties; progressive taxes; Maine's theory; labor and factory laws.

c. Tendency to reject complex or too comprehensive laws, and those involving expenses.

V. Criticism of the Referendum (Lowell II, 271-280; Hart, "Vox Populi in Switzerland," in *Nation*, LIX (1894), 193-4.

1. Smallness of the vote; fines for failure to vote.

a. In the states; examples of Bern, Basel, Zurich, Soleure.

b. In the confederation (less than 60 per cent. vote).

2. Absence of popular discussion; means of educating and spreading information.
3. Lowering the sense of legislative responsibility.
4. Swiss opinion; that of M. Droz.

VI. The Initiative (Lowell, II, 280-92; Brown, "The Popular Initiative," in *Am. Jour. of Sociology*, X, 713-749).

1. Principle as compared with that of the referendum; relation to legislative will.
2. Introduction in cantons.
  - a. First by Vaud (1845) and Aargau (1852) without referendum.
  - b. Then by Rural Basel (1863), Zurich, Thurgau, Soleure (all in 1869), with referendum.
  - c. Now, all but Geneva for constitutional revision; and all but Lucerne, Freiburg, and Valais for laws; special restrictions in St. Gallen, Grisons, and Rural Basel (Lowell, II, 281 n. 5).
3. Introduction only for constitutional revisions by the confederation, 1848, 1874; restricted to complete revision, 1880; but extended to partial, 1891.
4. Procedure in each kind of revision of federal constitution; in the cantons usually presentation of a completed draft forbidden.
5. Working of the initiative.
  - a. In the confederation.
  - b. In the cantons; the case of Zurich.
6. Criticism of the initiative (Lowell, II, 288-292; Brown, in *Am. Journal of Sociology*, X (1905), 713-49).

VII. The Referendum in America (Lowell, II, 292-300; Oberholzer, *Referendum in America*).

1. Kinds of referenda in use.
2. Objections to adoption of the general law-referendum.
3. Advantages of the local referendum.

REFERENCES.

Oberholzer, *Referendum in America* (1900); *idem*, in U. of Pa., *Polit. Econ. and Public Law Series*, V, No. 4; Dicey, "Ought the Referendum to be Introduced into England?" in *Contemp. Review*, LVII, 489-511; Brown and Hart, as above cited; Balfour, in *Spectator*, LXXII (1894), 188-89; Droz, "Referendum in Switzerland," *Cont. Review* (1895), 328-44; Lowell, II, 238-300; *idem*, "Referendum in Switzerland and America," in *Atlantic*, LXXIII (1894), 517-26; *idem*, *Essays on Government*, 76-8; Ell, "Direct Legislation in New Zealand," in *Arena* (1903), XXX, 268-72; Borgeaud, *Adoption and Amendment*

of *Constitutions*, Index, at "Initiative" and "Referendum," relating to many countries; *idem*, in *Arena* (1905), XXXIII, 482-86 (practical results in Switzerland); Moses, 117-20; Adams and Cunningham, 76 ff.; Vincent, *State and Fed. Government*, Index; *idem*, *Government*; Winchester, 164 ff.; Demombynes, II, 331 ff.; McCrackan, *Rise of Swiss Republic*, chaps. ix, xii; *idem*, various articles in Special Card Catalogue; Bluntschli, 475 ff.; Cree, *Direct Legislation* (1902); Deploige, *Referendum* (1898); Curti (T.), *Die Volksabstimmung* (1896); *idem*, *Geschichte der schweizerischen Volksgesetzgebung* (2d ed.); Kloti, *Die Proportionalwahl in der Schweiz* (1901); Keller (A.), *Volksinitiativrecht* (1889); Stussi, *Referendum und Initiative im Kanton Zürich*; *idem*, *Referendum und Initiative in den Schweizerkantonen*; Ganzoni, *Beiträge zur Kenntniss des bündnerischen Referendums*; Herzog (J. A.), *Das Referendum in der Schweiz* (1885); Sullivan (J. W.), *Direct Legislation* (1892); Commons (J. R.), *Proportional Representation* (1896).

In addition, many references are given in the Special Card Catalogue.

## CHAPTER IV.

### ORIGIN AND CHARACTER OF THE FEDERAL CONSTITUTION OF THE DOMINION OF CANADA.

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#### SECTION XXXI. LITERATURE AVAILABLE FOR THE COURSE.

##### I. Bibliographies.

- Hart, *Federal Government*, 188-189.  
Bourinot, in *Royal Society*, XI, 94-100 (Appendix); *idem*, in *Manual of Const. Hist.*; *idem*, in *Story of Canada*.  
Brymner, in *A. H. S., Papers*, III, 395-407.  
Bradshaw, *Self Government*, 361-74.  
Coffin, *Province of Quebec*, 558-62.  
Eakins, in *Library Journal* (1902), XXVII, 248-251.  
Johnston, in *A. H. R.* (1899), I, 613-32.  
Wrong (G. M.) and Langton (H. H.), *Review of Historical Publications Relating to Canada*, II-VIII.  
Special Card Catalogue of the Department of Political Science and Sociology.

##### II. Source-Books, Documents, Reports.

- Houston (W.), *Documents Illustrative of the Canadian Constitution* (1891).  
Pope (J.), *Confederation Documents* (1895).  
Federal Court, *Reports* (State Library).  
Dominion Parliament, *Sessional Papers* (State Library).  
Dominion Parliament, *Statutes*, printed in *Sessional Papers*.  
*Statutes and Journals* of each of the states (State Library).

##### III. Geography.

- Lucas (C. P.), *Historical Geography of the British Colonies* (1891).  
Greswell (W. P.), *Historical Geography of Canada* (1890).  
Dilke (C. W.), *Problems of Greater Britain* (1890).  
*Century Atlas*; and other Standard atlases and wall-maps.  
Maps in the works of Clement and Rawlings below mentioned, and in the encyclopaedias.

##### IV. Historical Manuals.

- Bryce (George), *Short History of the Canadian People* (1897).  
Clement (W. H. P.), *History of the Dominion of Canada* (1898).  
Good school history.  
Roberts (C. G. D.), *History of Canada* (1902).  
Tuttle, *Short History of Canada* (1878).

## V. Works Suitable for Obtaining a Comprehensive View of the Whole Course.

- Bourinot (J. G.), *Manual of the Constitutional History of Canada* (rev. ed., 1901). Clear, trustworthy outline.
- Bourinot (J. G.), *How Canada is Governed* (5th ed., 1902). A convenient manual on civil government.
- Bourinot (J. G.), *Canada: Story of Nations* series (1896).
- Bourinot (J. G.), *Federal Government in Canada*, in *J. H. U. S.*, VII (1889), 457-618.
- Bourinot (J. G.), *Parliamentary Government in Canada*, in A. H. A., *Report*, (1891), 309-407. Contains a bibliography.
- Bourinot (J. G.), *Parliamentary Procedure and Practice* (2d ed., 1892).
- Bourinot (J. G.), *Procedure* (1894). Abridgement of his larger work. Compare Watson (S. J.), *Powers of Canadian Parliament* (1880); and Macy, *Parliamentary Procedure*.
- Bourinot (J. G.), *Canadian Studies in Comparative Politics*, in *Royal Society of Canada* (1893), XI, sec. 2, 77-94; and bound separately.
- Bourinot (J. G.), *Canada and the United States*, in A. H. A., *Papers* (1891), V, 275-333. See also his articles on the subject in *Annals of Am. Acad.* (1890), I, 1-25; and *Forum* (1898), XXV, 329-40.
- Bourinot (J. G.), *Canada and England*, in *Royal Society of Canada* (1890), VIII, secs. 2, 3. See on similar subjects his articles in *Forum* (1901), XXXI, 1-14; *Royal Society* (1888), III, secs. 2, 3; *Contemp. Rev.* (1892), LXII, 590-608; *Canadian Magazine* (1897), IX, 93-101.
- Bourinot (J. G.), *Canada and Australia*, in *Royal Society* (1895), I, sec. 2.
- Bourinot (J. G.). For his other books and articles, see Special Card Catalogue.
- British America* (by various writers, 1900).
- Lefroy (A. H. F.), *Law of Legislative Power in Canada* (1897-8).
- McLean (S. J.), *Tariff History of Canada* (1895).
- Munro (J. E. C.), *Constitution of Canada* (1889). Good legal and constitutional treatise.
- Siegfried (A.), *Le Canada* (1906).
- Teece (R. C.), *A Comparison Between the Federal Constitutions of Canada and Australia* (1902).
- Todd (A.), *Parliamentary Government in the British Colonies* (2d ed., 1894). An able and monumental treatise. For Canada, see especially 432-624.

## VI. Other General and Special Works Important for the Course.

- Bradshaw (F.), *Self-Government in Canada* (1903). On Durham and his *Report*; has historical sketch of preceding period.
- Coffin (Victor), *The Province of Quebec* (1896).



- Cooper (J. A.), "The Canadian Premier and the U. S. President," in *Canadian Magazine* (1893-4), II, 415-21.
- Cotton (J. S.) and Payne (E. J.), *Colonies and Dependencies* (1883), Part II.
- Davidson (J.), "England and her Colonies, 1783-1897," in *Pol. Sc. Quart.* (1899), XIV, 39 ff., 211-39.
- Douglas (J.), *Canadian Independence and British Imperial Federation* (1894).
- Durham (Earl of), *Report* (1901, 1905). Important source.
- Egerton (H. E.), *Short History of British Colonial Policy* (1897). Index at "Canada."
- Garnet (R.), "Authorship of Lord Durham's Canada Report," in *Eng. Hist. Review* (1902), XVII, 268-75.
- Griffin (M. J.), "Did Lord Durham write his own Report?" in *Canadian Magazine* (1896), VII, 520-3. For other articles on the Report, see Egerton and Shaw in Special Card Catalogue; also in same the articles in *Democratic Rev.* (1839), V, 542-79; *Nineteenth Century* (1901), L, 12-20; *Dublin University Magazine* (1839), XIII, 355-68; *Westminster Review* (1838-9), XXXII, 241-60.
- Hodgins (T.), *British and American Diplomacy* (1900).
- Jenkyns (H.), *British Rule and Jurisdiction Beyond the Seas* (1902). Index at "Canada."
- Leacock (S.), *Greater Canada* (1907). Pamphlet.
- Lewis (G. C.), *Government of Dependencies* (1891).
- Macy (J.), *Parliamentary Procedure*.
- Rambaut (T. D.), "The Hudson's Bay Half-Breeds and Louis Riel's Rebellion," in *Pol. Sc. Quart.*, II (1887), 135-96.
- Rawlings (T.), *Confederation of the British North American Colonies* (1865).
- Smith (G.), *Canada and the Canadian Question* (1891).
- Snow (A. H.), *Administration of Dependencies* (1902).
- Stewart, *Canada and the Administration of the Earl of Dufferin* (1878).
- Williams (J. S.), *Sir Wilfrid Laurier and the Liberal Party* (2 vols., 1904).

## VII. Short Accounts.

- Anson, *Law and Custom of the Constitution*, II, 255-57; Hart, *Federal Government*, 75-76; *Statesman's Year Book*; Bryce (G.), in Winsor, *Narrative and Critical History*, VIII, 131-40; Seeley, *Expansion of England*, 151-60; Dicey, *Law of the Constitution*, 152-54; Lalor, *Cyclopaedia*, I, 827; Reade, "Making of Canada," in Royal Society, *Transactions* (1884), II, sec. 2; Dareste, I, 354; Bryce (J.), *Commonwealth*, Index; Mather, in *Atlantic* (1880), XLVI, 56-57; Acland, *Political History of England*, Index at "Canada;" Amos, *Fifty Years of the Constitution*, Index; Bourinot, "Canada during the Victorian Era," in *Royal Society*, III, secs. 2, 3; *idem*, "British Rule in the Dominion of Canada," in *Forum*, XXXI, 1-14; Jebb, *Studies in Colonial Nationalism* (1905), Index at "Canada;" Hincks, "The Crown and the Cabinet in Canada," in *Nineteenth Cen-*

ture (1878), IV, 423-31; Parkin, *Imperial Federation* (1892), chaps. v-vii; Love, "Canadian Form of Government, in *Forum* (1889), VII, 645-58; Payne, *History of European Colonies*, Index; Wilson, *The State*, 428-32; Wilson (D.), "Canada," in *Britannica*, IV, 675-91; Tupper, "Canada's International Status," in *Canadian Magazine* (1898), XI, 409-12; Stanwood, "Canada and the British Connection," in *Atlantic* (1884), LIV, 839-48; Reinsch, *Colonial Government*, Index. See the many articles in the Special Card Catalogue.

## SECTION XXXII. THE STRUGGLE FOR FREE INSTITUTIONS IN CANADA, 1763-1837.

### I. The Establishment of the Original Five Provinces; the first three are the so-called "maritime provinces."

1. Nova Scotia: part of French Acadie; acquired by England, 1731; gained a legislative assembly, 1758; until 1784 it included New Brunswick and Cape Breton, the latter called *Isle Royale* by the French and gained by England, 1763; and until 1769 it included Prince Edward (called "St. John"). Cape Breton was a separate province 1784-1820; thereafter, permanently reunited with Nova Scotia.
2. Prince Edward (St. John until 1799): made a separate province 1769; got an elective assembly 1773.
3. New Brunswick: made separate province 1784; first settled by "United Empire loyalists."
4. Lower Canada: so-called under act of 1791; part of "Quebec," 1763-1791; part of "Canada," 1840-1867; since 1867, again called "Quebec."
5. Upper Canada: so-called, 1791-1840; part of Quebec, 1763-1791; part of "Canada," 1840-1867; since 1867, called "Ontario"; founded mainly by "United Empire loyalists."

### II. Government of Old Quebec Province, 1763-1791: Beginnings of Representative and Legislative Institutions (Bourinot, *How Canada is Governed*, 12; *idem*, *Parliamentary Government*, 312 ff.; *idem*, *Const. Hist.*, 5-19).

1. The proclamation of George III, 1763 (Houston, 67-73; Macdonald, *Select Charters*, 267).
  - a. Quebec, the two Floridas, and Grenada made provinces; limits of Quebec?
  - b. Provisions regarding Indian lands and forbidding

western settlement (see Howard, *Preliminaries of Revolution*, 229 ff.; Alden, *New Governments*).

- c. Administered by a governor (Murray, 1764-68; Carleton, 1768-78; Haldimand, 1778-1786; Carleton, 1786 ff.) and a council appointed by him; there were also a chief-justice and attorney-general.
  - d. Why were the French laws retained, and an assembly not called? (See Coffin, *Province of Quebec*, and his *Quebec Act*.)
2. The Quebec act, 1774.
    - a. How regarded by the 13 colonies; assertions of the Declaration of Independence not sustained by the acts (Howard, 276-79; Coffin, in A. H. A., *Report*, 30 ff.; Clement, 99-102, 117, 121).
    - b. How regarded by the French Canadians.
    - c. Provisions: boundaries; laws, criminal and civil; clergy and religion (Catholics); government by a legislative council appointed by the crown (17 to 23); why no elective assembly granted? (Coffin, *Province of Quebec*; Howard, 277 ff.; Clement, 100-1; Bourinot, *Const. Hist.*, 9-13.)
  3. Abuses of government during the period, 1763-1791.
    - a. Oppression of the French population by the small English minority: rule of needy and greedy office-holders and "450 contemptible sutlers and traders" (Carleton).
    - b. Bad effects of the navigation laws.
    - c. Absentee office-holders appointed by Lord George Germain.
    - d. Corrupt councils organized a *pacte de famine* (Clement, 118).
    - e. Public education neglected.

### III. Character of the Government of the Maritime Provinces (Bourinot, *How Canada is Governed*, 27).

1. Abuses in administration and policy.
  - a. In Cape Breton, English monopoly forbade working of coal deposits.
  - b. Land-grabbing in Prince Edward, 1767 ff. (Clement, 105).
  - c. Manufactures discouraged.

2. No written constitution; their institutions compared with those of the two Canadas; their forms of government (Bourinot, *op. cit.*, 27-31).

#### IV. Development of Representative Institutions in the Two Canadas under the Constitutional Act of 1791.

1. Provinces of Lower and Upper Canada created by division of Quebec.
2. Government (Clement, 128-135; Bourinot, *How Canada is Governed*, 19 ff.; *idem*, *Parliamentary Government*, 314-15; *idem*, *Const. Hist.*, 13-24).
  - a. Executive: the crown represented in Lower Canada by governor and in Upper Canada by a lieutenant-governor, with absolute veto, aided by an executive council who often had seats in the legislative council; comprised heads of departments, and, in Lower Canada, the chief justice, another judge, and the Anglican bishop.
  - b. Parliament: consisting in each province of
    - 1) The crown.
    - 2) The legislative council, appointed by crown for life; comprising judges, members of North-West Company, etc. (Clement, 191); in Upper Canada, the bishop and archdeacon.
    - 3) Elective assembly: not less than 50 members in Lower Canada; nor less than 16 in Upper; restricted franchise and legislative powers.
  - c. Courts.
  - d. Other provisions: tithes; "clergy reserves"; legal system left to the determination of the assemblies.
3. Abuses of government before the Revolution of 1837.
  - a. The "old colonial system" in the Canadas; rule of Downing street; board of trade and the colonial secretary (1794); vicious policy of the colonial office prevents self-government; governor's powers controlled by the colonial secretary.
  - b. Colonies exploited through extortionate fees and large salaries for non-resident office-holders (Clement, 188).
  - c. The "family compact": universal graft for the magnates favored by bad election laws (Clement,

- 190); and by the composition of the legislative council.
- d. Legislative oppression; lack of proper control of revenues.
4. Varieties of graft and illustrative evidences of bad government.
- a. Land-graft in Lower Canada before 1812 (Clement, 146-7).
  - b. Reign of terror under Governor Craig, 1807-11: oppression of the French; assembly tries to exclude judges; arrest of Bedard, Papineau, and other leaders (Bradshaw, 46 ff.).
  - c. Bad educational and oppressive marriage laws in Upper Canada.
  - d. Public works graft and land-grafts after 1812; highway-graft.
  - e. "Family compact" in the courts.
  - f. Abuse of the law of criminal libel; persecution of Robert Gourel, 1817-19; of the editors, 1828-1835; cases of Joseph Howe and Lyon Mackenzie (Clement, 193-200).
  - g. Petty tyranny for political purposes.
  - h. Seditious meetings act, 1818; case of Captain Matthews, 1825.
  - i. Religious liberty denied; the struggle for it (Clement, 200-207; bigoted policy of the Anglican church.

## REFERENCES.

Houston, *Const. Documents*, 67-78 (Proclamation), 90-96 (Quebec Act), 112-145 (Const. Act); Davidson, in *Pol. Sc. Quarterly* (1899), XIV, 39 ff., 211 ff.; Clement, *Hist. of Canada*, 94-237; Roberts, *History of Canada*, 176-181, 198 ff., 208-219, 257-292; Bourinot, *How Canada is Governed*, 15-32; *idem*, *Const. Hist.*, 5-23; *idem*, *Parliamentary Government*, 311-316; Bradshaw, 25-89; Durham, *Report*, Table of Contents; Todd, Index; Bryce (G.), *Short History*, 225-32, 248 ff., 261 ff., 298 ff., especially 357-379; Greswell, *British Colonization*, 74 ff.; Egerton, *Short History*, 243-55, 302 ff.; Tarring, *Law Relating to the Colonies*, 38 ff. See many articles in the Special Card Catalogue.

SECTION XXXIII. THE REBELLION OF 1837, LORD DURHAM'S REPORT, AND RESPONSIBLE GOVERNMENT, 1840-1867.

- I. Fundamental Causes of the Uprising.
  1. Wrong colonial policy.
  2. Bad government (see preceding syllabus).

## II. Proximate Causes of the Uprising.

1. In Upper Canada, the struggle for secularization of the "clergy reserves"; controversy between Strachan and Ryerson; substance of the various bills, 1828-1835; effect of the endowment of the 44 new rectories, 1835; substance of the act settling the controversy, 1840.
2. In Lower Canada, charges against the judges; the struggle to control the entire civil-list (revenue); interference of the British parliament by the "Canada Trade Act" (Clement, 210-11).
3. All supplies refused by the assembly of Lower Canada, 1827; struggle with Governor Dalhousie; counter petitions; executive oppression.
4. Report of the committee of the house of commons, 1828; not acted upon by parliament; but accepted as guiding policy by the colonial office.
  - a. The condition, a permanent civil-list, rejected in Lower Canada.
  - b. The condition adopted in Upper Canada: the "Everlasting Salaries Bill."
  - c. Other reforms recommended by the report carried out by Kempt (1829-30) in Lower Canada; five years's deadlock, 1832-7; Papineau and Neilson leaders of two divisions of the reform party.
  - d. In Upper Canada: expulsion of Lyon McKenzie, 1831-3; but the record of expulsion expunged, 1834; the Seventh Report (1834); the "Family Compact," led by Lieutenant-Governor F. B. Head, victorious, 1836; the "Bread-and-Butter Parliament," 1836-7.
- c. Report of the Imperial Commissioners, 1837.
  - 1) In character reactionary.
  - 2) Russell's resolutions denying responsible government (March, 1837).

## III. The Revolt.

1. Lower Canada: precipitated by the attempt to arrest Papineau and other leaders: fights at St. Denis, St. Charles, and St. Eustache; the rebellion crushed.
2. In Upper Canada: failure of the plan to take Toronto; rebellion put down.

3. Reign of terror and punishment of the insurgents; constitution of Lower Canada suspended, 1838; Lount and Matthews (Upper Canada) executed.

#### IV. Lord Durham and His Report.

1. Character and previous career of Durham.
2. His course in Canada; why he resigned?
3. Substance of his report; called the "Great Charter" of Canada.
4. Question of authorship (see references in sec. XXXI. above; and in the Special Card Catalogue).

#### V. Government of United Canada, 1840 (Act of 3 and 4 Victoria, chap. 35; text in Houston, 149-85).

1. The legislature.
  - a. Legislative council: at first not less than 20 members to be appointed for life by governor in king's name, but made elective, 1856 (Houston, 177-9, 182); speaker appointed in same way; but choice left to determination of legislature, 1859, and made elective, 1860.
  - b. Legislative assembly; 42 members from each of two old provinces, but increased to 65 in 1853; quorum, 20; qualification, 500 pounds.
2. Executive.
  - a. Governor; powers of governor and crown respectively.
  - b. Executive council or cabinet (Houston, 167-8) · 8 members; made responsible, 1847-8.
3. Courts.
4. Revenues.

#### VI. The Establishment of Real Responsible Government, 1849 (see especially Leacock, in *Am. Political Science Review*, I, 355-92).

#### VII. Progress of Responsible Government, 1849-1867.

1. In the maritime provinces (Clement, 255-274, 294-9, *passim*).
2. In Canada (Clement, 274-94; Bourinot, *Const. Hist.*, 30-37).

#### REFERENCES.

In addition to the above citations, see Bourinot, *Federal Government*, 474-484; the works of Bryce, Bradshaw, Roberts, and Durham's

*Report*. For the whole period covered by the preceding outlines, there are interesting illustrations of parliamentary government in Matthews, *Powers of Canadian Parliaments* (1880), 9-46; Smith, *Canada and the Canadian Question*, 121 ff. The best treatment of the struggle for real responsible government is Leacock (S), "Responsible Government in the British Colonial System," in *Am. Political Science Review*, I, 355-92. Consult also the articles of Davidson above cited.

#### SECTION XXXIV. THE ORIGIN OF THE FEDERAL CONSTITUTION OF CANADA.

##### I. Preliminaries of the Federation.

###### 1. Early suggestions and discussions.

- a. The question of federal or legislative union, 1840 (Durham, *Report*, 116-21; Bradshaw, Index at "Union of the Canadas"); the convention in Quebec, 1839.
- b. The demand for a "double majority"; how far in practice carried out? (Bourinot, *Const. Hist.*, 38-9.) The double or coalition premierships: one premier for each race (Smith, *Canada and the Canadian Question*, chap. vii).
- c. Upper Canada demands proportionate representation according to population; this leads nearly to legislative deadlock between the two sections, 1862-1864.

###### 2. Rise of a sentiment for federation.

- a. Resolutions in favor by assembly of Nova Scotia, 1854-1861 (Bourinot, *Builders of Nova Scotia*, App. I and J; *idem*, *Const. Hist.*, 40-1; Roberts, 342).
- b. Expediency of union favored by Cartier-Macdonald government, 1858.
- c. Proposed legislative union of the maritime provinces; convention of these and Canadian ministers at Charlottetown decides to consider, in a meeting at Quebec, the feasibility of a general union.

##### II. The Quebec Conference (constitutional convention), October 10 to October 28, 1864 (see the bibliographical note on the origin of the federation in Bourinot, *Const. Hist.*, 41, n. 2; and Rawlings, 3 ff.).

1. Composed of 33 delegates: 12 from Canada (6 for



each section), 7 from New Brunswick, 5 from Nova Scotia, 7 from Prince Edward, 2 from Newfoundland.

2. Each province had one vote.
3. Proceedings with closed doors.
4. The debates (Pope, *Confederation Documents*; Bourinot, *Canada under British Rule*, chap. viii; Pope, *Life of Macdonald*).

III. Proceedings in the Legislature of Canada, February 3 to March 14, 1865.

1. Debate on the "seventy-two resolutions" submitted by the conference (the text is in Rawlings, 205-211).
2. Address to the queen favoring union adopted by vote of 45 to 15 in legislative council, and of 91 to 33 in assembly.
3. Similar addresses from two other provinces.

IV. The Westminster Palace Conference, December, 1866.

1. Proceedings on the proposed union in New Brunswick and Nova Scotia; refusal of Newfoundland and Prince Edward.
2. Conference at Westminster arranged minor terms relating to the financial interests of the four provinces.

V. Proceedings in the Imperial Parliament.

1. Plan of union submitted February 12, 1867.
2. Character of the debates; plan favored by leaders of all parties.
3. Royal assent March 29, 1867.
4. Royal proclamation, May 22, 1867, declaring the four provinces (including Quebec and Ontario) one dominion from July 1, 1867; and naming the first senators.

VI. The New Provinces and the New Territory (Bourinot, *How Canada is Governed*, 35-41).

1. Acquisition of unorganized territory.
  - a. Constitutional provision for admission of new provinces (sec. 146 of the act).
  - b. Purchase of Rupert's Land and the Northwest Territory from the Hudson's Bay Company, 1869; actual transfer, 1869-70; Louis Riel's Half-Breed rebellion (Pope, *Macdonald*, II, 49-55;

- Bourinot, *Const. Hist.*, 43-5; *idem*, *Canada under British Rule*, 227-8; Roberts 358, 361. See Bryce, Clement, and Rawlings, and Rambaut, in *Pol. Sc. Quart.*, II, 135-196).
- c. These lands made part of the Dominion by an order in council, June 30, 1870, to take effect July 15, 1870; all other British North American territories, except Newfoundland, added to the Dominion, 1880.
2. New provinces admitted.
    - a. Manitoba, 1870.
    - b. British Columbia, 1871.
    - c. Prince Edward, 1873.
    - d. Alberta and Saskatchewan, July, 1905 (*Revised Statutes of Canada*, 1906, IV, 3183 ff. See Cram's *Standard Am. Atlas*, 1906, pp. 482-3).
  3. The territories (since 1905. See *Revised Statutes*, II, 1151-73, 1175-1219).
    - a. The North-West Territory: governed by a commissioner and a council of 4.
    - b. The Yukon Territory: governed by a commissioner and an executive council of 10, 5 being elected.
  4. Newfoundland still declines to enter the union; effect of the French concessions?
  5. Creation of new provinces from unorganized territory (see act of 1871 in Bourinot, *Const. Hist.*, 231-2. For the nine "Districts" before act of July 20, 1905, see *idem*, *How Canada is Governed*, 39; *idem*, *Const. Hist.*, 73 ff.; and map in *Encyclopedia Americana*).

## REFERENCES.

Smith, *Canada and Canadian Question*, 138 ff., 147 ff., *passim*; Roberts, 334 ff.; Bryce, 44 ff.; and the authorities above cited.

SECTION XXXV. GENERAL CHARACTER OF THE FEDERAL CONSTITUTION OF THE DOMINION OF CANADA: THE BRITISH NORTH AMERICAN ACT (30 and 31 Victoria, chap. 3; and supplementary acts).

- I. Influence of the United States; of the Swiss Instrument.
- II. Plan and Scope of the Constitutional Act (Bourinot, *Par. Govt.*, 339 ff.; *idem*, *Fed. Govt.*, 485 ff.).

1. The preamble: general purpose and expediency of the union declared.
  2. Part I. Preliminary (secs. 1-2): name and force of the act.
  3. Part II. Union (secs. 3-8).
  4. Part III. Executive power (secs. 9-16): queen; English privy council; governor-general; queen's privy council for Canada.
  5. Part IV. Legislative power secs. 17-57).
    - a. Parliament: queen, senate, house of commons.
    - b. Elections and election districts.
    - c. Speaker; quorum.
    - d. Money votes; royal assent; governor's assent and disallowance by order in council.
  6. Part V. Provincial constitutions (secs. 58-90).
  7. Part VI. Distribution of legislative powers (secs. 91-95).
    - a. Powers reserved to the Dominion parliament (and crown).
    - b. Exclusive powers of the provincial legislatures.
    - c. Special provisions for education, uniformity of laws, agriculture, and immigration.
  8. Part VII. Judicature (secs. 96-101): supreme court; provincial courts; judicial committee of privy council.
  9. Part VIII. Revenues; debts; assets; taxation (secs. 102-126).
  10. Part IX. Miscellaneous provisions (secs. 127-144).
  11. Part X. Intercolonial railway (sec. 145).
  12. Part XI. Admission of other colonies (secs. 146-147).
- III. Was the Constitution, Without a Plebiscite, Legal?  
(See Smith, 143 ff.).

#### TEXT OF THE CONSTITUTION.

Houston, *Const. Documents*, 186-239; *British Statutes*, XV, 268, 289; Bourinot, *Const. Hist.*, 191-235; *idem*, *How Canada is Governed*, 289-326; Munro, *Constitution of Canada*, 278-312; Todd, *Parliamentary Government*, 857-94; Appleton, *Annual Cyclopaedia*, 1866, pp. 657-66; Dareste, II, 354-84; Roberts, 443-76. For analysis of the text, see Hart, *Federal Government*, 92 ff., 103 ff.

## SECTION XXXVI. THE DOMINION PARLIAMENT.

A. *The Senate.*

## I. Composition (since 1905).

## 1. Number: 87 since 1905.

a. The old provinces by the constitution in three groups of 24 senators each: Ontario, Quebec, maritime provinces, the latter having, respectively: New Brunswick, 10; Nova Scotia, 10; Prince Edward, 4.

## b. New provinces.

1) Manitoba, 4.

2) British Columbia, 3.

3) Alberta, 4.

4) Saskatchewan, 4.

2. Provision for admission of new provinces (act of 1871, 34-5 Vict., chap. 28; Bourinot, *Const. Hist.*, 231; *Const.*, sec. 147).

3. Provision for increase of 3 or 6 in case of deadlock (sec. 26): is it of practical importance? (See Smith.)

4. Mode of appointment; life tenure.

5. Qualifications: age, 30 years; natural-born or naturalized subjects of king; residence; property; special provision for Quebec and its motive.

6. Vacancy by resignation.

7. Vacancy by disqualification; vacancies, how filled; questions regarding determined by senate.

8. Salary: \$1,000 and mileage.

9. Choice of speaker: appointed and removed by governor-general; provisions for quorum and majority vote.

## II. Powers of Senate.

1. To what extent coordinate with those of commons?

2. Action on money-bills?

3. Powers compared with those of U. S. senate?

4. Sources of the senate's weakness.

a. Mode of appointment and life-tenure: what alternate plans considered?

- b. Actual appointment by a single party leader, the premier.
- c. Mediocrity of the ability of senators.
- d. How far used to reward party service? Sources of corruption? Why dangerous to responsible government through union with the "outs"? (See Smith.)

## REFERENCES.

Smith, *Canada and Canadian Question*, 162-170; Munro, *Constitution*, 6, 142-8, 230; Todd, *Parliamentary Government*, 63, 204, 320-1, 699-700; Bourinot, *Const. Hist.*, 57-60; *idem*, *How Canada is Governed*, 92-95; *idem*, *Par. Govt.*, 339-40; *idem*, *Federal Govt.*, 550 ff.; Roberts, 351; Tarring, 78-79, *passim*; Clement, 326-27; *Statesman's Year Book* (1906), 496; *Revised Statutes* (1906), IV, 3183 ff.

B. *The House of Commons* (secs. 37-57).

## I. Composition and Franchise.

1. Number: elected for 5 years, subject to dissolution.
  - a. For the four provinces at time of the act, 181: Ontario, 82; Quebec, 65; Nova Scotia, 19; New Brunswick, 15.
  - b. Present number (1906), 214: Quebec, 65; Ontario, 86; Nova Scotia, 18; New Brunswick, 13; Manitoba, 10; British Columbia, 7; Prince Edward, 4; Alberta, 10; Saskatchewan, 10; Yukon, 1 (see *Revised Statutes of Canada*, 1906, I, 24, act of 4 and 5 Ed. VII, chap. 3. On growth of representation, Bourinot, *Const. Hist.*, 60; *idem*, *How Canada is Governed*, 95; *New Int. Encyclopaedia*, III, 842-43; *Statesman's Year Book*, 1906, p. 496).
2. Principle of apportionment after each decennial census: Quebec (65 members) taken as a standard.
3. Qualifications and disqualifications of members (Munro, 128-130); substance of the "Corrupt Practices Act."
4. Quorum; majority; resignation; expulsion.
5. Salary and mileage (Munro, 118-119; Bourinot, *How Canada is Governed*, 97).
6. Officers of the commons (Munro, 112 ff., 138; Bourinot, *How Canada is Governed*, 97-8).

- a. The speaker: election; vote; salary (\$4,000.00); powers (Munro, 119).
  - b. Deputy-speaker.
  - c. Other officers: sergeant at arms; clerk; clerk-assistant; law-clerk (for drafting public bills).
7. Powers; money-votes; tax and revenue bills.
8. The franchise.
- a. 1867-1885: for federal elections, laws of respective provinces accepted.
  - b. 1885-1898, a general federal law (see summary in Bourinot, *How Canada is Governed*, 99-100; and Munro, 124-6).
  - c. Since 1898, provincial laws determine as at first: thus manhood suffrage, qualified by residence and British citizenship, prevails, except in Quebec and Nova Scotia where a small property qualification exists; who are disqualified? (Munro, 127.)
9. Election (Munro, 130-138; Bourinot, *Const. Hist.*, 85-87).
- a. Writ; speaker's warrant in case of vacancy.
  - b. Nominations.
  - c. Australian ballot.
  - d. Trial of election petitions.

*C. Provisions Relating to Parliament as a Whole.*

- I. Parliamentary Privileges, Powers, and Immunities (secs. 17-20).
- 1. As determined by Dominion statutes.
  - 2. Not to exceed those of British commons.
- II. Royal Assent to Bills.
- 1. When approved by governor, subject to veto of king in council.
  - 2. Reserved bills.
  - 3. Real extent of royal control of legislation.
- III. The Committees.
- IV. Private and Public Bills: Procedure.
- V. General Character of the Legislative System (Smith, 170-180).
- 1. Character and ability of members; effect of liberal franchise; of payment of salaries; tendency to localism; effects of party.

2. Comparison with congress and with the imperial parliament.
3. Relation to the cabinet.
4. Disbritution of legislative powers (secs. 91-92).

## REFERENCES.

Munro, 110-161; Bourinot, *How Canada is Governed*, 95-127; *idem*, *Const. Hist.*, 57-62, 80 ff.; *idem*, *Parliamentary Government*, 339 ff.; *idem*, *Federal Government*, 494 ff., 549 ff.; Todd, Index at "Canada," "Legislation"; Tarring, 66 ff.; Bourinot, *Comp. Politics*.

## SECTION XXXVII. THE EXECUTIVE (secs. 9-16, 54-57).

- I. The King, Acting Through the British Privy Council.
  1. Revision (veto) of bills.
  2. Appointment of governor-general.
  3. Control of military and naval forces.
- II. The Governor-General (secs. 10-14): acting mainly on advice of the privy council for Canada (Munro, 162 ff.).
  1. Creation: letters-patent, instructions, commission.
  2. Powers relating to parliament.
    - a. Appointment of senators.
    - b. Appointment of speaker of senate.
    - c. Summons, prorogation, dissolution.
    - d. Recommends money bills.
    - e. Assents to bills; veto; reserved bills.
  3. Duties relating to party-government.
  4. Appointment and removal of councillors.
  5. Functions regarding the judicature; appointment and removal of judges; pardon.
  6. Prerogative powers: appointment of king's counsel; of lieutenant-governors; disallowance of provincial bills.
  7. Responsibility.
- III. The King's Privy Council for Canada: Appointed and Removed by Governor.
  1. The cabinet members.
    - a. Prime minister: on British model.
    - b. Other members: number.
  2. "Ministers" as distinguished from cabinet members.
- IV. The Great Departments of State (see Munro and Bourinot).

V. The American, British, and Canadian Executives Compared (see Smith, 147-162; Bourinot, *Const. Hist.*, 162 ff.; *idem*, *Comparative Politics* (1890).

1. Political value of governor-general's office?
2. Social value?

#### REFERENCES.

Smith, *Canada and Canadian Question*, 147-162; Tarring, 39 ff.; Munro, 162-215; Dilke, *Problems*, 57 ff.; Todd, 576 ff., 759 ff., and Index at "Canada," "Crown," "Governor-General"; Bourinot, *Parliamentary Govt.*, 339-390; *idem*, *Federal Govt.*, 491 ff., 533 ff.; *idem*, *Comp. Politics*; *idem*, *Const. Hist.*, 47, 53 ff., 154-89 (good on ministry); *idem*, *How Canada is Governed*, 64 ff., 73-91.

### SECTION XXXVIII. THE CANADIAN JUDICIAL SYSTEM (secs. 96-101).

I. Judicial Committee of the (English) Privy Council (Todd, 301-312).

1. The highest court of appeal in colonial civil cases.
2. Composition (Todd, 306).
3. Appeal only by consent of the king in council: that is, of the judicial committee.
4. Practical importance; its conservatism in use of jurisdiction; highest tribunal on constitutional questions (see Todd).

II. Federal or Dominion Courts.

1. The supreme court of Canada: created, 1875.
  - a. Composed of a chief justice and five puisne judges of whom at least two must be appointed from the bar or bench of Quebec province.
  - b. Jurisdiction.
    - 1) Court of appeal from highest provincial courts; but it is not the exclusive tribunal of appeal, for appeals may be taken from some provincial courts directly to the judicial committee of privy council; and from its decisions there is appeal to the same body.
    - 2) Appeal in criminal cases only when provincial judges not unanimous; appeals are allowed in contested elections; but in neither of these two classes of cases are appeals to the judicial committee permitted.



- 3) Questions submitted by the governor in council; and private bills may be submitted for an opinion by either house of parliament.
  - 4) Constitutional questions: Controversies between the Dominion and a province; between provinces; validity of Dominion or provincial laws, etc.; but this jurisdiction must be authorized by provincial statute (see Munro, 218-19); question of constitutionality may in first instance be raised in any court, high or low.
2. The exchequer court.
    - a. Separated from the supreme court, 1887.
    - b. Jurisdiction: revenue cases or other interests of the crown; and in claims (Munro, 217).
  3. Admiralty court: how administered in "districts"?
  4. Appointment and tenure of federal judges (Bourinot, *How Canada is Governed*, 132-170; *idem*, *Const. Hist.*, 149 ff.; Munro, 221).

### III. The Provincial Courts.

1. The creation of the provincial courts.
  - a. The respective provinces have sole control of the constitution, organization, and maintenance of their civil and criminal courts, and power to regulate civil procedure.
  - b. The control of criminal law and procedure belongs solely to the Dominion parliament: there is a criminal code.
  - c. The Dominion parliament may assign duties to the provincial courts.
  - d. The Dominion appoints, removes, and pays all judges of the superior, district, and county courts of the provinces, except the probate courts of Nova Scotia and New Brunswick.
    - 1) Tenure; appointments, how made.
    - 2) Procedure in case of trial of charges against a judge (Bourinot, *Const. Hist.*, 151-3).
  - e. Justices of the peace, police judges, and stipendiary magistrates are appointed by the provincial governments.

2. Qualifications of the various grades of judges (Bourinot, *How Canada is Governed*, 170).
3. Varieties of courts in the provinces (Bourinot, *How Canada is Governed*, 177-191; Munro, 88-109).
  - a. Courts of civil jurisdiction.
  - b. Courts of criminal jurisdiction.

## REFERENCES.

Munro, 88-109, 206-208, 216-222 (Dominion courts); Todd, 301-12, 319-20, 184, 538-75 (Dominion courts); Smith, 183; Bourinot, *How Canada is Governed*, 62-63, 65-66, 128-132, 170-210; *idem*, *Const. Hist.*, 149 ff.; *idem*, *Federal Govt.*, 519-524.

## SECTION XXXIX. THE PROVINCIAL AND LOCAL GOVERNMENTS.

A. *The Provincial Constitutions.*

- I. Distribution of Legislative Powers (secs. 91-92).
  1. The question of state sovereignty; contrast of Canadian and United States history regarding the division of powers.
  2. The 29 groups of powers reserved to the Dominion parliament (sec. 91).
  3. The 16 groups of powers reserved to the provincial legislatures (sec. 92).
  4. The residuum of powers belongs to the Dominion parliament.
  5. Decisions of the supreme court and judicial committee on questions of legislative jurisdiction; rules of construction (see examples in Bourinot, *Const. Hist.*, 84-142).
- II. The Provincial Executive (Bourinot, *Const. Hist.*, 62-65; *idem*, *How Canada is Governed*, 147-8).
  1. The lieutenant-governor.
    - a. Appointment and dismissal; term, practically 5 years.
    - b. Character and functions.
      - 1) At once represents king, Dominion, and province.
      - 2) Duties: executive and administrative; relations to legislature and to the executive council (cabinet).

2. The executive council (see lists in Bourinot, *How Canada is Governed*, 151-152).

a. How appointed.

b. Members.

1) In cabinet with departments, 6 to 8.

2) Without office (in 5 provinces), 1 to 6.

c. Relations of the councillors to the provincial assemblies and to the lieutenant-governor determined by the usual cabinet law and custom.

### III. The Provincial Legislatures.

1. Bicameral systems in Quebec and Nova Scotia.

a. Legislative councils: in Quebec 24 and in Nova Scotia 21 members appointed by the crown (lieutenant-governor) for life; speaker, appointed by lieutenant-governor in council during pleasure; powers similar to those of Dominion senate.

b. Legislative assemblies: 74 members in Quebec, and 38 in Nova Scotia; elected for five years.

2. Unicameral system in the seven other provinces (for present numbers, see *Stateman's Year Book*, 1906, p. 497).

a. Qualifications (Munro, 61 ff.); compensation and mileage; tenure, 4 years.

b. Speaker and other officers.

c. Public and private bills: rules same as for Dominion parliament; Dominion power of disallowance (Bourinot, *Const. Hist.*, 142-49).

d. Relations to prime minister and council (cabinet): rules, same as for Dominion.

e. Number (see lists in Bourinot, *How Canada is Governed*, 159).

f. Constitutional subjects of legislation (sec. 92); qualified control of education.

g. Elective franchise and election laws (similar to those of Dominion; see Bourinot, *How Canada is Governed*, 157, 160-1; Munro, 55-61, 64-6).

### IV. Provincial Judicature (see preceding syllabus).

#### REFERENCES.

Munro, 40-87; Bourinot, *Const. Hist.*, 62-149; *idem*, *How Canada is Governed*, 145-169; Todd, 430-575, 579 ff., and Index.

### B. *The Local Constitutions.*

#### I. Origin and History, to 1840 (see Bourinot, *Local Government in Canada*, 43-69).

1. Under the French regime, 1608-1760.
2. Lower Canada, 1760-1840.
3. Upper Canada, 1760-1840.
4. The maritime provinces.

#### II. The Divisions of the Provinces for Purposes of Local Government.

1. The county: the largest municipal division in the province. It has
  - a. Council composed of elected or *ex officio* members;
  - b. Warden, reeve, or other head officer.
2. The township, parish, town, village, city (these are sometimes called "local municipalities").
  - a. Elected councils.
  - b. Reeve or mayor and other officers.

#### III. Local Constitution of Ontario (as an example).

1. Counties: each with a council composed of 2 members elected for 2 years in each "division"; and a warden chosen by the council.
2. The council in every city composed of a mayor and 3 aldermen for each ward; town, of a mayor and 3 or 2 councillors for each ward; township, of a reeve and 4 councillors; village, of a reeve and 4 councillors.
  - a. Election of councillors, mayors, and reeves is by general vote by ward.
  - b. By a referendum, the people may establish election of town and city officers by general vote (Bourinot, *How Canada is Governed*, 222-3).
3. Origin and general character of the Ontario township (see McEvoy).

#### IV. Local Constitutions of the Other Provinces.

##### REFERENCES.

Bourinot, *Local Government in Canada*, in *J. H. U. S.* (1887), VI, 175-246; or the same in *Royal Society of Canada* (1886), IV, sec. 2, and separately reprinted; *idem*, *How Canada is Governed*, 219-240; McEvoy, *The Ontario Township* (Toronto, 1889).

## CHAPTER V.

### ORIGIN AND CHARACTER OF THE FEDERAL CONSTITUTION OF THE AUSTRALIAN COMMONWEALTH.

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#### SECTION XL. LITERATURE AVAILABLE FOR THE COURSE.

##### I. Bibliographies.

- Edwards (H. W.), *Movement for Federation*, 136-38.  
Jenks (E.), *Australasian Colonies*, 320.  
Moore (W. H.), *Commonwealth*, p. xx.  
*New International Encyclopaedia*, II, 276-77.  
Special Card Catalogue of the Department of Political Science and Sociology.

##### II. Geography.

- Lucas (C. P.), *Historical Geography of the British Colonies* (1891).  
*Century Atlas* and other standard atlases.  
Maps in *Encyclopedia Americana* and *New International Encyclopaedia*.  
Maps in the works of Jenks, Finley, and Dilke.

##### III. Historical Manuals or Accounts and Constitutional Treatises.

- Clark (A. I.), *Studies in Australian Constitutional Law* (1907).  
Edwards (H. W.), *The Movement for Federation in Australia* (1901). An unpublished thesis; best historical account.  
Favenc, *History of Australian Explorations, 1788-1888* (1892).  
Finney (Joseph), *History of the Australian Colonies* (1902). Useful general manual; many maps.  
Jenks (E.), *History of the Australasian Colonies* (1895). Reaches only 1893; a good work.  
Kirkpatrick (J.), "Constitution of the Commonwealth of Australia," in *Juridical Review*, XII (1900), 113 ff.  
Larned (J. N.), *History for Ready Reference* (1894), I, 190 ff. Good historical sketch.  
Moore (W. H.), *The Constitution of the Commonwealth of Australia* (1902). Excellent scientific treatise; practically an annotated text; good historical account, pp. 12-61.  
Parkes (Henry), *Fifty Years in the Making of Australian History* (1892).  
Quick (J.) and Garran (R. R.), *Annotated Constitution of the Australian Commonwealth* (1901). The most elaborate treatise yet published; has full historical account, pp. 23-261.  
Short Accounts in *Encyclopedia Americana*, vol. II; and *New International Encyclopaedia*, vol. II.

## IV. General and Special Works of Importance for the Course.

- Appleton (pub.), *Annual Cyclopaedia*, for each year.
- Bannow (W.), *The Colony of Victoria* (1897).
- Clark (V. S.), *Labour Movement in Australasia* (1907).
- Cotton (J. S.) and Payne (B. J.), *Colonies and Dependencies* (1883).
- Deakin (A.), "The Federation of Australia," in *Scribner's Magazine* (1891), X, 549 ff.
- Dilke (C. W.), *Problems of Greater Britain* (1890).
- Dilke (C. W.), "The Commonwealth of Australia," in *Forum* (1891), XI, 379.
- Egerton (H. E.), *Short History of British Colonial Policy* (1897).  
See Index.
- Epps (W.), *Land Systems of Australia* (1894).
- Finniss (B. T.), *Constitutional History of South Australia* (1886).
- Flanagan (R.), *History of New South Wales* (2 vols., 1862).
- Galloway (W. J.), *Advanced Australia* (1899).
- Garran (R. R.), *Coming Commonwealth of Australia* (1899).
- Greswell (W. P.), *British Colonization* (1893).
- Jenks (E.), *Government of Victoria* (1891).
- Jenkyns (H.), *British Rule and Jurisdiction Beyond the Seas* (1902).
- Kohler (J.), "Australian Commonwealth and its Legal Character," in *Zeitschrift für Völkerrecht und Bundesstaatsrecht*, I, Nos. 2, 3.
- Lauterer (J.), *Australien und Tasmanien* (1900).
- Lewis (G. C.), *Government of Dependencies* (1891).
- Lloyd (H. I.), *Newest England* (1903).
- Morris (H. C.), *History of Colonization* (2 vols., 1900).
- Parkes (Henry), "Union of the Australias," in *Contemporary Review*, July, 1891.
- Reeves (W. P.), *State Experiments in Australia and New Zealand* (2 vols., 1902).
- Reid (G. H.), "Commonwealth of Australia," in *Nineteenth Century* (1891), XXX, 145-153.
- Rowland (P. F.), "Economic Resources of the Australian Commonwealth," in *Economic Review*, XII (1902), 172-184.
- Symon (J. H.), "United Australia," in *Yale Review* (1900), IX, 129-163.
- Tarring (C. J.), *Laws Relating to the Colonies* (2d ed., 1893).
- Teece (R. C.), *Federal Constitutions of Canada and Australia* (1902).
- Todd (A.), *Parliamentary Government in the British Colonies* (2d ed., 1894).
- Turner (H. G.), *History of the Colony of Victoria* (vol. I, 1904).
- Walker (Henry de R.), *Australian Democracy* (1897).
- Willoughby (H.), *Australian Federation* (1891).

## V. Short Accounts.

Anson, *Law and Custom*, II, 255; *Statesman's Year Book*; Seeley, *Expansion of England*; Lalor, *Cyclopaedia*, III, 13-16; Jebb, *Studies in Colonial Nationalism*, Index at "Australia"; Reinsch, *Colonial Government*; Payne, *History of European Colonies*; Bourinot, "Canada and Australia," in *Royal Society* (1895), I, sec. 2; Ball, "State Experiments in Australia," in *Economic Review* (1903), XIII, 870-3; Barton, "Australia and Her Problems," in *The Independent*, LIV (1902), 2165-67; *idem*, "Australian Federation" (1900), in *North Am. Rev.*, CLXX, 772-4; Beach, "The Australian Federal Constitution" in *Pol. Sci. Quarterly* (1899), XIV, 663-80; Braddon, "Federation Movement in Australia" (1896), in *Nineteenth Century*, XL, 156-72; Brassey, "Australian Federation," in *Nineteenth Century* (1899), XLV, 548-57; Burgess, "Social Experiments in Australia," in *Arena* (1900), XXIII, 132-40; Childers, "Court of Appeal," in *Nineteenth Century* (1901), L., 152-60; Deakin, in *Scribner's* (1891), X, 549-61; Donovan, in *Westminster Review* (1899), CLII, 155-65; Duckworth, in *Economic Journal* (1899), IX, 322-27; Fortescue, in *Nineteenth Century* (1891), XXX, 430-43; Gelling, "Municipal Institutions of Australia," in *Annals of A. A.* (1904), XXIII, 61-73; Henry, in *Outlook* (1901), LXVIII, 483-6; Higgins, in *Contemp. Rev.* (1900), LXXVII, 480-90; Hogan, in *ibid.* (1901), LXXX, 657-65; Holder, in *Independent* (1904), LVI, 9-13; Lusk, in *Review of Reviews* (1901), XXIII, 74-7; *idem*, in *N. A. Rev.* (1904), CLXXVIII, 598-604; *idem*, "Chinese Exclusion in Australia," in *ibid.*, CLXXIV, 368-75; *idem*, "The First Parliament of Australia," in *Review of Reviews* (1903), XXVII, 333-38; Macnaughten, in *Economic Review* (1903), XIII, 286-94; Mann, "Political and Industrial Situation in Australia," in *Nineteenth Century* (1904), LVI, 475-91; Moore, in *Law Quarterly Review* (1900), XVII, 35-43; *idem*, in *Annals of A. A.* (1903), XXI, 183-208; Parsons, "The Privy Council," in *Blackwood's*, XVI, 687-701; many articles in *Spectator*, *Saturday Review*, *Melbourne Review*, and *Victorian Review*; and others mentioned in the Special Card Catalogue.

## VI. Selected Sources and Serial Publications.

Australian Commonwealth and States, *Court Reports* (State Library).

Australian States, *Statutes* (State Library).

Australian Federal Convention, *Official Report of Debates*, First, Second, and Third Sessions (Report of Second Session in State Library).

*Australian Handbook*. Published annually since 1873.

Federal Council of Australasia, *Official Record of Debates*, First Session (1886).

Great Britain, *Parliamentary Papers*, *Hansard's Debates*, *General Statutes*.

*Melbourne Argus*. Published daily since 1854.

*Melbourne Review*. Published since 1880.

National Australasian Convention, *Official Record of Debates* (1891).

South Australia, *Parliamentary Debates*, 1857-1907.

*Victorian Review*. Published since 1880.

*Year Book of Australia*, edited by Edward Greville. Published annually since 1885 under auspices of the Governments of the Colonies.

## SECTION XLI. DISCOVERY, EXPLORATION, AND COLONIZATION OF AUSTRALIA, TO 1788.

### I. Discovery (Jenks, *Australasian Colonies*, 1-19; Finney, 3-14; Edwards, 1 ff.; Quick and Garran, 6 ff., 23 ff.).

1. Early knowledge and belief regarding Australia.
  - a. Legend and rumor.
  - b. Maps: the Rotz map, 1542; the Testu map of *Jave la Grande*, 1555.
  - c. The book of Cornelius Wytfliet, 1598: the name *Terra Australis*; the name *Australasia*, invented by Brosses, ca. 1750.
2. The Spanish discovery, 1606.
  - a. Mendana reaches Santa Cruz group (1595).
  - b. His pilot, Quiros, reaches the New Hebrides, one of which he calls *Austral del Espiritu Santo* (1605).
  - c. Quiros's lieutenant, Torres, coasts along New Guinea, reaches 11th degree, and probably sighted the Australian continent (1606).
3. The Dutch discovery, 1606?—1642 (New Holland).
  - a. Traditional discovery by the Duyfhen (1606).
  - b. By Dirk Hartog in the ship *Eendracht* (1616), at Shark Bay.
  - c. Other voyages, 1623, 1628.
  - d. Discoveries of Abel Janz Tasman (1642): Tasmania (Van Dieman's land until 1853), November 24; New Zealand, December 13 (called by him *Staates Land*); other islands.
4. English discoveries.
  - a. By Dampier: Australia (New Holland), 1689, 1699.
  - b. Captain James Cook: New Zealand, August, 1769; Botany Bay, Australia, autumn, 1770; he names New South Wales; his two later voyages, 1772, 1776-9.

### II. Characteristics of Australia.

1. Soil and climate.



2. Fauna and flora; why British economy was reproduced?
3. Character of the aborigines.
4. Contrasting character of New Zealand climate, geography, fauna, flora, and aborigines.

SECTION XLII. THE FOUNDING OF THE AUSTRALASIAN COLONIES.

I. New South Wales, 1788-1851 (Jenks, 20-51; Quick and Gar-  
ran, 35 ff.; Finney, 16 ff.).

1. The penal colony established under Captain (later Governor) Phillip at Port Jackson (Sydney), near Botany Bay, 1788.
  - a. Earlier history of the British "transportation" system; the inquiry of 1779; the act of 1783; and the orders of 1786.
  - b. The penal settlement due mainly to the government and not to private suggestion (Jenks, 20-26).
  - c. Incidents in the history of the colony to 1821.
  - d. General history to 1851.
2. Development of institutions (Jenks, 52-71, 139-165).
  - a. The governor, under the colonial office, practically the sole authority until 1823; "crown colony" (Jenks, 147).
    - 1) Military court of judge advocate and 6 assessors; other courts.
    - 2) Civil courts, 1814; influence of Baron Field.
    - 3) Rise of an executive council, appointed by the governor; date of origin uncertain.
  - b. The constitution of 1823.
    - 1) Supreme courts for New South Wales and Tasmania; also courts of quarter sessions and other courts; jury in civil suits; anomalous court of appeal.
    - 2) Legislative council of 5 to 7 appointed by the colonial office, with restricted financial and legislative powers; 1825, 3 independent (non-official) members admitted.
    - 3) Partial separation of Tasmania.
  - c. The constitution of 1828: for the 2 colonies of New South Wales and Tasmania.
    - 1) Appeals to privy council allowed; new circuit

courts; local legislatures allowed to extend jury to criminal suits.

- 2) Legislative council enlarged to 15; executive council gains new powers; chief justice loses absolute veto on ordinances.
  - 3) Beginnings of subordinate governments in Victoria (at Melbourne) Western Australia, and South Australia, 1828-1839.
- d. Constitution of 1842 (only for New South Wales).
- 1) Representation in legislative councils to consist of two classes of members.
  - 2) Provisions for local government.
- e. Act of 1850: practically places South Australia, Tasmania, and Victoria on same basis as New South Wales by act of 1842; attempt of colonial office to make the governor of New South Wales a "governor-general" for the three other colonies (to 1855).

## II. Tasmania, 1798-1851.

1. Explorations; founding of Hobart, 1804; of Launceston, 1806.
2. Subordinate to New South Wales until made a separate colony, 1825.

## III. Victoria.

1. Melbourne founded, 1836-7.
2. Port Phillip district under New South Wales, 1839.
3. Separate colony, 1850.

## IV. Queensland, separate colony, 1859.

## V. New Zealand.

1. Early history.
2. Colony, 1840.

## VI. South Australia.

1. Exploration and early history; colony founded 1836.
2. Separate colony, with Adelaide as capital, 1850.

## VII. Western Australia.

1. Founded, 1829.
2. Representative institutions, 1870.
3. Responsible government, with bicameral parliament, 1890.

## REFERENCES.

Jenks, *Australasian Colonies*, as cited; Edwards, 1-4; Finney, see table of contents; Quick and Garran, 35-78; Jenks, *Government of Victoria*; Finniss, *Const. Hist. of South Australia*; Todd, Index; *New International Encyclopaedia*, at "Australia," and name of each colony; Larned, in *History for Ready Reference*, I; Moore, 12-18; Flanagan, *New South Wales*. See also the works of Favenc and Morris.

## SECTION XLIII. THE MOVEMENT FOR FEDERATION, 1846-1890.

## I. Earl Grey and the Origin of the Movement (Edwards, 5-15; Jenks, 294-300; Quick and Garran, 81 ff.; Moore, 19 ff.).

1. The tariff problem; suggestion of Governor Fitzroy of New South Wales, 1846; a "superior functionary" to be created.
2. Earl Grey's dispatch to Governor Fitzroy, 1847; recommends a "central authority" in the colonies and a change in the constitution of N. S. W. (*Parl. Papers*, 1847-8, XLII, No. 715; Edwards, 5-7).
3. Protesting petition of the people of Sydney.
4. Grey's dispatch of July 31, 1849.
5. Report of the committee for trade and plantations (*Parl. Papers*, 1849, XXV, 33; Jenks, 294; Edwards, 7; Quick and Garran, 83; Moore, 20).
6. The federal constitution bill of 1850.
  - a. Contents; plan for representation; Gladstone's opposition to the scheme.
  - b. Why federal clauses rejected by parliament and disliked in Australia? Character of the amended act adopted; why called 'Magna Charta of Australia'? (Kirpatrick, in *Juridical Review*, XII, 114; Edwards, 12.)
  - c. New colony of Victoria (1850) adopts policy of "protection": evil results? (See Finney, 212.)
7. Executive union under a governor-general authorized by a commission of Earl Grey (1851-1861), following Fitzroy's suggestion of 1846 (see Jenks, *Victoria*, 155-6; *idem*, *Colonies*, 295; Moore 21-2; Quick and Garran, 89-90).

## II. Development of Federal Sentiment in the Colonies, 1853-1863: the Movement Confined Mainly to a Few Leaders.

1. In New South Wales.

- a. 1853, select, legislative committee on new constitution recommends a general assembly: Wentworth's influence in favor; why the scheme a failure?
    - b. 1856: Secretary Deas-Thomson proposes in a speech.
    - c. 1857, August 19, legislative council appoints a committee on establishment of a federal legislature; report of committee, October 20; council proposes a conference; joint meeting of the two houses of the legislature (Edwards, 19-20).
  2. In Victoria.
    - a. 1853: legislative committee on new constitution favors; Duffy's influence.
    - b. 1857, January 16, Gavan Duffy secures a select committee on federal union; the committee's report, adopted by both houses, recommends a colonial conference (see extract in Edwards, 18, note; Quick and Garran, 95 ff.; Moore, 24).
  3. Wentworth's memorial for the "General Association" (in England) on permissive principle recommending a federal assembly with equal colonial representation; permissive constitutional convention; opposition of British colonial secretary (Moore, 23; Quick and Garran, 93-95; Edwards, 17-18).
  4. Action in South Australia (1859-60); Queensland (1860); Tasmania (1862): failure of the entire movement for a conference (Moore, 25).
  5. Dr. J. D. Lang and the independence party: his books, 1852, 1870; he secures legislative committee, 1860 (Edwards, 22-3).
- III. Continuation of the Movement Through Colonial Conferences, 1863-1883 (Edwards, 24-34; Moore, 25-30; Quick and Garran, 100 ff.).
1. Struggle to overcome tariff difficulties; the movement thus fostered (Quick and Garran 100 ff.).
  2. Conference of 1863 (in Melbourne).
  3. Postal conference, 1867 (in Melbourne).
    - a. Federal council suggested.
    - b. Sir Henry Parkes's bill in the legislative assembly, N. S. W.

4. Conference of 1870.
  5. Victorian Royal Commission, 1870.
    - a. Purpose (Moore, 27).
    - b. Report.
  6. Conference of 1880-81 (Quick and Garran, 107-9; Jenks, *Colonies*, 296-7).
  7. General results of the conferences; the press and federation; why federation was delayed.
- IV. The Federal Council, 1885 (Edwards, 35-56; Dilke, *Problems*, 264, 228; Parkes, *Fifty Years*, I, 589; Quick and Garran, 109-115; Moore, 37 ff.; Jenks, 295-7).
1. Events leading to the movement for a council.
    - a. France and the penal colony of New Caledonia; suspicion of Germany.
    - b. Queensland formally takes possession of southern New Guinea, April 4, 1883.
    - c. Lord Derby repudiates Queensland's action and suggests union.
  2. The convention of delegates at Sydney, November, 1883.
    - a. Draft-bill for a federal council adopted.
    - b. Popular discussion and criticism.
    - c. Favored by legislatures of all colonies except New Zealand and New South Wales; opposition of Parkes.
    - d. Lord Derby's conciliatory letter of explanation.
  3. Imperial act establishing a council, 1885.
    - a. Substance of the act; powers of the council.
    - b. By what colonies accepted.
  4. Number of sessions and the work accomplished by the council.
    - a. Weakness of the body.
    - b. Value of the experiment.

SECTION XLIV. THE DEFENSE PROBLEM AND THE CONFERENCE OF 1890 (Edwards, 57-74).

I. Character of the Problem.

1. Alleged danger from Australia's isolated and exposed position.
2. Scheme proposed by conference of Australian delegates in London, 1887.

3. This scheme embodied in the act of 51 and 52 Victoria, chap. 32; substance; Queensland fails to agree (Dilke, *Problems*, 269).
  4. The investigation and report by General Bevan Edwards, 1889: he recommends federation.
- II. The Melbourne Conference of February, 1890.
1. Origin: influence of General Edwards's recommendation; Sir Henry Parkes's Invitation to other premiers; popular discussion.
  2. Composed of members of the federal council and deputies from colonies not thus represented; high character of the body.
  3. Organization; motion of Parkes (February 10).
  4. The debates: speeches of Griffith, Deakin, Playford, and Parkes; objections by the opposition; tendencies as to type of constitution needed.
  5. The conference provides for the call of a national convention.
    - a. Choice of delegates by the provincial legislatures; the opposition in N. S. W., led by the "irreconcilable," George R. Dibbs.
    - b. Discussions pending the meeting; Parkes's resolutions outlining principles of the proposed constitution.

## REFERENCES.

Edwards, 57-74; Quick and Garran, 115-123; Moore, 39 ff.; Jenks, *Australasian Colonies*, 297-98; Parkes, *Fifty Years*, II, 337 ff.; Garran, *Coming Commonwealth*, 115 ff.

SECTION XLV. THE NATIONAL AUSTRALASIAN CONVENTION AND THE CONSTITUTION OF 1891 (MARCH 2 TO APRIL 9).

- I. Composition and Organization: 45 Members from 7 Colonies.
1. Character of the members.
  2. Leaders; Dibbs and the opposition.
  3. Parkes chosen president, and Griffith vice-president.
  4. Debates to be open to public.
- II. Parties and Antagonisms.
1. Federalists vs. antifederalists.
  2. Small states vs. large states.
  3. Protectionists vs. free-traders.

III. Plan for a Constitution Presented in Resolutions by Sir Henry Parkes (Quick and Garran, 124-5).

1. Principles.
2. Organization.

IV. The Debates (Quick and Garran, 126-143).

1. Preliminary discussion; chief points of criticism; what model for the upper house?

2. Discussion in the committee of the whole.

- a. Powers of colonies (states).
- b. Customs-duties.
- c. The great compromise on powers and constitution of the senate; the convention in danger of disruption.

- a. The executive: Baker's amendment adopted.

- e. The judiciary: the question of appeal to the privy council.

- f. March 18, reference of the amended resolutions to three committees.

- g. March 31, the draft-bill reported; the debate thereon.

- 1) The name "Commonwealth."

- 2) Election of senators by legislatures.

- 3) The "single vote."

- 4) Relative powers of the houses; Baker's amendment; Dibbs's speech.

- 5) The judiciary; question of courts for industrial arbitration; appeals to privy council.

- 6) Surplus revenue.

- 7) Assumption of state debts.

- 8) Communication between states and home government.

- 9) Appointment of state governors.

- 10) Amendments: referendum rejected.

- 11) Adoption of the amended draft, April 9; provisions for submission to people; and for recommendation of a constitutional act by imperial parliament.

V. Principal Features of the Constitution of 1891 (Edwards, 105-114).

1. The Legislature.

- a. Composition of the senate and house; term of office; franchise; relative powers, etc.
- b. Powers of parliament.
2. The executive.
  - a. Governor-general.
  - b. Executive council.
  - c. Ministers.
3. Supreme court; other courts to be created by the federal parliament.
4. Relative powers of states and federal government.
5. Amendments.
6. General character of the instrument; relative influence of Canada, Switzerland, and United States.
7. Original features.

## REFERENCES.

Edwards, 75-114; Quick and Garran, 123-143; Moore, 40 ff.; Jenks, *Colonies*, 298-300; *idem*, *Victoria*, 269 ff.; Parkes, *Fifty Years*, II, 338 ff.; Braddon, in *Nineteenth Century* (1896), XL, 156-72; Willoughby, in *ibid.*, XXX, 292-302; Cameron, in *Forum* (1891), XI, 250-57; Deakin, in *Scribner's* (1891), X, 549-61; Dilke, in *Forum* (1891), XI, 379-97; Duffy, in *Contemporary Review* (1890), LVII, 153-169; Fortescue, in *Nineteenth Century* (1891), XXIX, 523-37; Reid, in *ibid.*, XXX, 145-53; Parkes, in *Contemporary Review* (1891), LX, 1 ff.; Salmon, in *Fortnightly Review* (1895), LXIV, 67-77; Galloway, *Advanced Australia*, 149 ff.; Reeves, II, 143 ff.; Garran, *Coming Commonwealth*, 115 ff.; Walker, *Australian Democracy*, Index.

## SECTION XLVI. THE TRIUMPH OF THE FEDERAL MOVEMENT, 1891-1901.

## I. Action on the Draft Constitution of 1891.

1. Failure of all the legislatures to approve.
  - a. Not introduced in the parliaments of Western Australia, Queensland, and New Zealand.
  - b. Defeated in the parliaments of South Australia, Tasmania, and Victoria.
  - c. G. H. Reid prevents its introduction in N. S. W.
2. Reasons for the failure: mainly due to a lack of popular interest; not demanded by public opinion (see Parkes, *Fifty Years*, II; Deakin, in *Scribner's*, X, 561; Dilke, in *Forum*, XI, 393; Edwards, 117-120).

## II. How the Movement Was Revived (Edwards, 121 ff.); it spreads to the people.

1. Educative influence of the constitution and debates of 1891.



2. Increasing relative influence of the native Australians.
  - a. "Australian Natives Association" favors federation.
  - b. Local "federation leagues" in a conference demand a federal constitution to be formed by a popularly elected convention, and submitted to a direct vote of the people (1893).
3. Premier G. H. Reid (N. S. W.) secures a conference of premiers, 1895.
  - a. This calls a constitutional convention of delegates to be chosen by the electors.
  - b. Agrees to a draft enabling act, to be introduced in each parliament.
  - c. Five parliaments provide for the choice of delegates.
4. Influence of the "People's Federal Convention" at Bathurst, 1896.

III. The Federal Convention of March 22, 1897-March 17, 1898 (Quick and Garran, 165 ff.; Edwards, 124-33; Moore, 45 ff.).

1. Composed of 50 delegates from 5 colonies; Queensland and New Zealand not being represented.
  - a. Character of the members.
  - b. Increased number of jurists.
2. Organization.
3. The first session at Adelaide, March 22-May 5, 1897; a constitution drafted; after adjournment, it was discussed and amended by the parliaments; fear of deadlock, if federal senators chosen directly by the people.
4. The second session at Sydney, September 2-24, 1897.
  - a. Amendments discussed (286 in number).
  - b. Compromise agreement to prevent deadlock between senate and house (Quick and Garran, 189 ff.).
5. The third session at Melbourne, January 20-March 17, 1898 (Quick and Garran, 194 ff.).
  - a. Final compromise as to deadlock.
  - b. Constitution completed for the referendum.

IV. The First Referendum, 1898.

1. Various antagonisms developed. Compared with American struggle in 1788.

2. Constitution carried in Victoria, Tasmania, and South Australia; failed of necessary 80,000 in N. S. W.; Western Australia took no vote.
  3. The struggle in N. S. W. parliament (Quick and Garran, 213 ff.).
    - a. Amendments proposed; accepted in a conference of premiers held January 28, 1899; provision for a second referendum (Quick and Garran, 218 ff.).
    - b. Legislative council refuses assent to work of premiers and is swamped by creation of 12 new members.
- V. The Second Referendum, 1899 (Quick and Garran, 221-28).
1. Constitution carried by 5 colonies, including Queensland.
  2. Not submitted in Western Australia; petition of 23,000 people of Eastern Goldfields to be made a separate colony.
  3. Australian delegates invited to England by the colonial secretary.
- VI. The "Commonwealth of Australia Constitutional Act" Passed by the Imperial Parliament, July 9, 1900, 63 and 64 Victoria, chap. 12 (Quick and Garran, 228-52).
1. Secretary Chamberlain's objections to three principal points.
  2. Finally he accepts a provision for restricted right of appeal to privy council.
  3. July 19, 1900, Earl Hopetoun appointed first governor-general; Edmund Barton, N. S. W., becomes first premier.
  4. January 1, 1901, the "Commonwealth of Australia" formally inaugurated.
- VII. The Most Characteristic Features of the Australian Constitution.

## REFERENCES.

Quick and Garran, Parkes, Edwards, Moore, and Garran, *Coming Commonwealth*; Symon, in *Yale Review*, IX, 129-63; Walker, in *Atlantic*, LXXXIII (1899), 577-85; Vogel, in *Contemp. Review*, LXXIV, 275-79; Stout, in *Forum*, XXX, 321-31; "Status of Aust. Fed.," in *Nation*, LXX, 374-5; "The Aust. Commonwealth and the Privy Council," in *Spectator*, LXXXIV, 542-43; compare *ibid.*, 693-94; "The Federation of Australia," in *Sat. Rev.*, LXXXVII, 516-17; Russell in *N. A. Rev.*, CLXVII, 27-38; Lusk, in *ibid.*, CLXXII, 103-12; *idem*, in *Rev. of Rev.*, XXII, 72-74; Posnett, in *Fort. Rev.*, LXXV, 969-88; Parsons,

"Commonwealth and the Privy Council," in *Blackwoods*, CLXVI (1899), 687-701; *idem*, in *Fort. Rev.*, LXXII, 612-21; Moore, in *Law Quarterly Rev.*, XVI, 35-43; Lusk, "First Parliament of Australia," in *Rev. of Rev.*, XXVII (1903), 333-38; *idem*, "Second Par.," in *N. A. Rev.*, CLXXVIII, 597-604; *idem*, in *Forum* (1899-1900), XXVIII, 482-92; *idem*, in *Rev. of Rev.*, XXIII, 74-77; Hogan, in *Contemp. Rev.*, LXXX, 657-65; Higgins, in *ibid.*, LXXVII, 480-90; Henry, in *Outlook*, LXVIII, 483-86; Godkin, in *Atlantic*, LXXXI, 322-36; Fortescue, in *Nineteenth Century* (1891), XXX, 430-45; Fetchett, "Failure of the Aust. Fed. Bill," in *Canadian Magazine*, XI, 400-408; Duckwood, "Economic Aspect of Aust. Fed.," in *Economic Journal* (1899), IX, 322-27; Donovan, "Queensland Politics and Federation," in *Westminster Rev.* (1899), CLII, 155-65; *Nation*, LXIV, 453-55, LXVI, 378-79; Childers, "What Court of Appeal," in *Nineteenth Century*, L, 152-60; Brassey, in *ibid.*, XLV, 548-57; Beach, in *Pol. Sci. Quarterly*, XIV, 663-80; Barton, in *N. A. Rev.*, CLXX, 772-84.

## SECTION XLVII. GENERAL CHARACTER OF THE CONSTITUTION OF THE AUSTRALIAN COMMONWEALTH: THE "CONSTITUTION ACT" (63 and 64 Victoria, chap. 12).

### I. Influence of Other Federal Constitutions.

1. Switzerland: form or subdivision of the written instrument; preamble; state ownership and control; constitutional referendum.
2. Dominion of Canada: relatively little influence; its centralization disliked.
3. United States: the tripartite division of departments; great influence of the American constitution on the form, principles, and details, but notable differences.

### II. Plan and Scope of the "Constitution Act" (Moore, 62-81; Quick and Garran, 262-383).

#### 1. Preliminary provisions.

a. The preamble: function of the preamble; God in the constitution; meaning of "under the crown" (Moore, 73-74; Quick and Garran, 294-296); meaning of the "people have agreed to unite"; sources of sovereignty; the term "indissoluble"; the 8 "affirmations" (Todd, 243; Quick and Garran, 286; Moore, 77).

b. The nine "covering clauses": alterable only by imperial parliament; while the constitution proper (the 128 sections of clause 9) are alterable by the Commonwealth (Moore, 62 ff.).

- 1) The term "commonwealth"; meaning; ambiguities; why adopted?
  - 2) The term "state"; meaning; ambiguities.
  - c. Supremacy of the federal constitution and federal laws, the laws of any state "notwithstanding" (clause 51; compare original form of article 6, Const. of U. S. (Quick and Garran, 346; Moore, 81, note).
  - d. The term "constitution"; relation to constitutional law; to custom or the unwritten constitution (Moore, 78 ff.); legislative powers of a colony and of the commonwealth compared (Moore, 78-81; Quick and Garran, 314).
2. Chapter I. The Parliament (secs. 1-60).
    - a. Part I. General (secs. 1-6).
    - b. Part II. The Senate (secs. 7-23).
    - c. Part III. House of Representatives (secs. 24-40).
    - d. Part IV. Both Houses (secs. 41-50).
    - e. Part V. Power of the Parliament (secs. 51-60).
  3. Chapter II. The Executive Government (61-70).
  4. Chap. III. The Judicature (secs. 71-80).
  5. Chap. IV. Finance and Trade (Secs. 81-105).
  6. Chap. V. The States (secs. 106-20).
  7. Chap. VI. New States (secs. 121-124).
  8. Chap. VII. Miscellaneous (secs. 125-127).
  9. Chap. VIII. Alternation of the Constitution (sec. 128).

#### TEXT OF THE CONSTITUTION.

Moore, 333-361; Quick and Garran, 262-278 (the clauses are also successively repeated in the discussion throughout the treatise).

#### SECTION XLVIII. THE PARLIAMENT OF THE COMMONWEALTH.

*A. The King: Represented by the Governor-General Appointed by the King* (secs. 1-6).

I. Parliamentary Powers of the Governor-General (Quick and Garran, 404-5).

II. Salary: 10,000 pounds.

*B. The Senate* (secs. 7-23).

I. Composition.

1. An equal number from each original state directly

chosen by the people; voting as one electorate until parliament otherwise provides.

2. Now 6 senators from each state; but parliament may increase or diminish the number.
3. Vacancies, how filled.
  - a. Temporarily by legislature, or by governor with advice of the executive council.
  - b. Permanently by election.

## II. Tenure.

1. Six years; but parliament may be earlier dissolved in case of deadlock.
2. The original division of the senators of each state into two classes, to hold 3 and 6 years respectively.
3. Vacancy: for absence two consecutive months without permission; by resignation.

## III. Qualifications of Senators: The Same as for Members of the House.

## IV. Qualifications of Electors of Senators.

1. The same as fixed by the constitution or by the federal parliament for members of the house.
2. At present, therefore, the qualifications are those of lower house of the state legislature; but parliament may alter.

## V. Choice of Senators.

1. Parliament may establish a uniform method.
2. Temporarily the laws of the states relating to choice of members of the lower house of legislature to prevail.
3. State may make laws regarding mode of election, subject to the general federal acts.

## VI. Senate May Elect a Member to be President of the Body.

1. Vacancy of presidential office by resignation; when holder ceases to be a senator; when removed by vote.
2. Place, how supplied?

## VII. Quorum, One-third of Whole Number; but parliament may determine; questions determined by majority vote, each senator having one vote; and the president may vote on all questions; a tie counts as a negative.

## VIII. Powers of the Senate.

1. In what functions they are coördinate with those of the house?

2. Restrictions as to money bills.
3. Relative strength and dignity of the senate as compared with those of other federal systems.

*C. House of Representatives* (secs. 24-40).

See Quick and Garran, 265-7, 445-83; Moore, 101-113.

I. Composition.

1. Members "directly chosen by the people of the commonwealth," the number as "nearly as practicable" to be twice that of the senators.
  - a. Significance of the two clauses quoted; compare the U. S. constitutional provisions.
  - b. Number of representatives for several states to be in proportion to the population; but each shall have at least 5 members.
  - c. How the number is determined; the "quota" (Quick and Garran, 265, 453-55).
  - d. Parliament "under the constitution" has power to alter the number (sec. 27).
2. When enumeration of persons of a state to be diminished for disqualifying "all persons of any race" (sec. 25).

II. Tenure.

1. Every house continues 3 years; but may be sooner dissolved by governor-general (sec. 28).
2. Vacancy.
  - a. By written resignation.
  - b. For absence 2 consecutive months of a session; vacancy filled by election under a new writ (sec. 33).

III. Qualifications of Representatives Until Parliament Otherwise Provides (sec. 34).

1. Full age of 21 years.
2. Qualified to vote for a representative, or to become such.
3. Resident of commonwealth 3 years.
4. Natural born or for five years a naturalized subject of the king; the four ways of being naturalized (sec. 34, part II).

IV. Qualifications of Electors of Representatives: until parliament otherwise provides the same as for electors of mem-

bers of more numerous house of state legislature (sec. 30); but each has but one vote; by federal statute women in all states have the franchise.

#### V. Elections.

1. Until parliament otherwise provides state laws to determine the method (sec. 31).
2. Electoral districts (sec. 28).
3. Writs; vacancies, how filled (secs. 32-33).

#### VI. Speaker.

1. Elected by the house.
2. Vacancy: by resignation, removal, or ceasing to be a member; place, how filled?

#### VII. Quorum, One-third of the Whole Number; but parliament may determine; questions decided by majority vote, the speaker voting only in case of tie (secs. 39-40).

#### *D. Both Houses (secs. 41-50).*

See Quick and Garran, 267-68, 483-508; Moore, 113 ff.

#### I. Provision to Preserve the Franchise of Women (sec. 41); everywhere women now vote by federal law; and by state law in all states except Victoria.

#### II. Disqualifications.

1. Enumeration (secs. 43-44).
2. Exceptions: king's ministers and others.
3. Vacancies for disqualification.
4. Penalty for sitting when not qualified (sec. 46).
5. Questions regarding disqualification and disputed elections, how determined (sec. 47).

#### III. Salary, 400 pounds; the rule in the several states (Moore, 113).

#### IV. Privileges (sec. 49); common law doctrine not admitted (Moore, 114).

#### V. Procedure (sec. 50).

#### *E. Legislative Powers of Parliament (secs. 51-60).*

See Quick and Garran, 268-70, 483-698; Moore, 117-164. Compare U. S. Constitution, art. I, sec. 8; Canadian Constitution, sec. 91.

#### I. Provision as to the Residuum of Powers (see chap. v. of constitution).

- II. The 39 Enumerated General Powers (sec. 51); these are "plenary" (Quick and Garran, 509-10).
1. Analysis (Quick and Garran, 509).
    - a. New and original powers.
    - b. Old powers previously exercised by the colonies.
      - 1) Some "exclusively" vested in the federal parliament.
      - 2) Some "concurrently" vested in the federal and state parliaments: the rule of construction (Story, *Commentaries*, sec. 438).
  2. General interpretation of the more important of these powers.
- III. The Exclusive Powers (sec. 52).
- IV. Laws Regarding Money, Revenue, Taxation: Relative Powers of the Houses (secs. 53-56); Importance of Governor-General's Recommendation (sec. 56).
- V. Deadlocks (sec. 57).
- VI. Assent, Veto, Reserved Bills.

#### SECTION XLIX. THE EXECUTIVE (secs. 61-70).

See Quick and Garran, 271, 699-718; Moore, 224-31.

- I. The King; Represented by the Governor-General Appointed by the King; Power Extending to the Execution and Maintenance of the Federal Constitution and Laws (sec. 61).
- II. The Governor-General (see Quick and Garran, 404-406).
  1. Share in legislation (assent, veto, reserve).
  2. Appoints executive councillors, ministers, and other executive officers.
  3. Commander-in-chief of army and navy (sec. 68).
- III. The Federal Executive Council, to Advise the Governor-General; Chosen and Appointed by the Governor-General and Holding During His Pleasure; When the Governor-General Acts "in Council" (Moore, 224-25).
- IV. The "King's Ministers of State for the Commonwealth" (Quick and Garran, 709-11).
  1. They are members of the executive council appointed during pleasure of the governor-general.
  2. After three months, a minister must be a member of



parliament (indirect provision for responsible cabinet government).

3. Until parliament otherwise provides, the number not to exceed seven.
4. Salaries (sec. 66).
5. Comparison with the colonial (state) cabinets and ministries (Moore, 227-29).
6. Governor-General Hopetoun's first cabinet (Moore, 230-31).

#### V. Other Provisions.

1. Appointment and removal of all other executive officers (sec 67).
2. Transfer to the commonwealth of colonial departments and executive powers (secs. 69-70).

### SECTION L. JUDICATURE, FINANCE, MISCELLANEOUS.

#### A. *Federal Judicature* (secs. 71-80).

See Quick and Garran, 272-73, 719-810; Moore, 232-81.

#### I. Courts (sec. 71).

1. Supreme court called high court of Australia; consisting of a chief justice and not less than two other justices as parliament determines.
2. Other courts to be created by parliament.
3. Courts (state) invested with federal jurisdiction by parliament: unique provision.

#### II. Justices of the First Two Classes of Courts (sec. 72).

1. Appointed by the governor-general in council.
2. May be removed in same way on address from both houses.
3. Salary to be fixed by parliament.

#### III. Jurisdiction of the High Court (secs. 73-80).

1. Appellate jurisdiction from all judgments, decrees, orders, and sentences, subject to exceptions and regulations prescribed by parliament, of
  - a. Any justice or justices exercising the original jurisdiction of the high court.
  - b. Other federal courts or court exercising federal jurisdiction.

- c. Supreme court of any state in all questions.
  - d. Interstate commission as to questions of law only (for examples of questions of law and fact, see Quick and Garran, 743-46).
  - e. The constitutional function of federal courts (Moore, 232 ff.).
2. Original jurisdiction (secs. 75-76): meaning of "original" (Quick and Garran, 784-88): question of concurrent jurisdiction.
    - a. In 5 classes of cases enumerated in the constitution (sec. 75).
    - b. In 4 classes of cases as parliament determines.
  3. Trial of offenses by jury (sec. 80): when trial takes place?
- IV. Miscellaneous.
1. Jurisdiction of the high court in cases when appeal was formerly allowed from the supreme court of a state to the king in council.
  2. When appeal from the high court to the king in council.
    - a. When on certificate of the high court.
    - b. When on leave granted by the king by virtue of the prerogative; parliament may limit the matters to which such leave applies.
  3. Limitation of the original federal jurisdiction by parliament (sec. 77).
  4. Parliament may confer rights to proceed against a state or the commonwealth (sec. 78).

*B. Finance and Trade (secs. 81-105).*

- I. Consolidated Revenue Fund; Expenditures Charged Thereon; Appropriations (secs. 81-83).
- II. Transfer of Offices and Property from States to Commonwealth (secs. 84-85).
- III. Control of Customs, Excises, and Bounties Passes to Federal Executive (sec. 86).
- IV. Reservation of Share of Net Revenue from Customs and Excise for States for Payment of Interest of State Debts Taken Over by the Commonwealth (sec. 87).
- V. Uniform Duties; Free Trade between States; Temporary Provisions (secs. 88-95).

VI. Financial Aid to Any State (sec. 96); No Preference to Any State (99).

VII. Parliament Must Establish an Interstate Commission (sec. 101).

1. Preference as to railways by any state regulated; duty of commission (sec. 102).
2. Composition of interstate commission (sec. 103).
3. Saving of certain railway rates necessary for development of the territory of any state (sec. 104).

VIII. Taking Over Debts of the States (sec. 105): the Struggle for Funding in the First Parliament (see Lusk, in *Rev. of Rev.* (1903), XXVII, 333 ff.).

C. *The States* (secs. 106-120; Quick and Garran, 276-77, 927-66; Moore, 282-309): Preservation of existing laws and constitutions; conflict of state and federal laws; powers forbidden, etc.

D. *New States*: Government and acquisition of territories; alteration of state limits (secs. 121-24; Quick and Garran, 277, 967-77; Moore, 310-15).

E. *Miscellaneous*: Seat of government; aborigines not counted; governor's deputy (secs. 125-27; Quick and Garran, 277-78, 978-84).

F. *Amendments* (sec. 128; Quick and Garran, 278, 985-95; Moore, 316-23).

## CHAPTER VI.

### SELECT REFERENCES FOR GERMAN AND LATIN FEDERAL INSTITUTIONS.

#### SECTION LI. LITERATURE AVAILABLE FOR STUDY OF THE FEDERAL CONSTITUTION OF THE GERMAN EMPIRE.

##### I. Bibliographies.

Hart (A. B.), *Federal Government* (1891), 68-76, 187-188.

Levermore (C. H.) and Dewey (D. R.), *Political History Since 1815* (1889), 72-81.

*New International Encyclopaedia*, VIII, 448-49. References in the works of Arndt, Howard, Lowell, Schulze, Daresté, I, 159-160; Lalor, II, 367; and in other treatises. See also the Special Card Catalogue of the Department of Political Science and Sociology.

##### II. Geography.

Ausant, *Atlas Historique*.

Berghaus, *Deutschland Seit Hundert Jahren* (1859-62).  
*Century Atlas*.

Droysen, *Atlas*, Plates 22, 26, 31, 34, 38, 42, 46, 49, 50, 51, 59.

Freeman, *Historical Geography*, I, chap. viii, sec. 2, II, maps xxii-xxxliii, *passim*.

Hertslet, *Map of Europe by Treaty*.

Rhode, *Historischer Schul-Atlas*, Plates xi, xvii.

Standard atlases and encyclopaedias.

##### III. German Federations, 1806-1870: Confederation of the Rhine, 1806-13; German Federation, 1815-66; Zollverein, 1834-71; North German Federation, 1866-1870.

Baring-Gould (S.), *Germany Present and Past* (2 vols., 1879).

Behr, *Systematische Darstellung des rheinischen Bundes* (1808).

Binding (K.), *Die Grundung des Norddeutschen Bundes* (1889).

Bismarck (Otto von), *Gedanken und Erinnerungen* (2 vols., 1898);  
Eng. translation by A. J. Butler (1899).

Bryce (J.), *Holy Roman Empire* (new ed., 1904).

Duff (G.), *Studies in European Politics*.

Dyer (T. H.), *Modern Europe* (1861-64).

Falke, *Geschichte des deutschen Zollvereins* (1869).

Fyffe (C. A.), *Modern Europe* (2d American ed., 2 vols., 1887-90).

Hahn, *Der Krieg Deutschlands gegen Frankreich* (1871).

Hahn, *Zwei Jahre preussisch-deutscher Politik, 1866-1867* (1868).

- Hiersemenzel (C.), *Das Verfassungs- und Verwaltungsrecht des Norddeutschen Bundes und des deutschen Zoll- und Handelsverein* (2 vols., 1868-70).
- Hiersemenzel (C.), *Die Verfassung des Norddeutschen Bundes* (1867).
- Hudson (R.), "The German Federation," in *Political Science Quarterly* (1891), VI, 424-38.
- Kaltenborn (C. von), *Geschichte der deutschen Bundesverhältnisse und Einheitsbestrebungen von 1806 bis 1856* (2 vols., 1857).
- Kloppel (P.), *Dreissig Jahre deutscher Verfassungsgeschichte, 1867-1897* (1900).
- Klüber (J. L.), *Akten des Wiener Kongresses* (8 vols., 1816).
- Klüber (J. L.), *Staatsrecht des Rheinbundes* (1808).
- Kluppel (K.), *Geschichte der deutschen Einheitsbestrebungen bis zu ihrer Erfüllung, 1848-1871* (2 vols., 1872).
- Malet, *Overthrow of the German Confederation* (1870).
- Meyer (G.), *Grundzüge des Norddeutschen Bundesrechts* (1868).
- Müller (W.), *Political History of Recent Times, 1816-1875* (1882).
- Münster, *Der Norddeutsche Bund und dessen Uebergang* (1868).
- Nicolson, *Sketch of the German Constitution and of the Events in Germany from 1815 to 1871* (1875).
- Packisch, *Geschichte des Zollvereins* (1869).
- Thudichum, *Verfassungsrecht des Norddeutschen Bundes und des deutschen Zollvereins* (1870).
- Treitschke (H. von), *Deutsche Geschichte im neunzehnten Jahrhundert* (1870-85).
- Waitz (G.), *Grundzüge der Politik* (1862).
- Zalke (J.), *Geschichte des deutschen Zollvereins* (1869).

#### IV. Constitution of the Empire.

- Aegide and Klauhold, *Das Staatsarchiv* (1866 seq.).
- Archiv für das öffentliche Recht* (1886 seq.).
- Arndt (A.), *Das Staatsrecht des Deutschen Reiches* (1901). An excellent analytical treatise on the constitution and law, with citation of the sources and the literature.
- Arndt (A.), *Verfassung des Deutschen Reichs, Mit Einleitung und Kommentar* (2d ed., 1902).
- Arndt (A.), *Das Verordnungsrecht des Deutschen Reiches*.
- Auerbach, *Reich und Verfassung* (1871).
- Binding (K.), *Die rechtliche Stellung des Kaisers im heutigen Deutschen Reiche* (1898).
- Bornhak (C.), *Grundriss des deutschen Staatsrecht* (1907).
- Burgess (J. W.), *Political Science and Constitutional Law* (2 vols., 1890).
- Burgess (J. W.), "Tenure and Powers of the German Emperor," in *Political Science Quarterly* (1888), III, 334-84.
- Buy (Jean du), *Two Aspects of the German Constitution* (New Haven, 1894).
- Dareste de la Chavanne (F. R. and P.), *Les Constitutions Modernes* (2 vols., 1883).

- Demombynes (G.), *Constitutions Européennes* (2 vols., 1883).
- Fischer, *Das Recht des Deutschen Kaisers* (1895).
- Garner (J. W.), "The German Judiciary," in *Political Science Quarterly*, xvii (1902), 490-552, XVIII (1903), 512-64.
- Gerber (P.), *La Condition de l'Alsace Lorraine dans l'Empire Allemand* (1906).
- Goodnow (F. J.), *Comparative Administrative Law* (2 vols., 1893).
- Hänel (A.), *Staatsrecht* (1892).
- Hänel (A.), *Studien zum deutschen Staatsrecht* (1873-80).
- Hauser, *Verfassung* (1871).
- Held, *Verfassung* (1872).
- Held, *Das Kaiserthum als Rechtsbegriff* (1879).
- Hensel, *Die Stellung des Reichskanzlers*.
- Hirth, *Annalen des Deutschen Reiches* (1868 seq.).
- Howard (Burt Estes), *The German Empire* (1906). Best treatise in English; an excellent guide for university study; contains classified lists of authorities in foot-notes.
- Howard (Burt Estes), "Alsace Lorraine," in *Pol. Sc. Quarterly* (1906), XXI, 447-74.
- Kloepfel (P.), See above, division III.
- Laband (P.), *Das deutsche Kaiserthum* (1896).
- Laband (P.), *Die Wandlungen der deutschen Reichsverfassung* (1895).
- Laband (P.), *Das Staatsrecht des Deutschen Reiches* (4th ed., 4 vols., 1901).
- Leidig (E.), *Preussisches Staatsrecht* (1891).
- Lorenz (O.), *Kaiser Wilhelm und die Begründung des Reichs, 1866-1871* (1902).
- Lowell (A. L.), *Governments and Parties in Continental Europe* (2 vols., 1896), I, 232-85, II, 1-69. A scholarly discussion; useful as preparation for more detailed study.
- Mejer (O.), *Einleitung in das deutsche Staatsrecht* (2d ed., 1884).
- Meyer (G.), *Staatsrecht* (1878).
- Meyer (G.), *Lehrbuch des deutschen Staatsrechtes* (5th ed., 1899).
- Mohl, *Reichsstaatsrecht* (1873).
- Robinson (J. H.), "The German Bundesrath," in *Pub. University of Pa., Pub. Law Series*, III, No. 1. A very important monograph.
- Rönne, *Staatsrecht* (1876-77).
- Rönne, *Verfassungsrecht* (1882).
- Schulze (H. J. F.), *Lehrbuch des deutschen Staatsrechtes* (1881, 1886). One of the best treatises; literature is cited.
- Seydel (M.), *Commentar zur Verfassungsurkunde für das Deutsche Reich* (2d ed., 1897).
- Sybel (H. von), *Die Begründung des Deutschen Reiches durch Wilhelm I.* (7 vols., 1892-1899).
- Sybel (H. von), English translation of the first edition by Perrin (1890-97).

Treitschke (H. von), *Historische und politische Aufsätze* (3 vols., 1871).

Zorn (P.), *Das Staatsrecht des Deutschen Reiches* (2 vols., 2d ed., 1895).

Short Accounts: Burgess, in *Political Science Quarterly*, III (Mar., 1888), 123-135; Howard (Burt Estes), "Trial by Jury in Germany," in *Pol. Sc. Quart.*, XIX (1904), 650-72; Geffcken, in *Contemporary Review*, XLIX (Feb., 1886), 280-94, L (Aug., 1886), 277-94, LI (April, 1887), 586-601, LII (Dec., 1887), 880-94; Schulte, *Lehrbuch*, I, secs. 76-79; Woolsey, *Political Science*, II, 204-208; Calvo, secs. 51, 72; Wheaton, *Commentaries*; Bryce, *Holy Roman Empire* (new ed., 1904), 447-505; Hudson, "The German Empire," in *Pol. Sc. Quart.*, X, 656-63; Tuttle, in *Harper's*, LXIII (Sept., 1881), 691; Wilson, *The State* (rev. ed., 1903), 253 ff.; Crane and Moses, *Politics*, Index at "German Empire"; Macvane's Seignobos, *Political History of Europe Since 1814*, 456-517; Arndt, *Verfassung*, 28 ff.; Zorn, "Constitutional Position of the German Emperor," in *Annals of Am. Academy* (1899), XIV, 73-93.

Text of the Constitution: Burgess, *Political Science and Constitutional Law*, I, 285-312; Howard, *German Empire*, 403-35; Lowell, *Governments and Parties*, II, 355-77; James, in *Pub. Uni. of Pa., Polit. Econ. and Pub. Law Series*, No. 7 (1890); Arndt, *Verfassung des Deutschen Reichs*, 1-27; New York: *Convention Manual*, Part II, vol. III, 257-86; and the references in Hart, 74.

## SECTION LII. LITERATURE AVAILABLE FOR THE STUDY OF THE FEDERAL CONSTITUTIONS OF MEXICO AND ARGENTINA.

### I. United States of Mexico.

#### 1. Bibliographies.

Hart (A. B.), *Federal Government*, 81.

*New International Encyclopaedia*, XIII, 416-17.

Bancroft (H. H.), *Mexico* (6 vols.), see list of authorities in each volume.

Winsor (J.), *Narrative and Critical History*, VIII, 266 ff.

Foster (W. E.), *Reference Lists*, No. 90.

Clarke (R.), *Bibliotheca Americana*, 232-34.

#### 2. Geography.

See Hart, 81.

#### 3. Text of the constitution.

Abbott (G. D.), *Mexico and the United States*, 283-309.

*British and Foreign State Papers*, XIII, 695, 704, XXV, 683, XLVII, 472.

Daresté, *Constitutions Modernes*, II, 475-507; New York *Convention Manual*, Part II, vol. III, 319-56.

Moses, in *Annals of Am. Academy* (1891), II, 1-47.

## 4. Constitution and history.

- Abbott (G. D.), *Mexico and the United States* (1869).  
 Bancroft (H. H.), *History of Mexico* (1885-1888), V, VI.  
 Bancroft (H. H.), *Popular History of the Mexican People* (1887).  
 Bastian, in *Sammlung wissenschaftlicher Vorträge* (1869).  
 III, 463-502.  
 Castro, *Republic of Mexico in 1882* (1882).  
 Conckling (H.), *Mexico and the Mexicans* (1882).  
 Cubas (G.), *Republic of Mexico* (1876).  
 Dunn, *Mexico and Her Resources* (1889).  
 Hale, *The Story of Mexico* (1891).  
 Lester, *The Mexican Republic* (1878).  
 Mayer, *Mexico* (1853).  
 Nall (A. H.), *Short History of Mexico* (1890).  
 Richthofen, *Aeusseren und inneren Zustände der Republik von Mexico* (1859).  
 Salinas (D.), *The Riches of Mexico and Its Institutions* (1893).  
 Van Bruyssel, *Les États-Unis Mexicains* (1880).  
 Wells, *Study of Mexico* (1887).  
 Short Accounts: *New International Encyclopaedia*, XIII, 411-13; Lalor, II, 833-37; Morgan, in *N. A. Review* (1883), CXXXVI, 409-19; Dareste, II, 475-77; *Statesman's Year Book*. See Poole's *Index*; and the Special Card Catalogue.

## II. Argentine Republic.

## 1. Bibliographies.

- Dareste, II, 525.  
 Hart (A. B.), *Federal Government*, 84.  
 Lalor, *Cyclopaedia*, I, 118.  
*New International Encyclopaedia*, I, 782.  
 Special Card Catalogue of the Department of Political Science and Sociology.

## 2. Geography.

See the standard wall-maps, atlases, and encyclopaedias.

## 3. Text of the constitution.

- British and Foreign State Papers*, XIV, 942, XLII, 779, LII, 1066.  
 Dareste, II, 527-52; *New York Convention Manual*, Part II, vol. III, 3-28.

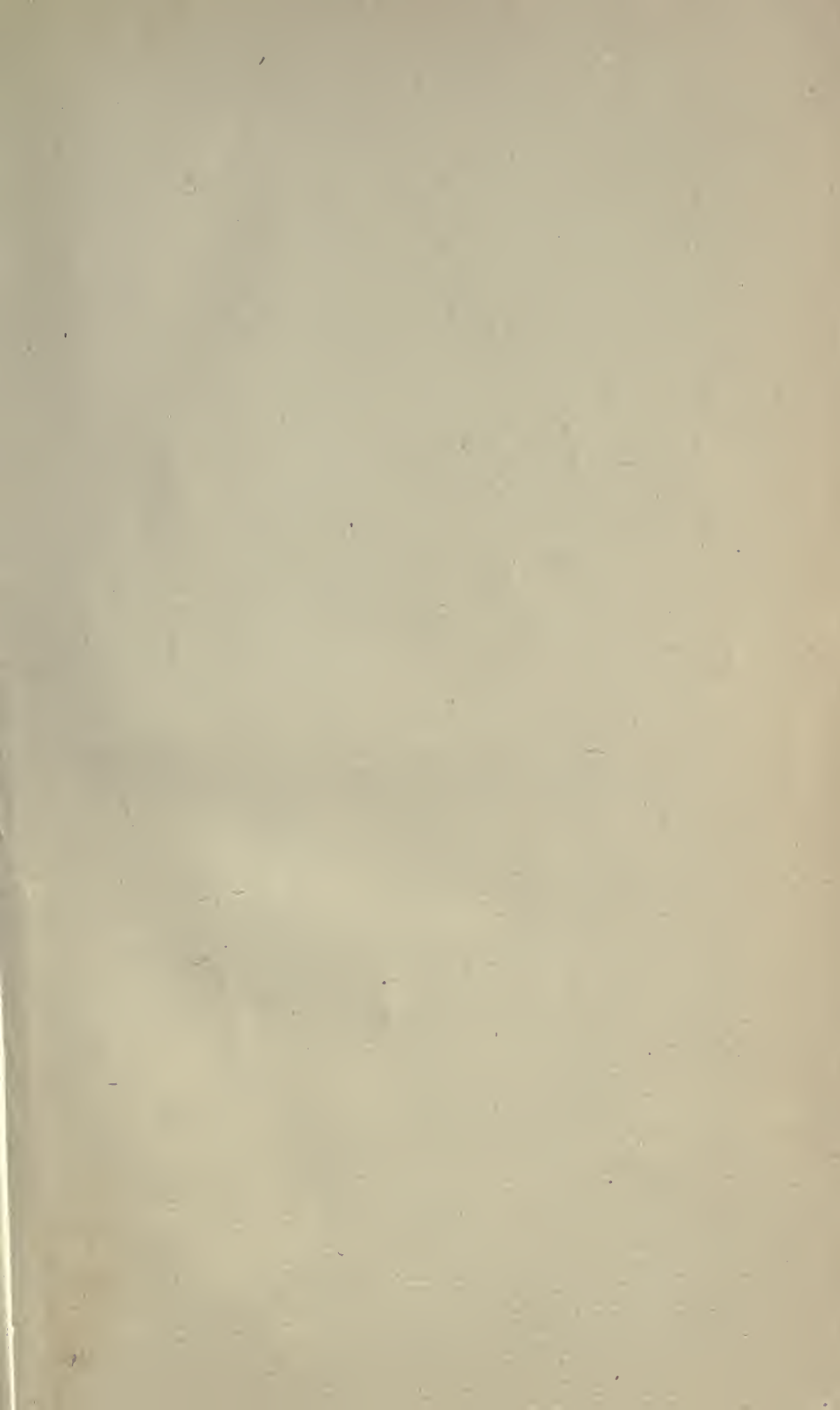
## 4. Constitution and history.

- Akers (C. E.), *History of South America* (1905).  
 Alberdi, *Organizacion che la Confederacion* (1858).  
 Butterworth (H.), *South America* (2 vols., 1898).  
 Carpenter (F. G.), *South America* (1903).



- Child, *Spanish-American Republics* (1891).  
Clemens, *La Plata Country* (1866).  
Dawson (T. C.), *The South American Republics* (2 vols., 1903).  
Deberle (A.), *Histoire de l'Amérique du Sud* (3d ed., 1897).  
Greger, *Die Republik Argentina* (1883).  
Guillain, *La République Argentine* (1889).  
King, *Twenty-Four Years in the Argentine Republic* (1846).  
Mulhall, *Handbook of the River Plate Republics* (1893).  
Napp, *Argentine Republic* (1876).  
Paxson (F. L.), *Independence of the South American Republics* (1903).  
Seeber (F.), *Great Argentina* (1904).  
Turner, *Argentina and the Argentines* (1892).  
Van Bruyssel, *La République Argentine* (1888).  
Short Accounts: Gallenga, *South America* (1881), chaps., xiii-xv; Daresté, II, 525-526; Lalor, I, 114-118; Calvo, sec. 59; Daireaux, in *Revue des Deux Mondes*, 3d ser., XI (1875), 877-90; *New International Encyclopaedia*, I, 779 ff. See Poole's *Index* and the Special Card Catalogue.









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