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JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

VOLUME IV

MUNICIPAL GOVERNMENT
AND
LAND TENURE

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TABLE OF CONTENTS.

	PAGE.
I. Dutch Village Communities on the Hudson River. By Irving Elting, A. B. (Harvard),	1
II. Town Government in Rhode Island. By Wm. E. Foster, A. M. (Brown University),	69
III. The Narragansett Planters. By Edward Channing, Ph. D. and Instructor in History, Harvard University,	105
IV. Pennsylvania Boroughs. By William P. Holcomb, Ph. D. (J. H. U.), Professor of History and Political Science, Swarthmore College,	129
V. Introduction to the Constitutional and Political History of the Individual States. By J. F. Jameson, Ph. D. and Associate in History (J. H. U.),	181
VI. The Puritan Colony at Annapolis, Maryland. By Daniel R. Randall, A. B. (St. John's College), Fellow in History (J. H. U.),	211
VII-VIII-IX. History of the Land Question in the United States. By Shosuke Sato, B. S. (Sapporo); Ph. D. and Fellow by Courtesy (J. H. U.),	259
X. The Town and City Government of New Haven. By Charles H. Levermore, Fellow in History and Ph. D. (J. H. U.); Instructor in History, University of California,	441
XI-XII. The Land System of the New England Colonies. By Mel- ville Egleston,	545
Index,	601

I

Dutch Village Communities

ON THE

HUDSON RIVER

"The Government of the United States is not the result of special creation but of evolution. . . .

"In the deepest and widest sense our American history does not begin with the Declaration of Independence, or even with the settlement of Jamestown and Plymouth; but it descends in unbroken continuity from the days when stout Arminius in the forests of northern Germany successfully defied the might of imperial Rome."

—*John Fiske.*

"The State of New York, once New Netherlands, affords us the remarkable phenomenon of a land settled by one body of Teutonic settlers and afterwards by the accidents of warfare transferred to another. The two sets of colonists were both of the same original stock and the same original speech; but the circumstances of their several histories had made them practically strangers to each other. On the Nether-Dutch of Holland and Zealand transplanted to the New World came in the Nether-Dutch of England. . . . Here is a field of special interest."—*Freeman.*

"But they [the Dutch] brought the patience, the enterprise and the courage, the indomitable spirit, and the hatred of tyranny, into which they had been born, into which their nation had been baptized with blood.

"Education came with them; the free schools, in which Holland had led the van of the world, being early transplanted to these shores; . . . an energetic Christian faith came with them, with its Bibles, its ministers, its interpreting books."—*R. S. Storrs.*

"The Netherlands divide with England the glory of having planted the first colonies in the United States; and they divide the glory of having set the example of public freedom. If England gave our fathers the idea of a popular representation, the United Provinces were their model of a federal union."—*Bancroft.*

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FOURTH SERIES

I

Dutch Village Communities

ON THE

HUDSON RIVER

BY IRVING ELTING, A. B.

BALTIMORE

N. MURRAY, PUBLICATION AGENT, JOHNS HOPKINS UNIVERSITY

JANUARY, 1886

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BALTIMORE.

DUTCH VILLAGE COMMUNITIES

ON THE

HUDSON RIVER.¹

No two rivers have been oftener compared than the Rhine and the Hudson, and the latter has sometimes been termed the "Rhine of America." In interest, in importance, and in beautiful scenery, they have much in common. Yet the comparisons between them, likely to be made by travellers, are chiefly of difference rather than of likeness. The Rhine which, rising in the Alps, pushes its way between France and Germany, through the Netherlands and, with divided channel, out into the Northern Sea, is a narrower, swifter running, more tortuous stream than the Hudson, which in fact is, in its later course, not properly a river but a fjord—an inlet of the sea—with one hundred and fifty miles of tide-water ebbing and flowing in a broader bed, and between higher mountains, than the Rhine can boast. The Rhine is famous for its castle-crowned hills, illustrating with their ruins an historical tale begun in the time of Cæsar. About the Hudson, our own Washington Irving has thrown a grace-

¹ In the preparation of this paper much of the material has been gleaned from records in County Clerks' offices, but special acknowledgments are due to the writings of Laveleye, Sir Henry Maine, J. R. Green, Dr. O'Callaghan, Mr. Brodhead, and Gen. J. Watts de Peyster; also to the assistance, generously rendered in the loan of books, documents, and MSS., by Mr. Samuel Burhans of New York, by the officers of the Huguenot Bank, the Rev. Ame Vennema, Messrs. Jacob Elting and Edmund Eltinge of New Paltz, and by Messrs. Wallace Bruce, C. B. Herrick, and Frank Hasbrouck of Poughkeepsie.

ful mantle of later romance and legend, and in variety and grandeur of natural scenery, the "Rhine of America" surpasses her foreign sister.

Between these two rivers, there exists, unnoticed by the traveller, and unnoted, for the most part, even by the historian, a bond of union formed by the institutional relationship of the village communities which have had their existence, with similar customs, similar laws, and similar forms of government, upon the banks of each stream.

It is only within a comparatively few years that, by reason of the researches of Von Maurer, Sir Henry Maine, and Laveleye, the term "village community" has gained a special and instructive significance for the student of institutional history. It has come to represent a civil unit, universal to all peoples—at least to those of Aryan stock—at a certain stage of the progress in civilization; with collective property or ownership of land in common, and with a representative governing body chosen by, and from, the co-owners of the domain, to administer the common affairs, as its distinctive characteristics. Absolute and individual rights in land, as we know them, Von Maurer and his followers assert to be of recent origin; separate property, they say, has grown, by a series of changes, out of common or collective ownership.¹

¹ The writer of this paper states this theory of the origin and growth of property rights among the Aryan peoples, because it is held by the majority of students who have given their attention to the subject; but he is not unmindful of the fact that the pains-taking and scholarly researches of his friend Dr. Denman W. Ross in America, and the investigations of others, *e. g.* Fustel de Coulanges, in Europe, have led them to oppose the view taken by Sir Henry Maine and to maintain that separate individual ownership *preceded* the various forms of ownership in common. A decision of this question, if it were possible, is not necessary for the present purpose of examining the village communities on the Hudson River. Whether or not the distribution of common lands among the primitive Germanic tribes was originally *per stirpes* and not *per capita*,—was, in short, collective tenure and not communism,—the local institutions of the Dutch villages in New York can hardly fail to impress the disciple of either theory with the closeness, and consequent importance, of the relationship of Old World and New World types of government.

Nowhere does this development of property rights in their successive forms exhibit itself more clearly than among the Germanic tribes which the Romans first met as pastoral groups moving from place to place, and subsisting upon the results of the chase, or upon the cattle which they herded on the common lands where they chanced to be. In this stage of race development there is essentially no holding of landed property, not even in common. That comes when the pastoral period is succeeded by the agricultural. The tillage of the soil brings with it ownership of land, but in the first instance a *common* ownership. The pastoral habits clung to the tribes, and they moved about, cultivating fresh lands of the unoccupied territory each year.¹ As the agricultural system became more important, the village community crystallized. The territory of the tribe was the Mark, in which each family was entitled to the temporary enjoyment of a share.² The woodland and pasturage were entirely common, and so continued even after the arable land had, in the progress towards individual property, been allotted and rendered subject to hereditary rights. Cæsar and Tacitus testify to the existence of the peculiar features of the village community among the Germanic tribes of the Rhine countries.³ Laveleye asserts that "the triennial rotation of crops was introduced into Germany, . . . before the time of Charlemagne."⁴ . . . "The parcels in each field had to be tilled at the same time, devoted to the same crops, and abandoned to the common pasture at the same period, according to the rule of *Flurzwang*, or compulsory rotation. The inhabitants assembled to deliberate on all that concerned the cultivation, and to determine the order and time of the various agricultural

¹ Laveleye, *Primitive Property*, p. 102.

² Laveleye, *Primitive Property*, p. 105.

³ Laveleye, *Primitive Property*, p. 105 (Citing *De Bel. Gal. L. VI. c. 29*, and *Tac. Germ. c. VII*).

⁴ Laveleye, *Primitive Property*, p. 110.

operations.¹ The member of the German village community was a *free man* in the best sense of the word; he had a share in the common property, he had a voice in the assembly of his equals, and was subject to no arbitrary ruler. It is not strange that groups of these freemen were able to make themselves masters of the empire of the Cæsars.

Yet their very power had in it the seeds of its own destruction. The force of the combined freemen of the tribe or canton led to conquest over other tribes; conquest led to the acquisition of the territory of the conquered, and this in turn resulted in that unequal division of the acquired territory, the outcome of which was the feudal system. The leader of the band of freemen became the most important personage in the group; equality ceased to exist: the chief took the largest portion of the new land, and gave it out in parcels to his under-companions in arms, thus becoming, in time, the lord of the manor, subject indeed to his king,—the sovereign of the whole territory,—but having within his own manor arbitrary rule, and having under him and subject to his entire control, men who, in early Germanic times, would have been his equals.

Thus at the end of the tenth century in western Europe, but especially in France, the conditions of society were in many respects the very opposite of those by means of which the primitive German village community fostered the principles of freedom, equality, and representative government. The voice of the people in government had practically ceased to be heard. “Land has become the sacramental tie of all public relations; the poor man depends upon the rich, not as his chosen patron, but as the owner of the land he cultivates, the lord of the court to which he does suit and service, the leader whom he is bound to follow to the host.”²

The earlier, freer, community-life, however, with the customs of common land tenure and of government by freemen

¹ Laveleye, *Primitive Property*, p. 111.

² Stubbs' *Constitutional History*, I., p. 167.

met in general assembly, survived the changes just described, in some of the more secluded portions of the country, notably in the forest regions of the lower Palatinate east of the Rhine,¹ and in those northern provinces of the Netherlands—Friesland, Groningen and Drenthe—whose free peoples Rome never conquered, and whose right of self-government no haughty baron ever suppressed. Throughout the Netherlands, in fact, the feudal system, though prevailing, never obtained the firm foothold it gained in France, and even in more distant England. The industrial spirit and the growth of the importance of towns among the Dutch had modified the feudal system in Holland in a marked degree.² “Holland was an aggregate of towns each providing for its own defence, administering its own finances, and governing itself by its own laws.”³ Each town was governed by “a ‘Wethouderschap’ or Board of Magistrates, consisting of several burgomasters⁴ and a certain number of Schepens or Aldermen.”⁵ The term of office was usually annual. The burgomasters and schepens were chosen by the eight or nine “goodmen” who were “elected by the ‘Vroedschap,’⁶ or great council of the town, which was itself composed, in most cases, of all the inhabitants who possessed a certain property qualification. There was also another important officer, named the ‘schout,’ who, in early times, was appointed by the Count, out of a triple nomination by the wethouders. The functions of the schout—whose name, according to Grotius, was

¹ Dr. H. B. Adams, in “The Germanic Origin of New England Towns,” Vol. I of this series, pp. 13, 14, describes the primitive character of the villages now to be found in the Odenwald and Black Forest.

² Brodhead’s History of the State of New York, 1609–1664, p. 192.

³ Brodhead’s History of the State of New York, p. 453.

⁴ This privilege of “burgher-recht,” which had to be acquired to entitle a resident to every municipal franchise, introduced some inequality among the people.

⁵ Brodhead’s History of the State of New York, pp. 453-4.

⁶ Motley, Dutch Republic, I., p. 37, mentions the “Vroedschappen” or councillors.

an abbreviation of 'schuld-rechter,' or a judge of crimes—were somewhat analagous to those of bailiff or county sheriff; combining, however, with them some of the duties of a prosecuting attorney.”¹

In the course of the fifteenth century “the inhabitants were authorized . . . to select from among themselves a certain number, double or triple, from which the head of the government elected and appointed such as it considered best qualified to act as ‘schepens’ or magistrates.”²

As early as 1295 the “Tribunal of Well-born Men,” or of “Men’s Men,” as it was sometimes called, was instituted in the Low Countries. It originally had separate criminal and civil jurisdiction. Afterwards the Courts were united, and the bailiff of each district was allowed to administer justice in both civil and criminal cases with “Thirteen elected good Men.” This tribunal, which resembled the modern jury, continued until the spring of 1614, when the number was altered to “Nine Well-born Men” who administered justice together.³

“The States-General,” says Brodhead, “was, in one sense, an aggregate assembly of the States of the provinces, each of which might send an unlimited number of deputies.”⁴

“The sovereign power of the province did not, however, reside in the States of Holland, but in the constituencies of

¹ Brodhead, *supra*, pp. 453–4.

² O’Callaghan, *History of New Netherland*, I., p. 391.

³ O’Callaghan, *History of New Netherland*, II., p. 40.

In view of the foregoing statements relating to early town government in the Rhine Countries, the position taken by Palfrey in his *History of New England* seems surprising. In Vol. I., pp. 275–6, he says: “The institution of towns had its origin in Massachusetts, and was borrowed thence by the other governments.” He speaks of the selectmen as if they were indigenous to New England, whereas they are found to be as old as the history of Germanic institutions. Certainly, if the ancestors of our Hudson River settlers had, in Holland, chosen their selectmen, varying in number from thirteen to eight, from a time as early as the thirteenth century and probably much earlier, their Dutch descendants did not need to borrow from Massachusetts “the institution of towns.”

⁴ Brodhead’s *History of the State of New York*, pp. 454–5.

the deputies. The real authorities were the college of nobles, and the municipal councils of the towns. To them each deputy was responsible for his vote, and under their instructions alone he acted. Thus the government of Holland, in fact, rested mainly upon its people.”¹ In 1477, the first assembly of the States-General resulted in a charter of liberties, which after successive demands by the towns, “guaranteed and confirmed the ancient privileges of the municipal governments, and recognized the right of the towns, at all times, to confer with each other, and with the States of the Netherlands. It declared that no taxes should be imposed without the consent of the States; and it distinctly secured the freedom of trade and commerce.”² Thus at the close of the sixteenth century, the liberty-loving Netherlanders had not only preserved much of the freedom of the people, which the feudal system had tended to crush out, but they had also adhered to a freedom of trade which brought them wealth, and made them the most important maritime country of the world.

Just at this time—the beginning of the seventeenth century—the enterprising East India Company sent out from Amsterdam a small vessel under command of an English sailor to discover, if possible, a northwest passage to India. So it happened that in the fall of 1609,—nearly a dozen years before the Mayflower landed at Plymouth,—Hendrick Hudson, in his Dutch vessel the “Half Moon,” sailed into the mouth of the river which now bears his name. Five years later the States-General of Holland granted a charter to the United New Netherland Company, giving it exclusive trade within the territory to which Holland considered that Hudson’s discovery entitled her. Its object was not colonization and improvement of the land, but the monopoly of the fur-trade with the Indians. Three trading posts were established on the river, at what is now New York, at Albany, and at

¹ Brodhead’s History of the State of New York, p. 452.

² Brodhead’s History of the State of New York, p. 437.

Rondout,—the mouth of the river, the head of navigation, and about midway between the two.

The charter of the first company expired in 1618, and in 1621 the States-General granted another to the West India Company, with the monopoly of exclusive trade as before. The general government of the company was lodged in a board or assembly of nineteen delegates. They might choose a Director-General and Council who “were invested with all powers, judicial, legislative and executive, but the resolutions and customs of Fatherland were to be received as the paramount rule of action.”¹

In 1624, in the same ship with Peter Minuit,—the first Director-General of the West India Company,—there came to New Netherland some families of Walloons from the frontier of Belgium and France. After a temporary settlement on Staten Island, they removed to the north-western extremity of Long Island on a bay called the “Wahle-Bocht,” or “the bay of the foreigners,” where they established a permanent home. With the exception of such small accessions, comparatively nothing was done towards advancing settlement and agriculture during the seven years which followed the incorporation of the West India Company. The States-General, accordingly, determined to plant “colonies” or seignorial fiefs, or manors, in the new country, and in June, 1629, ratified the document called “Freedoms and Exemptions,” granted by the Assembly of XIX of the West India Company, “to all such as shall plant any colonies in New Netherland.” This charter established a monopoly in land, as the previous one had in trade, and put the valley of the Hudson largely into the hands of proprietors who were favorites of the company. Each proprietor or “Patroon” was to undertake to plant a colony of fifty souls, upwards of fifteen years old, and for that purpose might extend his limits four (that is sixteen English) miles on one side of the river, or half that

¹ O’Callaghan, *History of New Netherland*, I., p. 90.

distance on both sides, "and so far into the country as the situation of the occupiers will permit."¹ The company was to retain the intervening lands, and no one was allowed to come within thirty miles distance without the consent of the "Patroon;" subject, however, to the order of the commander and council. The Patroons were to hold the lands "as a perpetual inheritance," establish officers and magistrates in the cities, and dispose of their property by will. The colonists were to be freed by the company from payment of customs, taxes, excise, or other contributions, for the space of ten years, after which they should pay the usual exactions. The most liberal clause of the charter is the one which grants to other persons, who should go and settle there, but without the privileges of the Patroons, as much land (with the approbation of the Director-General and Council) "as they shall be able properly to improve."²

The Patroons and colonists were to endeavor to support a minister and a schoolmaster, that thus the service of God and the zeal for religion may not grow cool, and be neglected among them; and that they do, for the first, procure a comforter of the sick there."³ But the colonists were prohibited from manufacturing, "on pain of being banished, and as perjurers to be arbitrarily punished." The Patroons were entitled to the services of the colonists, and were to be supplied with "blacks" by the company. Thus the feudal tenure of Europe, in a somewhat modified form, but conferring less liberty than the Dutch had enjoyed in the Fatherland, was imposed upon the settlers of the Hudson river valley by the States-General of Holland acting under the instigation of the Assembly of XIX. of the West India Company. "While it secured the right of the Indian to the soil and enjoined

¹ O'Callaghan, *History of New Netherland*, I., p. 113. (Citing Hol. Doc. ii., pp. 98, 99.)

² O'Callaghan, *History of New Netherland*, I., p. 118.

³ O'Callaghan, *History of New Netherland*, I., p. 119.

schools and churches, it scattered the seeds of servitude, slavery and aristocracy. While it gave to freemen as much land as they could cultivate, and exempted colonists from taxation for ten years, it fettered agriculture by restricting commerce and prohibiting manufactures.”¹

Kilien Van Rensselaer, a merchant of Amsterdam and one of the directors of the West India Company, became a Patroon in 1630 under this “Freedoms and Exemptions” charter of 1629, and secured the grant of a large tract of land on both sides of the Hudson, including the present site of Albany. As Patroon he was “empowered to administer civil and criminal justice in person or by deputy within his colonie, to appoint local officers and magistrates; to erect courts and to take cognizance of all crimes committed within his limits.”²

Nominally an appeal lay from the manorial courts to the Director-General and Council at Fort Amsterdam, in cases

¹ Moulton, *History of New York*, pp. 387, 388.

It should be especially noted that in this earliest charter of 1629, notwithstanding its restriction of civil liberties, the Dutch recognized the prime importance of establishing in their colony here the foundations of religion and education. So intimately were the two connected that, as Dr. Baird mentions in his “*Huguenot Emigration to America*” (Vol. I., p. 185), in 1656 some colonists set sail for New Netherlands in three ships, one of which carried a schoolmaster who was to be also “a comforter of the sick,” till the minister arrived. As early as 1633, Everardus Bogardus, the first minister in New Amsterdam, and Adam Roelandsen, the schoolmaster, came over from Holland together.—(Brodhead, p. 223).

Of the character and influence of the religious life of the Hudson river colonists, something will be said in connection with the account of New Paltz, which in most respects may be called the typical village community of the Hudson river.

The part which Dutch influence played in shaping the educational life of America, has not been given the general recognition it deserves. Our free public school system, of which we are so justly proud, seems to have its beginnings distinctly traceable to the earliest life of the Dutch colonies

² O’Callaghan, *History of New Netherland*, I., p. 320.

(For Van Rensselaer Patent, see Docs. relating to Colonial Hist. N. Y., Vol. I., p. 44).

affecting life or limb, or where the amount in controversy was over twenty dollars; but this right to appeal was rendered for the most part nugatory, by the exaction of a promise from the colonist at the time of settlement, that he would not resort to the higher tribunal. Thus, besides being subject to the laws prevailing elsewhere in New Netherland,—the civil code, the ordinances of the Province of Holland and of the United Netherlands, the edicts of the West India Company and of the Director and Council at Manhattan,—the colonists of the manor were also subject to such laws as the Patroon or his deputies might establish.¹ “Theoretically,” says Mr. Brodhead, “the Patroon was always present in his court baron.”² Practically, the government of the colony was administered by a court composed of two commissaries and two schepens, assisted by the colonial secretary and the schout.”³ The Patroon bore the expenses of preparing the land for occupancy. He set off farms, erected farm buildings, stocked them with tools and cattle, and so brought the farmer to his

here in America, and to have had its prototype in “the free schools in which,” says Dr. Storrs (*American Spirit and the Genesis of It*, p. 47), “Holland had led the van of the world.” Mr. Motley, in a letter to the St. Nicholas Society (cited by Dr. Storrs, *supra*), intimates that the New England colonists gained their educational impulses more from the Netherlands than from their own country. “It is very pleasant to reflect,” he says, “that the New England pilgrims, during their residence in the glorious country of your ancestry, found already established there a system of schools which John of Nassau, eldest brother of William the Silent, had recommended in these words: ‘You must urge upon the States-General that they should establish free schools, where children of quality as well as of poor families, for a very small sum, could be well and Christianly educated and brought up. This would be the greatest and most useful work you could ever accomplish for God and Christianity, and for the Netherlands themselves.’ . . . This was the feeling about popular education in the Netherlands during the 16th century.” In New Amsterdam in 1647, the Nine Men approved arrangements “for finishing the church and reorganizing the public schools.”—(Brodhead, *Hist. N. Y.*, p. 476).

¹ Brodhead’s *Hist. of N. Y.*, p. 305; O’Callaghan’s *Hist. of N. Y.*, p. 321.

² “Studies” I., VII, *Old Maryland Manors*, pp. 11, 12.

³ Brodhead’s *Hist. of N. Y.*, p. 305.

work unhampered by want of capital. In return for these outlays the civil code gave the Patroon many of the rights incident to lordship under the feudal system. He was not only entitled to the rent¹ fixed upon, but also to a portion of the increase of the stock and of the produce of the farm. Even to the remainder he had pre-emptive right, and the farmer was not at liberty to sell any of his produce elsewhere, until it had been refused by the Patroon. He required each colonist to grind all grain at his mill, to obtain license from him to fish or hunt within the domain, and as "lord of the manor," he was the legal heir of all who died intestate within the "colonie."²

This manor, thus early created under Dutch rule,³ may stand as a type of the later ones, most of which were established after the English obtained possession of the territory, and before the close of the 17th century. The proprietary on the Hudson river, therefore, had the power of establishing the feudal system as they had in Maryland, where, as Mr. Geo. Wm. Brown has stated, "express provision was made for manors, lords of manors and manorial courts."⁴

In the patent for the Livingston manor given under the hand and seal of Gov. Dongan, July 22, 1686, provision is made for constituting "in the said Lordship and Mannor one Court Leet and one Court Baron⁵ . . . to be kept by the said Robert Livingston his Heirs and assignes for ever or their or any of their Stewards Deputed and appointed with

¹ The rent was usually paid in kind on the Hudson as it was in "Old Maryland Manors." See "Studies," I., VII., p. 10.

² Brodhead's Hist. of N. Y., p. 305; O'Callaghan's Hist. of New Netherland, I., pp. 325-6.

³ The summary above is from the Charter of Rensselaerswyck. In 1646, Kieft's manorial grant to Van der Donck was of territory on which Yonkers is now the chief town.

⁴ Geo. Wm. Brown, *The Origin and Growth of Civil Liberty in Maryland* (1850), p. 7. Conf. Maine, *Village Communities*, pp. 139, 140.

⁵ "The ownership of the manorial estate carried with it in New York the right to hold two courts," as Mr. Johnson says it did in Maryland—"Studies," *supra*, p. 11.

full and ample Power and authority to Destraine for the Rents Services and other Sumes of Mony Payable by Reason of the Premises and all other Lawfull Remedyes and meanes for the haveing . . . and Enjoyeing the Premissesse and every parte and Parcell of the same and all Wasts Estrayes Wrecks Deodands Goods of felons happening and being forfeited within the said Lordshipp and Mannor,"¹ together with the right of advowson and other incidents of feudal tenure, in which these Hudson river domains of the Patroons were closely allied to the "Old Maryland Manors" as set forth in Mr. Johnson's interesting monograph.²

So distasteful, to the Dutch settlers who had enjoyed a greater freedom in the Fatherland, were these restrictions of the manors, that the settlements did not rapidly increase.³ The beginnings of governmental life on the Hudson river, therefore, were unfortunate for the growth of free institutions. Monopoly—in trade, in land,⁴ and in government—seemed to be the foundation on which the settlers in New Netherland must build their state.⁵

¹ Docs. Relating to Col. Hist. of N. Y., III., pp. 375-6.

² "Studies," *supra*.

³ Evidence of the unpopularity of the manor government may be found in a letter written by the Earl of Bellomont to the Lords of Trade, dated, "New Yorke, Jan^y 2^d 1700/1." He says: "Mr. Livingston has on his great grant of 16 miles long and 24 broad but 4 or 5 cottagers, as I am told, men that live in vassallage under him and work for him and are too poor to be farmers having not wherewithall to buy Cattle to stock a farm. Collonel Courtland has also on his great grants 4 or 5 of these poor families;" other like cases being mentioned.

⁴ In the same letter he adds: "I believe there are not less than seven millions of acres granted away in 13 grants, and all of them uninhabited . . . except M^r Ranslaer's grant, which is 24 miles square, and on which the town of Albany stands."—Docs. relating to the Hist. of N. Y., IV., pp. 822-3.

⁵ The opinion, here expressed, that the manor system on the Hudson river hampered the early development of representative government, may seem to be inconsistent with Mr. Johnson's statement (Old Maryland Manors, *supra*, p. 20) that, "it should not be thought that the aristocratic character

No Dutch village community seemed likely to rise under the first charter of 1629, and the need of inducing settlers to colonize New Netherland for agricultural purposes convinced the States-General of Holland that the monopoly they had unwisely established must, to some extent, be broken. In 1638 trade was taken from the exclusive privileges of the West India Company and made free. In 1640 there was granted a more liberal charter,¹ by which any one who should go to New Netherland with five souls over fifteen years of age was to be acknowledged a master or colonist, and entitled to claim 100 Morgen (200 acres) of land. When the settlements of these masters increased so as to become villages, towns, or cities, the company was bound to confer upon them subaltern or municipal governments.²

of the manor was injurious to the growth of liberal ideas. The manor was a self-governing community." Is it not true, however, that it was "a self-governing community," only in so far as the power of the lord of the manor had been restricted by the people? And would not the "liberal ideas" of the Dutch settlers have borne earlier and richer fruit if the character of the manor had not checked their growth? This is evidently the opinion of Mr. Fernow who (in his introduction to vol. XIII. of Docs. relating to Col. Hist. of N. Y.), says that the "object of the Patroons had been, at first when they obtained their privileges in 1629, rather a participation in the Indian trade than the colonization of the country; their new plan was to divide the province into manors for a privileged class to the exclusion of the hardy and industrious pioneer and sturdy and independent yoeman." All the more noteworthy and commendable, is the persistent and successful struggle of the "sturdy and independent yoeman" of Holland in fighting his way towards free representative government when opposed by such extensive manorial grants to the Patroons, who were in favor with the powerful West India Company.

¹ Docs. Relating to Col. Hist. of N. Y., I., pp. 119-123.

² The charter of 1640, which thus contained more liberal provisions for agricultural settlement, still retained clauses for erecting manors under Patroons; but they could only claim about a quarter of the territory which they might have claimed under previous charters, and their authority over the colonists was somewhat lessened. In 1655, the Directors of the West India Company reiterated their disinclination, any longer to grant colonies like Rensselaerswyck to Patroons. Docs. Relating to Col. Hist. of N. Y., XIV., pp. 332-3.

The Dutch settlers, at this time established in New Amsterdam and vicinity, had given Kieft, the Director-General, to understand plainly that they demanded a voice in the government. In 1641, the brutal murder of Claes Smits by an Indian was the occasion of the first recognition by the Director-General of the people's demand. "All the masters and heads of families, residents of New Amsterdam, and its neighborhood, were therefore, invited to assemble in the fort on the 28th day of August then and there to determine on 'something of the first importance.'" ¹ This, the first popular assembly in New Netherland, promptly chose "Twelve Select Men" ²—all emigrants from Holland—to consider the propositions submitted by the Director. ³

The step towards freedom gained at this time was never lost. Before Kieft dismissed them, ⁴ as having served in settling the Indian affair, the purpose for which they were elected, the "Twelve Men" had demanded for New Amsterdam, and the neighboring settlements, the popular representation of Holland, urging that "the Council of a small village in Fatherland consists of five @. seven Schepens." ⁵ In 1643,

¹ O'Callaghan, *Hist. of New Netherland*, I., p. 241.

² Mr. Palfrey would apparently have us believe that this selection of representatives by the Dutch settlers at New Amsterdam must somehow be accounted for by a borrowing of the methods of the Dorchester colonists in Massachusetts (see p. 10, *supra*). Neither perhaps had need to borrow what had been known for centuries to the ancestors of both, but certainly the Dutch knew, even better than the English, the advantages of representative government.

³ Brodhead's *Hist. of N. Y.*, p. 317.

⁴ *Hol.*, Doc. III., pp. 175–180, cited by O'Callaghan, *Hist. N. N.*, Vol. I., pp. 248–9. The Director evidently did not intend that the "Twelve Men" should have any permanent share in the government. Whether he allowed them to be chosen merely "to serve him as a cloak, and as cats-paws,"—perhaps to shield him from responsibility, as Van der Donck strenuously asserts, or whether for some more worthy purpose, the fact remains that it was a concession by the arbitrary ruler in the direction of representative government.

⁵ *Docs. Relating to Col. Hist. of N. Y.*, I., p. 202.

“Eight Men” were chosen by the commonalty and addressed the West India Company upon the serious Indian troubles. They renewed, in vigorous language,¹ the demand of the “Twelve Men” for representative government, and in 1646 the inhabitants of the village of “Breuckelen” (Brooklyn) were given the municipal privileges they desired. “They were to have the right of electing two schepens or magistrates, with full judicial powers, as in the Fatherland. Those who opposed the magistrates in the discharge of their duties were to be deprived of all share in the common lands adjoining the village.”² Thus at the first conferring of self-government upon this Dutch village, named for an ancient village in Utrecht, the evidence of a system of common land tenure is met with.

Under Stuyvesant, as under Kieft, the people of New Amsterdam clamored for their rights. Reforms were pressed upon him. New Amsterdam was in bad condition. Most of the lots were unimproved. Hog-pens, “little houses,” and other nuisances encroached upon the public streets, and, in 1647, “fence viewers” were appointed, by whom, in addition to other duties, every new building had to be approved. In the same year, Stuyvesant and his council granted to the inhabitants of the Island of Manhattan and two or three adjacent towns, the privilege of nominating “a double number

¹ Docs. Relating to Col. Hist. of N. Y., I., p. 213. “It is impossible,” they say in their letter to the Directors, “ever to settle this country until a different system be introduced here,” and they suggest the election of representatives by the people to vote as deputies with the Director and Council.

² Brodhead, Hist. of N. Y., pp. 421-2. It is curious to note the strength, at that early day, of the opinion that “public office is a public trust.” At New Amsterdam, in April, 1654, the Director-General sends following order to one Jan Everson Boot, who had been elected schepen of “Breuckelen.” “If you will not accept to serve as schepen for the welfare of the village of Breuckelen with others, your fellow residents, then you must prepare yourself to sail in the ship ‘King Solomon’ for Holland, agreeably to your own utterance,” he having said he would rather go than serve. Docs. Relating to Col. Hist. of N. Y., XIV., p. 255.

of persons from the most notable, reasonable, honest and respectable of our subjects, from whom we might select a single number of Nine Men to them best known, to confer with us and our council, as their Tribunes, on all means to promote the welfare of the commonalty as well as that of the country.”¹

Not, however, until 1652 did the people succeed in obtaining for New Amsterdam itself a municipal form of government. In accordance with the 17th clause of the Provisional Order of 1650,² it consisted of “one schout, two burgomasters³ and five schepens,⁴ to be elected by the citizens in the manner usual in ‘this city of Amsterdam,’ to act as a Court of Justice with the right of appeal in certain cases ‘to the Supreme Court of Judicature.’” This advance towards a representative government in New Amsterdam marked the beginning of a new era throughout the whole of New Netherland, which was not, however, without its struggles between the people and Stuyvesant’s arbitrary exercise of power.⁵ In

¹ O’Callaghan, *Hist. of New Netherland*, II., p. 39.—(Citing *Alb. Rec.* VII., pp. 72-74, 81-84.)

These “Nine Men” were of more importance in the affairs of the colony than any previous representative body.—Brodhead’s *Hist. of N. Y.*, p. 474.

² O’Callaghan, *Hist. of New Netherland*, II., p. 192.—(Citing *Alb. Rec.* IV., pp. 68, 72, 73, 75; VIII., pp. 8-13, 16-19, 42.)

³ The name and office of the burgomaster in Holland may be traced as early as the 14th century.—O’Callaghan, *Hist. of New Netherland*, II., p. 211.

⁴ The word *schepen*, meaning, as here, one of the local magistrates in Holland, is older still, probably originating about 1270, says one writer; but that date is not early enough. The word was used in an instrument said to have been signed and sealed in 1217, and quoted by Motley, *The Dutch Republic*, I., p. 35.

⁵ The difficulties with which the people had to contend are given a ludicrous coloring in a letter from Van Dinclagen to Van der Donck: “To describe the state of this government to one well acquainted with it is a work of supererogation; it is washing a black-a-moor white. Our Grand Muscovy Duke goes on as usual, resembling somewhat the wolf—the older he gets the worse he bites. He proceeds no longer by words or letters but by arrests and stripes.”—O’Callaghan, *Hist. of New Netherland*, II., p. 170; citing *Hol. Doc.* VI., pp. 5, 7, 53-60, 67, 68. The letter was in Latin.

April, 1652, Beverwyck was declared to be independent of the Patroon's colony, "and the germ of the present city of Albany was released from feudal jurisdiction,"¹ its court being established at Fort Orange. Two years later, Breuckelen and adjacent towns² secured the privilege from Stuyvesant of having a greater number of schepens, and district courts were organized, (composed of delegates from each town-court, together with the schout,) which had general authority over roads, the establishment of churches and schools, and the making of local laws, subject to the approval of the provincial government.³

About the same time, there came an increase in immigration, both from abroad and from New England. English settlers, fleeing from the persecutions of New England, had already established themselves in towns under the Dutch government, which, in New Netherland, still allowed the broad religious toleration of Holland. With the exception of some persecution of the quakers under Stuyvesant's personal lead, the principles which made Holland the asylum of the persecuted were observed by the Dutch in America. There came to the Hudson river, Walloons from the Spanish Netherlands, Huguenots from France, Puritans from New England, and Waldenses from Piedmont,—all seeking freedom from persecution, and finding it in New Netherland rather than in New England, where, at this time in Massachusetts colony, civil rights were dependent upon church membership. In New Netherland, such rights, fought for step by step, depended simply upon the ownership in land, as did the rights of the members of the early Germanic village community.

Turning from this hasty sketch of the growth of representative government in New Amsterdam and vicinity before the year 1650, we may take this middle year of the 17th

¹ Brodhead's Hist. of N. Y., p. 535.

² Midwout and Amersfoort.

³ Brodhead's Hist. of N. Y., p. 580.

century as an approximate starting point for an examination in detail of the peculiar characteristics of the Dutch village communities; for, from this time forward, the agricultural settlements increased more rapidly, and, under conditions of freer government, villages and towns grew up, on lands granted directly to those who were to cultivate the soil. Hoping to advance such settlement, van Tienhoven, the Dutch Secretary under Stuyvesant, sent information to Holland in March, 1650, in regard to taking up land in New Netherland. "Before beginning to build," he said, "'twill above all things be necessary to select a well located spot on some river or bay, suitable for the settlement of a village or hamlet. This is previously properly surveyed and divided into lots, with good streets, according to the situation of the place. This hamlet can be fenced all around with high palisades or long boards and closed with gates.¹ . . . Outside the village or hamlet, other land must be laid out which can in general be fenced and prepared at the most trifling expense."²

The draft of "Freedoms and Exemptions," in the same year, (1650) states that, "on the arrival of the aforesaid persons in New Netherland they shall be allowed and granted the privilege of choosing and taking up under quit rent or as a fief, such parcels of land as they shall in any way be able to cultivate for the production of all sorts of fruits and crops of those parts," on condition that they should be deprived of the land, if it were not cultivated within a year. They were to "enjoy exemption from Tenths," for a term of — years, "and

¹ This enclosure is clearly analogous to the *Hedge* of the early Teutonic village, which, through the Saxon *Tun*, is perpetuated in our English word, *Town*. For the existence of a similar survival in New England and a more complete statement of the interesting derivation of the word *Town*, see "Studies," I., "Germanic Origin of New England Towns," pp. 26-31.

² Docs. Relating to Col. Hist. of N. Y., I., pp. 365, 367-8. This may be called the Village Mark in New Netherland,—a larger *town* around the smaller.

thenceforth one additional year's exemption for every legitimate child they shall convey thither or get there." They might also cut and draw timber from the public forests, and hunt and fish in the public woods and streams.¹ The company sometimes advanced land, farm implements, and cattle, for the term of six years, the farmer being "bound to pay yearly one hundred guilders and eighty pounds of butter rent for the cleared land and bouwerie."²

It has been noted³ that as early as 1646, the village of Breuckelen had about it common lands in which the inhabitants had a share, to be taken as a penalty from those who opposed the schepens, or magistrates, of the town. In New Amsterdam itself, where the people had not at first settled for agricultural purposes, the right of pasturage in common lands prevailed. In 1649, the Director and Council passed a resolution to the effect that "the farmers on the Island Manhattan requesting by petition a free pasturage on the Island Manhattan, between the plantation⁴ of Schepmoes and the fence of the Great Bouwery, No. 1, the petitioners' request is provisionally granted, and that no new plantation shall be made or granted between said fencing."⁵ What is now City Hall

¹ Docs. Relating to Col. Hist. of N. Y., I., p. 401.

² Docs. Relating to Col. Hist. of N. Y., I., p. 371. This word "bouwerie," which occurs so frequently in early Dutch documents, is an interesting one. The verb in Dutch is "bouwen," to build; to till, plough. "Bouwerie" is used to designate in most cases, not only the portion of the land which is tilled or ploughed, but also that portion on which the farm *buildings* stand. In other words, it means usually the "home-lot," which, in the village communities on the Hudson, as in those on the Rhine, and in other parts of Europe (Laveleye, *Prim. Prop.*, p. 112), was in early times the only holding that was strictly in severalty.

³ See p. 20, *supra*.

⁴ Here, as often, "plantation" and "Bouwery" are used as opposite terms. Dr. O'Callaghan, *Hist. of New Netherland*, II., p. 291, Note, says of this use: "By bouweries are meant those farms on which the family resided; by plantations those which were partly cultivated, but on which no settlers dwelt."

⁵ Docs. Relating to Col. Hist. of N. Y., XIV., p. 110.

Park in New York, bounded by Broadway, Nassau, Ann and Chambers streets, was, as late as 1686, perhaps much later, known as the Village Commons, where the droves of cattle were sent morning and evening to pasture.¹

These village rights of common in regard to land were accompanied, in New Amsterdam, by rights of common participation in the deliberative assembly of the people, as they were in the forests of Germany centuries before. The record runs: "Tuesday Novbr. 11. 1653. Present at the meeting in the City Hall of New Amsterdam," two Burgomasters and three Schepens named. Then follows the statement that "some of the most influential burghers and inhabitants of this city having been lawfully summoned the following appeared," naming twenty-three. "To whom the said Hon^{bl} Burgomasters and Schepens propose that, whereas they have asked the community to provide means for paying the public expenses and keeping in repair the works . . . the aforesaid Magistrates ask the Community whether they will submit to such ordinances and taxes, as the Magistrates may consider proper and necessary for the government of this city. They all answered 'Yes!' and promised to obey the Hon^{bl} Magistrates in every thing as good inhabitants are in duty bound to do confirming it with their signatures."² One needs no great power of the imagination to fancy that he hears, in the unani- mously spoken "Yes" of the Dutch assembly, something very like the shaking of spears and clashing of shields³ with which the sturdy, warlike Teutons signified assent to the plans of their chieftains in the open-air meetings of the tribe!

The voice of the colonial settlers had found tolerably free expression in local affairs, in some of the village communities⁴ on Long Island earlier than the organization of municipal

¹ Valentine, *History of New York City*, p. 281.

² Docs. Relating to the Col. Hist. of N. Y., XIV., p. 220.

³ Green's *Hist. of the English People*, I., p. 15.

⁴ "Gravesande" (1645); Breuckelen (1646); Amersfoort (1647).

government in New Amsterdam. The majority of the settlers in the neighboring hamlets were Dutch; some, however, were English, who had come from New England to enjoy religious freedom among the Dutch colonists. They took their lands by Dutch title, and willingly placed themselves under Dutch laws and modes of government.¹ Director Kieft's patent² to the town of Gravesend, in the year 1645, when a few settlers had moved there from New England, is a veritable Dutch charter of civil and religious freedom. The patentees, it reads, were "to have and enjoye the free libertie of conscience according to the costome and manner of Holland, without molestation or disturbance from any Madgistrate or Madgistrates or any other ecclesiasticall Minister that may p'tend iurisdiction over them, with libertie likewise for them the s^d patentees theyr associates heyres &c. to erect a bodye politique and ciuill combination amongst themselves, as free men of this Province & of the Towne of Gravesend & to make such ciuill ordinances as the Maior part of y^e Inhabitants ffree of the Towne shall think fitting for theyr quiett and peaceable subsisting & to nominate elect & choose three of y^e ablest approved honest men & them to present annuallie to y^e Gouvernor Generall of this Province for the tyme being, for him y^e said Gouvern^r to establish and confirme;" which three men were to act as a local court with the usual jurisdiction. Five years after this patent was granted, the record of "severall orders agreed vppon by and with consent and approbation of the inhabitants of Gravesend," shows that "the first inhabitants agree togeather att Amesfort that they would fence in a certaine quantitie of Land to Conteine eight and twenty shares, the s^d land to be fenced with post and raile in one Common fence and to have it compleated by a certaine daye by them agreed vppon; vppon the penaltie of forfeiting as much as the rest of the s^d fence might come vnto;

¹ Docs. Relating to Col. Hist. of N. Y., I., p. 181.

² Doc. Hist. of N. Y., I., p. 411. (See Gravesend Records).

. . . The said eight and twenty shares were devided by lott; and every one injoynd to build and inhabit in the towne by a daye agreed vppon for the mutual strengthening of one another, for the peace with the Indians being new, and rawe there was still feares of theyre vprising to warre. . . . It was likewise agreed & ordered that none of the inhabitants should sell theyre lotts to any whatsoeuer, but first to propound it to the towne in generall¹ & in case the towne would not buye then hee to have libertie to sell to any, vnlesse hee were notoriouslie detected for an infamous person or a disturber of the common peace . . . It was therefore ordered that the men should at several times as they thought fitting view all the fences and when they found defects to giue warning to the neighbors to make upp theyre fences according to order."²

The extent to which the principles of holding property in common prevailed among the Dutch settlers in the vicinity of New Amsterdam, with reference to personal property as well as to land, is evidenced by a deed³ for land and *cattle* on Long Island in 1651, granting, "all whatsoever the vendor has thereon and is belonging to him together with thirty-five and one half (*sic*) goats;" but the deed adds: "which the purchaser now takes at his risk and hazard,"—a saving clause perhaps to avoid trouble in the division of the odd goat!

A document dated August 27, 1657,⁴ indicates the custom of furnishing to a town a certain quantity of meadow land, presumably beyond the town proper. It states that Petrus Stuyvesant on petition showing the need of the inhabitants of "the new begun Town of Utrecht and of those who might

¹ This was certainly a serious encumbrance upon individual rights in land. The same restriction is found in the Germanic Mark, where "no one could sell his property to a stranger without the consent of his associates, who always had a right of preemption."—Laveleye, *Prim. Prop.*, p. 118.

² Docs. Relating to Col. Hist. of N. Y., XIV., pp. 128–9.

³ Docs. Relating to Col. Hist. of N. Y., XIV., p. 143.

⁴ Doc. History of N. Y., I., p. 416.

hereafter dwell there, allowed unto them as to others a parcel of meadow land lying on Long Island by the easterly Hook of the Bay of the North River, over against Conyen Island." Two years afterward, it is recorded that twenty-four inhabitants having plantations drew lots by numbers for the meadows which had been divided into twenty-four parcels. Two plantations, whose owners were named, might draw two lots each.¹ This distinction between meadow or pasture land and the tilled land, is observed also in the documents relating to the proposed establishment in 1658 of "a new village at the north-eastern extremity of Manhattan Island, 'for the promotion of agriculture, and as a place of amusement for the citizens of New Amsterdam.' To encourage this settlement to which the name of 'New Haerlem' was given, each inhabitant was to receive from eighteen to twenty-four morgens of tillage, and from six to eight morgens of pasture land . . . The magistrates were to be nominated at first by the settlers, . . ."² Another illustration of the marked separation of lands that were to be devoted to different uses, is found in the provision for a "Townshipp" on Staten Island: "A Towne, the which shall bee divided into lotts according to the number of Inhabitants proposed . . . That each home lott shall have . . . acres of Ground to build a house upon and for gardens or other necessary accomodacons. . . . That there shall bee allotted of Ploughland or Arable ground . . . acres and of Meadow a convenient proporcon." Liberty of conscience, and the selection of their own minister, was granted. The latter was to have a "lott of ground proporconable with the Rest," to be held for succeeding ministers.³

¹ Doc. Hist. of N. Y., I., p. 416.

² O'Callaghan, Hist. of New Netherland, II., p. 428.—(Citing Alb. Rec. VII, pp. 420-22; XXIV., pp. 368-9).

³ Docs. Relating to Col. Hist. of N. Y., XIII., p. 425.

Bearing upon this division of the land in the early settlements about New Amsterdam, a passage may here be cited not merely as a study in land tenure, but also as a study in English. It relates to the present town of

In the cluster of Dutch village communities at the mouth of the Hudson, many of the peculiar customs of Holland also prevailed, which were not specially connected with land-holding. An order with regard to "waggon racing," provides that "No person shall race with carts and wagons, in the streets within the villages, but the driver while passing through villages must walk by the side of his horse or vehicle,¹ according to the edict of the 12th of July, 1657." An edict of "the 15th Dec^r 1657," relating to inn-keepers, is what might be called an early Civil Damage act: "All tavern keepers to be held liable for willingly permitting fighting or wounding in their houses, and when such breaches of the peace take place, they shall inform the officer of the same, on the penalty of having their trade stopped."²

Jamaica, which then had the no doubt appropriate Dutch name of "Rustdorp" (quiet-village), and it purports to be "a true cobby taken out of y^e town-booke by Daniel Denton, Clark, y^e 29th off August, 1661." It goes on to say: "It is farther voted & agreed upon by the town y^t as y^e medows are devided by lot above specified so they shall continue ffor perpetuity without any ffor further devisions till y^e bee Layed out in particular & yⁿ every man to take his share in y^e neck where the now, & as y^e town do enlarge wth inhabitants y^e shall bee devided proportionably to every neck till y^e bee layd out." Docs. Relating to Col. Hist. of N. Y., XIV., p. 506.

¹The writer has somewhere seen it stated that this custom of walking by the side of horse or vehicle is still observed in some villages of the more northern provinces of Holland.

²Doc. Hist. of N. Y., I., p. 424.

It might be considered an unpardonable omission, for one who was referring to the peculiar customs of early New York, not to mention some of the causes which were considered directly responsible for bringing on a certain "warr with the Indians." Among the reasons given, are these: "For men wearing long hair and perriwigs made of women's hair.

"For women wearing borders of hair and for cutting curling and laying out their hair and disguising themselves by following strange fashions in their apparel.

"For prophaneness in the people in not frequenting their meetings, and others going away before the blessing is pronounced."

Docs. Relating to Col. Hist. of N. Y., III., p. 243. (Date [probably 1614-92], and authenticity not vouched for).

A hundred miles north of New Amsterdam, the first Dutch adventurers had erected, in 1614, on the western bank of the Hudson river, a small block house called the "Ronduit."¹ The land about it remained unsettled till the year 1652 or 3, when a few persons who had been members of the colony of Rensselaerswyck, desiring to escape the feudal restrictions of the manor, settled upon the Indian tract called Atkarkarton, in the region known as the Esopus.² In 1661, this Dutch settlement had grown to an extent which induced the inhabitants to desire separation from Fort Orange, of which it had hitherto been an appendage, so as to obtain a local court of justice and a settled ministry.

Stuyvesant "accordingly conferred a charter on the Esopus, to which place, in commemoration of the fact that the soil was a free gift from the Indians, he gave the name of 'Wiltwyck.'"³ The charter granted to this village indicates very well the scope of the powers possessed by incorporated towns in New Netherland at that time. It provided that "the aforesaid Director-General and Council, considering the increased population of said village, resolve to favor its inhabitants with a subaltern court of justice, and to organize it as far as possible, and the situation of the country will permit, in conformity with the customs of the city of Amsterdam in Holland, but so, that from all judgments an appeal may be made to the Director-General and Council in New Netherland, who shall reserve the power to give their final decision;" that the court of justice "shall consist of a sheriff,⁴ being *in loco*, who shall

¹ It is now Rondout, recently incorporated with the city of Kingston. It was the Dutch word meaning a "small fort." In Docs. Relating to Col. Hist. of N. Y., XIII., p. 149, it is called "Redout;" at p. 257, it is called "Redoubt."

² O'Callaghan, Hist. of New Netherland, II., pp. 356-7; also Brodhead's Hist. of N. Y., p. 536. Esopus creek still retains the name then applied also to the region through which it ran.

³ O'Callaghan, Hist. of New Netherland, II., p. 432. (Citing Alb. Rec. XIX., pp. 36, 112, 114, 137-140).

⁴ Roeloff Swartwout was soon after appointed the first sheriff at Wiltwyck. Among his instructions is the following: "He shall take rank of the Burgo-

summon in the name of the Director-General and Council, the appointed schepens, and preside at their meeting; and with him three schepens, who for the present time and ensuing year, . . . are elected by the Director-general and Council aforesaid." This court was to give final judgment in civil suits involving fifty guilders, or less, in amount; in other cases an appeal lay to the Director-General and Council. In criminal cases the local court had power to arrest, imprison, and transfer the delinquent to the Director-General, but not to act further except in regard to the lesser crimes, and in all such cases an appeal lay to the supreme authority. One clause of the charter reads: "All inhabitants of the Esopus are, till further orders, either from the Lords Patroons, or their higher magistrates, subjected and may be summoned before the aforesaid Sheriff and Commissaries, who shall hold their court, in the village aforesaid, every fortnight—harvest time excepted—unless necessity or occasion might otherwise require."¹ Subject to certain requirements of approval from the Director-General and Council, they might act in regard to public roads, the enclosure of lands, the building of churches and schools, etc. In conclusion the charter provides that "whereas, it is customary in our Fatherland and other well regulated governments, that annually some change takes place in the magistracy, so that some new ones are appointed, and some are continued to inform the newly appointed, so shall the Schepens, now confirmed, pay due attention to the conversation, conduct and abilities of honest and decent persons, inhabitants of their respective villages, to inform the Director-General and Council, about the time of the next election, as to who might be sufficiently qualified to be then elected by the Director-General and Council."

masters and Schepens and sit in their meeting, also to exhort the culprits, sentenced by the Court, before sentence is passed on behalf of the magistrates." Docs. Relating to Col. Hist. of N. Y., XIII., p. 158.

¹ O'Callaghan, Hist. of New Netherland, II., pp. 436-7.

Even before the incorporation of this village, there were evidences in the grants of land at Esopus of the distinction between the bouweries, or "home lots,"¹ meadow land, and wood land. In a patent dated September, 1656, by Stuyvesant and his council to one Cristoffel Davids, he was granted thirty-six morgens of land, "with as much hayland (meadow) as shall *pro rata* be allowed to the other bouweries."² About the same time there was a patent to Johanna de Laet, of land "containing altogether in arable lands, meadows and wood land five hundred morgens."³ After the establishment of the local court of justice, one of the first cases which came before the three schepens, shows very well the existence of the custom of common pasturage. One Blanshan complained that the herdsman did not "bring his cows home in time, that he had not brought them in two days." The herdsman answered: "If they don't bring their cattle by the drove I can't care for them." This was the view of the court.⁴

Only two years after Wiltwyck received its charter, came the massacre by the Indians, June 7, 1663. The savages, entering the palisaded village just before noon while the farmers were in the fields, killed many of the defenceless women and children, took some forty-five others into captivity, and burned a part of the town. Seventy inhabitants were missing when the Indians were finally routed by the assembled villagers. This seemed to be the beginning of the misfortunes which immediately preceded the surrender of the Dutch to the English in September of the following year. The situation became alarming; "an expensive war was being waged against the Indians; the Company's territory was invaded by Connecticut; the English villages were in a state of revolt, and the public treasury was exhausted."⁵ In this extremity, the

¹ See page 24, *supra*.

² Docs. Relating to Col. Hist. of N. Y., XIII., pp. 69-70.

³ Docs. Relating to Col. Hist. of N. Y., XIII., pp. 71-72.

⁴ Researches of the late Jonathan W. Hasbrouck.

⁵ O'Callaghan, Hist. of New Netherland, II., p. 490.

burgomasters and schepens at New Amsterdam requested the Director and Council to call a meeting of delegates from the several towns, "to take into consideration the state of the province." "It was at this gloomy juncture," says Dr. O'Callaghan, "when it became evident that the country was held only on sufferance, and authority felt itself utterly powerless that the principle of popular REPRESENTATION was, for the first time, fully recognized in this province."¹ Two deputies were elected by plurality votes of the inhabitants at New Amsterdam, Rensselaerswyck, Fort Orange, Wiltwyck, New Haerlem, Staten Island, Breukelen, Midwout, Amersfoort, New Utrecht, Boswyck, and Bergen.

Even such a popular assembly as this, was not able to resist the tide of events which, in September of 1664, swept New Netherland from the hands of the Dutch and placed it under English rule. The Dutch colonists themselves did not seem averse to a change in government. They were doubtless wearied by their long struggle for the popular rights enjoyed in their Fatherland, and hoped that they might gain additional freedom under England's rule. In that, they were doomed to disappointment; it took nearly twenty years under English supremacy for them to reach the same point—the election of a popular general representative assembly²—which they had just gained from the Dutch government before its surrender to Colonel Nicolls.

The Dutch of New Amsterdam vigorously contended, at this time, for their rights, and thus the articles of capitulation, which Nicolls consented to in the "Governor's Bowery,"³ contained many liberal clauses. They provided, among other

¹ O'Callaghan, *Hist. of New Netherland*, II., p. 505.

² This was the general assembly of 1683, which divided the Hudson river valley into counties (see *Docs. Relating to Col. Hist. of N. Y.*, XIII., p. 575), and was the beginning of regular representative government for the whole province of New York.

³ What is now the Bowery in New York City was doubtless originally so called from Gov. Stuyvesant's "home-lot" and its buildings.

things, that "all people shall continue free denizens, and shall enjoy their, lands, houses, goods, shipps, wheresoever they are within this country, and dispose of them as they please;" that they "shall enjoy their own customs concerning their inheritances," and "the liberty of their consciences in Divine Worship and church discipline."¹ As a whole, the immediate changes which the surrender wrought in the government were nominal rather than substantive. It had been agreed that in the inferior offices there should be no changes until the next regular election, and although New Amsterdam became New York, the same city government of schout, burgomasters, and schepens went on for nearly a year. On the 12th of June, 1665, there was published what the record² calls: "The Govern^{rs} Revocation of y^e fforme of Government of New Yorke under y^e style of Burgomast^r & Schepens" It declares: "That by a particular commission such persons shall be authorized to putt the Lawes in execucon in whose abilityes prudence & good affection to his Ma^{ties} service and y^e Peace and happinesse of this Governm^t I have especial reason to put confidence, which persons so constituted and appointed shall be knowne and called by the Name & Style of Mayor or Aldermen and Sheriffe, according to the custome of England in other his Ma^{ties} Corporacons." Eight years later (1673) Benckes and Evertsen's charter³ reinstated the Dutch government for six months before the English again took possession of the territory.

The Duke of York's Laws⁴ published and given to Colonel Nicolls, the Deputy Governor, in 1664, but not introduced till Sept. 22, 1676, recognize, with some changes of phrase-

¹ Docs. Relating to Col. Hist. of N. Y., II., pp. 250, 251.

² Doc. Hist. of N. Y., I., p. 389.

³ For many of the papers of this period see Docs. Relating to Col. Hist. of N. Y., II., pp. 571-731.

⁴ These laws may be conveniently referred to, as published under direction of the Secretary of the Commonwealth of Pennsylvania in 1879, with interesting historical matter relating to that State.

ology, the existence of many of the village customs which prevailed in the earlier Dutch settlements. Constables were to be chosen yearly, "by the plurality of the votes of the freeholders in each town." The "overseers shall be eight in Number, men of good fame and life, Chosen by the plurality of voyces of the freeholders in each Town." Thus the voters of the villages were, as before, the freeholders; the suffrage continued to be based upon land. Similar methods of holding the land in common still obtained, and were recognized in the Duke's Laws. "Every person interested in the improvement of Common fields inclosed for Corn or other Necessary use shall from time to time, make and keep his part of the fence Sufficiently Strong and in constant repair, to secure the Corn and other fruits therein, and shall not put, cause, or permit any Cattle to be put in so long as any Corn or other fruits shall be growing or remain upon any part of the Land so Enclosed." Fence-viewers, such as had earlier been appointed in New Amsterdam and other Dutch towns, were also provided for in the English laws just quoted, "for all or each Common field belonging to the Town where they dwell; to view the Common fences within their trust." Further, "all cattle and hoggs shall be markt with the publique mark of the Town to which they belong and the private mark of the owner, and whatsoever Swine or greater Cattle, horses excepted shall be found in the woods or Commons unmarked are Lya-ble to poundage."² The character of the courts proposed by

¹ It is interesting to note that in the Duke's Laws, the rules laid down for the building of line fences show a marked distinction between the "home-lots" and all other land. Between the "home-lots," the line fence must be made and maintained by both owners, even if only one wished to "improve" by fencing. Of other lands, only such as "improved" the land paid for the fencing. He "shall Compell no man to make any fence with him except he also Improve in Several."

² The village pound is so old an institution ("older than the King's Bench," says Sir Henry Maine, in *Early History of Institutions*, p. 263), that the survival is a matter of special interest. Dr. H. B. Adams has called attention to its early existence at Hatfield, and has noted its deriva-

these laws was similar to that of the earlier Dutch tribunals. The Court of Sessions¹ held within the "Riding," by the constable and justices of the peace, took the place essentially of that of the schout and schepens under the Dutch. The Court of Assizes, held once a year at New York, was a higher Court, and the local Town Courts were lower than the Court of Sessions, and were constituted by the constable with at least five overseers sitting in judgment upon matters belonging peculiarly to the town.

Governor Nicolls five years after the first English possession, in answer "to the Severall Queries Relating to the Planters in the Territories of his R. H. S. the Duke of Yorke in America,"² reports: "1st. The Governour and Council with the High Sheriffe and the Justices of the Peace in the Court of the Generall assizes have the Supreme Power of making altering and abolishing any Laws in this Government . . . 2nd. The Land is naturally apt to produce Corne & Cattle so that the severall proportions or dividents of Land are alwaies allowed with respect to the numbers of the Planters, what they are able to manage and in w^t time to accomplish their undertaking, the feed of Cattell is free in Commonage to all Townships. The Lots of Meadow or Corne

tion from the Saxon *pyndan*, to pen or enclose.—(Studies, First Series. New England Towns, p. 32). In the record of the transactions in the town of Wiltwyck, 1667, may be found the following instructions for the "pound-master (or Encloser)." "No horses or Cattle must run on the lands before the first of September. And if anything but working horses and calves are found on any ones land, or his neighbors, he shall bring it to the pound yard and the owner must pay full pound money," etc.

¹ At Wiltwyck, "a Court of Sessions convened April 26, (probably in 1675), composed of Captain Chambers, justice of the peace, George Hall, sheriff, Cornelius B. Slecht, W. Nottingham, Jan Eltinge and Jan Brigs." —(History of J. W. Hasbrouck, p. 176). At the same time "a record was . . . made of a jury, viz: William Ashfordby, Wessel Ten Broeck, Lowies Duboys, Mattys Mattysen, Jacob Adriaense, D. J. Schmoes, Jacobus Elmen-dorf." Mr. Hasbrouck considers this to be probably the first jury in America. Assault and battery the chief offence.

² Doc. Hist. of N. Y., I., p. 59.

Ground are peculiar to each Planter." Yet it should be noted that these "Lots of Meadow or Corne Ground," which are spoken of as "peculiar to each Planter," were probably not separately fenced as individual holdings until some years afterward. At the Esopus, and probably elsewhere along the river, it was the custom of the villagers to enclose many lots or farms outside of the stockade, in one enclosure; each owner of the land enclosed, building in proportion to his valuation, a part of what was called the "Ring-fence,"¹ which it was the fence-viewer's duty to look after. In the Kingston Records,² at the county clerk's office, a grant dated August 25, 1701, conveys land "running . . . about south west unto the Ring-fence, and from the said Ring-fence north west in the woods." In 1676 an order to the magistrates of Esopus, speaks of the "inconvenience, prejudice and great charge to all the Inhabitants of these parts, to maintaine an Extraordinary ffence many Miles Long,"³ and bids the farmers to move their houses within the town. Just when these extensive common fences, enclosing many holdings of the arable land, disappeared, is doubtful.⁴ It was probably by a

¹ Researches of the late J. W. Hasbrouck.

² Liber AA. of Deeds, p. 265.

³ Docs. Relating to Col. Hist. of N. Y., XIII., p. 495.

⁴ The circular, or ring-fence, was the object of special enactment in the early laws of New York. "An Act for regulating the Fences in the County of Ulster. Passed the 18th of October, 1701," recites that "whereas in the County of Ulster, the Inhabitants there are accustomed to make circular Fences, for the surrounding of their Land which they manure, by which Means great Quantities of Lands, are surrounded with the said circular Fence; and those who are in the Middle of the said Lands, have their Fields secured by the said Fence, yet have not contributed, nor will contribute their Proportion of the charge of the said Fences: That the same may be remedied for the future; I. BE IT ENACTED by his Honour the Lieutenant Governor, and Council, and Representatives, convened in General Assembly, and by the Authority of the same, That as to all Lands within the said County of Ulster, which now are, or hereafter shall be surrounded with a Circular Fence, the Owners or Possessors thereof shall, in proportion to the Quantities of Land they have within the said Fence, pay and contribute to

gradual change; but it is certain that the rights of common in pasture and woodland prevailed in the Hudson river towns a long time after the cultivated lands had become separately enclosed by the individual holders. At Kingston in 1792,—a hundred years later than the period we have been examining, in a lease now in the archives of the Ulster Historical Society,—Johannes J. Jansen describes one of his lots of “orchard and meadow land,” as “lying west and adjoining the Lands of Jacob Ten Brouck and the Plains or Common.” “House-lot” and “Armebouwery” are terms still in use at that date, and even in the present century.¹

Commonage of pasture and woodland appears in communities established much later than those we have hitherto been examining. The records in the County Clerk’s office at Goshen, although they do not begin until about 1700, show that rights of common existed in Orange County for the next hundred years at least. In 1686 Gov. Dongan gave a patent to sixteen Dutch patentees to make what was to be called the town of Orange, to be held of King James II., “in free & Common Soccage according to the tenure of East Greenwich in the county of Kent.”² The record contains grants of lots in this patent, with certain “privileges in the common or undivided land.”³ The Waywayanda and Tappan patents comprised large tracts of land granted to similar numbers of

the making of the said Fence;” then follows the conferring, upon any Justice of the Peace in the county, of power, in case of non-payment, to assess the proportion and direct the constable to levy on goods to the amount. A similar act with regard to these circular fences passed in 1750. This act of 1750 speaks of “lands or Meadows, which they Use in Common among them, in Tillage, Pasturage or Mowing,” and the act of 1701 treats of the fences surrounding “*Land which they manure.*” These designations show that most of the holdings of the arable land were not separated by fences.

¹ See list of lots, as late as 1814, in the archives of the Ulster Historical Society. “Armebouwery” probably meant an inferior home-lot, or poor piece of tillable land.

² Orange County Records, Lib. B., p. 90.

³ Orange County Records, Lib. B., p. 97.

proprietors and held largely in common. In "a release of survivorship by Joynt Tenancy made between the Patentees of Waywayanda and entered at the request of said Patentees the 23rd day of September . . . 1706," each releases for himself, his heirs and assigns: "all their right of survivorship by Joynt Tennancy of in and to said full equall and undivided twelfth part of the before recited tracts of land."¹ Nearly ninety years later (Sept. 10, 1793), is recorded a grant "of four equal undivided thirty six parts of the said Lot piece or parcel of Land,"² of the Waywayanda patent. In a grant of 1720 was conveyed "all that certain Tract of Land situated in the Town Spott of Goshen in Orange County within the Colony of New York aforesaide containing eighty acres and known by number foore being one of the Home Lots."³ In 1713 is recorded a grant of a lot of land "No. Two in the divided lands of Tapan . . . Together with an equall or proportionable right in the undivided land or commons of Tapan or Orange Towne agreeable and proportionable to what others shall have for the like quantitie of Morgens or acres,"⁴—which gives unmistakable evidence of the existence of the proportional rights of the villager in the general domain, known in England as "Common appendant," and found to exist in those village communities of the continent of Europe,⁵ whence England's land customs came.

Not until near the beginning of the present century (1793), was any considerable portion of these common tracts divided

¹ Orange County Records, Lib. B., p. 3.

² Orange County Records, Lib. E., p. 277.

³ Orange County Records, Lib. B. p. 277.

⁴ Orange County Records, Lib. B., p. 81.

⁵ "During the middle ages," says Laveleye, "the right to a share in the collective domain gradually ceased to be a personal right, and became a real right, a mere dependence on habitation. Only the owner of an entire farmstead (*Hube, Hoffstatt*) had a whole share in the *mark*; . . . The right of enjoyment in the fields, wood, meadow and water, was sold as an appendage of the *hube*." Laveleye, *Prim. Prop.*, pp. 120-121.

by partition and allotment to individual proprietors, and it was then done pursuant to acts of the Legislature of the state.

In Dutchess County, which was settled a few years later than Orange County, similar customs of land-holding prevailed for about the same length of time. The first deed recorded in the Dutchess County Clerk's office at Poughkeepsie¹ is one dated Dec. 20, 1718, in which J. Jacobus Van den Bogert granted to Capt. Barent Van Kleeck and others a lot "For the proper and onley use benefitt and behoof of the Inhabitance and Naborhod of pochkepsen aforesaid to Bild and Maentaen a proper Mietenghous to worship the one and onley . . . God according to the Ruels and Methodes as it is agried and Concluded by the Sinod National kept at Dordrecht in the year 1618 and 1619 and that in the Neder Dutch Lingo and manner as it is now used by the Clarsses and Church of amsterdam with the benefitt of the Mietenghous yard for a Bureall place of Cristian. Corps to the same belonging." The community which thus, within fifteen years after the first settlement, made such a permanent church establishment, held their meadow and woodland, though probably not their cultivated land, in common. The record shows a grant, in 1707, by "Myndert harmse of pogkeepsink,

¹The first mention of Poughkeepsie which I have found in the records occurs in a quit-claim deed given by an Indian, reciting: "This fifth day of May 1683 appeared before me, *Adrian Van Ilpendam*, Notary Public in *New Albany* and the undersigned witnesses a *Highland* Indian called *Massany*, who declares herewith that he has given as a free gift a bouwery to *Pieter Lansingh* and bouwery to *Jan Smeedes* a young glazier also a waterfall near the bank of the river to build a mill thereon. The waterfall is called *Pooghkepesingh* and the land *Minnessingh* situate on the Eastside of the river," etc. The witnesses were Cornelis van Dyk and Dirck Wesselsen. This was undoubtedly the fall from which afterwards the Dutch gave the name "Fall-kill" to the stream emptying into the Hudson at Poughkeepsie. A dye wood mill has for many years occupied the original site of the mill of Jan Smeedes above mentioned.—Docs. Relating to Col. Hist. of N. Y., XIII., p. 571.

. . . to Jan Osterom of Pogkeepsink ” of a parcel of land “with y^o previledge of cutting of timber and wood and Mowing of grasse for hay in y^o Meadows and pastering of Cattle & horses in y^o woods of that part of y^o Land which now belongeth to y^o heirs of y^o aforesaid Robert Sanders.”¹ This Robert Sanders here mentioned seems to have been the original patentee of a considerable tract of land from which grants were made, always with the “common appendant” rights in the unenclosed meadow and woodland. No town records of this time remain to indicate the particular customs of pasturage about Poughkeepsie, but it is likely that in Dutchess, as in Orange and Ulster Counties, the cattle were sent in droves to the common pasture lands, each individual in the community designating his stock by a special brand or ear-mark.²

The first court house in Poughkeepsie was constructed of wood furnished chiefly from “the commons.” November 13, 1747, Jacobus Van den Bogert of Poughkeepsie precinct gave to four justices of the peace a deed of lands for “Court House & Goals,” in which the grantor “for himself and his heirs and assigns doth hereby Grant a privilege in his Unimproved Lands or Commons for Cutting and Carrying away all manner of wood and timber for Compleating and Repairing the said Court House and Goals on the hereby granted premises.”³ That the rights of commonage were enjoyed generally by the neighborhood, appears in numerous grants similar to the following: “Myndert harmse of pogkeepsink in Dutchess County . . . doe bargaine . . . unto the

¹ Dutchess County Records, Lib. A or 1, p. 7.

² The Register in the Orange County Clerk's office at Goshen, at page 32, contains the following minute: “. . . 1704 The fourth Sessions. Ordered That all the Inhabitants of this county doe the next Sessions Bring into the Clark their markes of their Chatles &c, In order that they may be allowed by the Court and entered by the said Clark in the publick Records. This order publisht upon the County house door.” The distinctive marks are enumerated Among others is found that of “Cornelius Herring for Horses C H upon the nere buttock his neat Cattle sheep hogs &c. A hole in right Eare and A Swallows Tale in the Left Eare.”

³ Dutchess County Records, Map 6.

said pieter u: ziele all that Certaine tract or parcell of Land scituate” and so on, “together wth the privilege of cutting grass for hay in y^e Meadows as others of y^e neighbours and ffree outdrift ffor horses and Cattle in y^e woods.¹ This deed bears date, 1722/3, and reserves a yearly rent of “halfe a busshel of good winter wheat.” In 1730, one Thomas Rathbone of Rhode Island granted to one John Gay and wife “and their heirs and assigns for ever one seventh part of all my Right or share of Land (both divided and undivided) in the Town of Pecapesy² in Dutchess County . . . together with the profits Priviledges and appurtenances unto the same belonging or in any wise appertaining.”³

Less than one hundred years ago (Oct. 11, 1786), an affidavit was made by “johannis Swartwout and Samuel Curry, . . . that they are two of the owners and Proprietors of that certain tract undivided and parcel of Lands Tenements & hereditaments held in Common, situate . . . in the Precinct of Poughkeepsie . . . commonly called and known by the name of the Commons, and that they have given thirty days previous notice to the other owners and proprietors of the aforesaid tract of Lands . . . of their intention of applying to this Court [Common Pleas] for the appointment of Commissioners for the division of the same in pursuance of the act of the Legislature of the State of New York passed sixteenth of March, 1785 entitled ‘an Act for the Partition of lands.’”⁴ By means of such partition of the common lands, individual ownership of all property became universal in Dutchess, as it did in Orange County, just at the close of the last century.

There remain to be considered⁵ two village communities, in some respects more marked in character, and more interest-

¹ Dutchess County Records, Lib. A. of Deeds, pp. 31-32.

² Poughkeepsie is said to have been spelled in more than forty different ways.

³ Dutchess County Records, Lib. A. of Deeds, p. 103.

⁴ Dutchess County Records, Map 13 and enclosed Docs.

⁵ If the limits of this paper permitted, interesting facts of community-life might be gathered from other settlements on the Hudson. At Albany the

ing for purposes of study, than those already examined, because they combine with the customs of common landholding, a local government and an exclusive family proprietorship peculiar to the earlier types of community-life among the Germanic peoples.

Just west of the town of Kingston, and adjoining it, lies the present town of Hurley, including land of which there were some grants to Dutch settlers who moved back from Wiltwyck as early as 1662. In distinction from the latter, and much older, place, the early settlers called it "Niew Dorp" (New Village).¹ The grants made by the Dutch government were confirmed after the English occupation, and in 1669, the same year in which Wiltwyck became Kingston, the "Niew Dorp" was named Hurley from the paternal estate of the English governor, Lovelace. There in Niew Dorp it was, that Louis Du Bois, the Walloon,² who afterwards became

records have been well preserved, but, so far as the writer has consulted them, they would yield nothing especially significant, aside from the facts already noted in other towns. From the earliest settlement until 1652, the inhabitants of Fort Orange, now Albany, were hampered by the feudal restrictions of the manor of Rensselaerswyck; at that time the separation took place and an independent court of justice was established at Fort Orange.

Interesting material also is afforded by the records relating to the settlements (one of them on the site of the present city of Newburgh) about the year 1710, made by Germans, who were known as the Palatines,—another instance of the close relationship between the Rhine and the Hudson, besides that afforded by New Paltz, as hereafter mentioned.

Doc. Hist. of New York, pp. 327–383, contains the papers relating to the Palatines, and at p. 347, in a document dated 1719, there is mentioned "A certain tract of land on the West side of Hudson's river above the high lands in the County of Vlster neer to a place called Quassaick containing two thousand one hundred and ninety acres laid out into nine lotts for the said Palatins and a glebe of five hundred acres for a Lutheran minister and his successors forever."

¹ Researches of J. W. Hasbrouck, referred to in Docs. Relating to Col. Hist. of N. Y., XIII, p. 412.

² The Walloons," says Dr. Baird (*Huguenot Emigration to America*, I, p. 149), "were the inhabitants of the region now comprised by the French département du Nord, and the south western provinces of Belgium. They

the leader of the pioneer band that settled at New Paltz, had established himself, and from there the Indians took many captives in their retreat from the massacre at Wiltwyck in 1663, already mentioned. The Hurley (spelled Horly, hürly, and in several other ways) Commons is a term found in most of the early deeds of land in that vicinity, and the history of the grant from which it arose is interesting.

In the Ulster County Records¹ at Kingston is an indenture bearing date the 25th of August, 1709, signed by nine proprietors, eight of them Dutch and one of them a Huguenot, reciting that they had purchased, together with others, a "certaine tract of land near y^e town of hürly afores^d," and extending south to the New Paltz patent. It refers to a patent of October 19, 1708, to "Cornelius Cool" and his associates, and goes on to say: that "whereas y^e s^d lands were more especially purchased & obtayned by y^e parties in y^e said deed & patent mentioned to serve as Commons for wood pasturage & drift² of Cattle to y^e parties respectively in y^e s^d severall Instruments named . . . This Indenture wittnesseth . . . that upon y^e decease of one or more of y^e s^d parties y^e lands . . . shall not be subject to any survivorship but shall descend unto y^e heirs of y^e partie or parties respectively

were a people of French extraction and spoke the French language." Among the Walloons who came to New Netherland, about 1660, was this Louis DuBois, who played so prominent a part in the civil and religious life of the community which he did much to establish. He was born at Wicres in Flanders in 1627, went to the Palatinate about 1647, and was married at Mannheim in 1655. The name Wallkill, given to the stream whose rich border-lands attracted Louis DuBois, is by some derived from his traditional title of Louis the "Wall." Whether this be the origin of the name, or whether it came from the Holland branch of the Rhine called the Waal, this tributary of the Hudson serves, at all events, to emphasize that close relationship of the two Rhines which is elsewhere noted.

¹ Ulster County Records, Lib. AA. of Deeds, p. 494.

² This word "drift" in its use here is interesting because derived from the German *trift*, pasturage or drove; Anglo-Saxon, *drif*, a driving. It is a legitimate Teutonic representative of an old Teutonic custom.

as if y^e same had been particularly divided . . . and it is further covenanted and agreed by y^e parties aforesaid . . . y^t no part of y^e s^d lands shall hereafter be divided but in such manner as in these pr^{es}ents is exprest but y^t y^e wood lands shall for ever remain in common . . . and it is further covenanted and agreed . . . y^t in case it shall hereafter be thought reasonable to let sell or dispose of some small tract or tracts of arrable Land w^{ch} may happen in the s^d tract the same shall & may bee disposed for y^e Common benefit by y^e s^d parties or y^e major part of them who are to execute y^e necessary deeds for y^e same, And it is further [agreed] that y^e number of those that shall have any right to dispose as afores^d shall bee nine or y^e major part of them, and y^t how many soever doe claime under any one of y^e s^d purchazers . . . shall be only accounted as one & may appoint one of their number to vote for them all when any land is to be disposed of, And it is further covenanted & agreed between y^e s^d parties that they . . . [shall not] sell or dispose of any of y^e s^d wood lands to bee left in Common . . . to any person or persons not being an Inhabitant of y^e town of horly, arrable Lands Creekes for Mills and such like cases excepted and in case y^e s^d Commons or any part thereof do by Inheritance or by will descend or are bequeathed to any . . . not being an Inhabitant of y^e s^d town he or they shall neverthelesse enjoy y^e same but not sell y^e same to any other . . . not being an Inhabitant . . . and it is further agreed y^t all monys to bee received for any arrable Lands bee always divided amongst them and their heirs and assigns in nine equal shares or proportions.” This exclusion from proprietorship of all who were not inhabitants of Hurley finds its prototype in the primitive mark of Germany, —notably where its organization has been preserved in the forest cantons of Switzerland. There “each inhabitant,” says Laveleye, “owned his house and the adjacent plot as private property: the rest of the territory was collective property.” Yet the general assembly or *Landesgemeinde*, “superintended the use of the forest and common pasture . . . and framed

all necessary regulations. No one could sell his house or his land to a stranger.”¹

Ten years after the execution of the above agreement which sought to do away with survivorship-rights, and to fix forever the woodland as common property, an instrument² dated Sept. 3, 1719, under authority of the Governor and Assembly of the Colony, and signed by the Secretary, appointed seven of the Hurley freeholders as trustees of all the land included in the patent of 1708,³ and, by incorporation, made them a body politic.⁴ In case of vacancy in the board of trustees by death or disability, the freeholders and inhabitants were authorized to elect the successor by a majority of voices. They were also permitted to meet together in some public place annually the first Tuesday in April to elect “one or more Constables, Two or more Assessors, two or more Collectors one or more Supervisors and such and so many other town officers” as they should agree upon. To defray the expenses of procuring the Act of Confirmation from the Assembly the freeholders were to make payment “by voluntary and equal contributions.” For the same purpose, however, the trustees were prudently given power to sell to the highest bidder any of the common lands within the tract, not to exceed the amount of £225 in value. The “succession as above Directed to be continued forever To and for the benefit and behoof of all the freeholders and inhabitants of the said town.”

Apparently the “Hurley Commons” thus continued to be held for the public use by the locally appointed trustees, not,

¹ Laveleye, *Prim. Prop.*, pp. 239-240.

² Town Clerk's Records, West Hurley.

³ The patent mentioned before (p. 44), given to Cornelius Cool and associates, “to their heires and assignes forever,” provided they settle and improve it within three years; “In free and common soccage as of our manor of East Greenwich in the County of Kent.” A rent of twelve shillings was reserved.

⁴ Feudalism was asserted in the nominal yearly rent of one peppercorn, which the trustees had to pay to the Crown.

indeed, "forever," but for nearly a century;—until a division was "made in Pursuance of an Act of the Legislature of the State of New York entitled an Act for Dividing the Common Lands in the Town of Hurley in the County of Ulster passed the 4th of April 1806,"¹ three commissioners being duly appointed for the purpose. In the "Field Book" which contains the surveys and a record of the allotments made by the commissioners, is recited that portion of the act which specifies two classes who were to take part in the allotment, and it includes some of the inhabitants who had never had any rights, either by descent or purchase, in the original grant.

It provided,² "That there shall be set apart and conveyed to every Freeholder severally who shall own a Freehold within said Corporation of the Value of more than three hundred Dollars, and who shall reside therein at the time of passing this Act, and own and occupy a Dwelling House therein, one certain share or dividend of said Common Land, and where two or more persons are possessed of such Freehold as Joint tenants or tenants in common [they] shall be entitled to one such share and no more; and to every Freeholder possessing a Freehold in said Corporation of the Value of less than three hundred Dollars and shall be a native thereof and shall own and occupy a Dwelling House therein at the time of passing this Act, a like share or Dividend of said Common Land which several Description of proprietors above mentioned shall be called the first Class. And be it further enacted, That there shall be set apart and conveyed to the following description of proprietors as a Second Class, viz: To every freeholder residing within the said Corporation at the time of passing this Act and not being a native thereof, and possessing a Freehold therein of the value of less than three hundred Dollars, at (*sic*) who shall at the time of passing this Act, occupy a Dwelling House therein, one other

¹ Town Clerk's Recs., West Hurley, Field Book, p. 1.

² Town Clerk's Recs., West Hurley, Field Book, pp. 3, 4.

certain equal share or Dividend of the said Common Lands, not less than two thirds in Value of such share or dividend as shall be set apart for proprietors of the first Class ; And also a like two-thirds share or dividend to every inhabitant not being a Freeholder as shall have supported a family and resided within the said Corporation the term of two years next before making such partition and who shall during that term have followed some trade or occupation." The lots were to be as near the respective dwellings, and as nearly equal, as possible. Among those who were to be granted a lot of the first Class, were also non-resident owners of freehold of a value not less than two thousand dollars. The trustees were to settle all disputes, and to defray expenses by levying a tax on lots. They were given power to sell, after two years, the shares of those whose taxes were then unpaid. Under this act, the commissioners surveyed one hundred and sixty-eight lots, numbered regularly from 1 to 168, and Nov. 13, 1806, the allotment seems to have been made at the house of "Peter Elmendorf Inholder," the result being duly recorded in the Field Book.

This division of the common lands (both arable and woodland) at Hurley, in the first decade of the present century, presents features which call to mind the customs of the early Teutonic community, to-day surviving in some of the Rhine countries.¹ If it does not show a "periodic partition," it gives evidence of that distinctive feature of ancient communal landholding,—the reservation of a portion of the domain for "distribution among new families." To give to one who had been merely a resident (not a freeholder) of the town of Hurley two years, and had, during that time, "followed some

¹ Laveleye, *Prim. Prop.*, p. 83. In speaking of the Allmends of Switzerland, he says: "In 1826, the commune of Pully-Petit put all its lands, previously divided, once more into community, and subjected them to a periodic partition among all the inhabitants every fifteen years, a part being reserved for distribution among new families." See also, *Maine Village Communities*, pp. 81-87.

trade or occupation,"¹ a share in the allotment of land which had been granted a hundred years before to Cornelius Cool and associates, "to their heires, and assignes forever," and which had been enjoyed during the century as the common territory of the freeholders of the town, is to establish the purely communal character of the tenure during that period. The distribution was made probably in compliance with a petition to the Legislature from the towns-people, and was based not, as were most of the partitions of the common lands along the Hudson about that time, upon hereditary rights in the domain, but upon the communistic theory of the needs of the individual residents; it was not *per stirpes*, but *per capita*. It was at once a readjustment of old titles and the conferring of entirely new ones.²

After this stride toward the holding of all lands in severalty, the freemen of Hurley still continued to meet in annual popular assembly to choose by majority vote "officers for the township of hurley,"—the seven trustees, town clerk, assessors, constables, collectors, overseers of the poor, commissioners of the highway, road-masters, and fence-viewers.³

The town of New Paltz, lying south of Hurley and the Esopus, also claims special attention. There, many of the peculiar characteristics of early village community-life appeared more distinctly, and continued for a longer time than in other towns along the river. To-day the quiet village is a station on the Wallkill Valley railroad, and one may reach it by

¹ Maine, *Village Communities*, p. 125. It is curious to note that Sir Henry Maine speaks of this provision for establishing trades as "yet another feature of the Indian cultivating groups which connects them with primitive western communities of the same kind."

² If it be asserted that this is only an incident of landlordship, that the nominal rent reserved kept the title in the sovereign, so that he might give the land to whomever he chose, the fact remains that freeholders who evidently supposed they held the land in fee, dealt with it in such a way as would best subserve the needs of the whole community.

³ Town Clerk's Records, West Hurley, Town Records, 1793-1832.

steam from Kingston over a route, perhaps identical in part, with that taken by the little band of slow-moving pioneer settlers somewhat more than two hundred years ago. The pleasanter way for one to gain his first impressions of New Paltz, is to cross the Hudson from Poughkeepsie and drive directly westward over an excellent turnpike road, lying wholly within the territory of the original grant. Eight miles from the river a point is reached which commands a fine view of the surrounding country. In the north-west, the Catskill peaks stand out boldly against the horizon; and in front, the nearer Shawangunk range stretches north and south,—a natural barrier beyond which the early settler did not venture. Sky Top, its most prominent point, marks the location of Lake Mohonk,¹ and is the grand boundary stone at the south-west corner of the New Paltz patent. Between this ancient landmark and the view-point of the spectator, is the valley of the Walkill, whose cultivated fields present in summer an appearance strikingly unusual. Almost everywhere the boundary lines seem to be rectangular, and the fields, on the slope of the opposite mountain, sown with different kinds of grain or left as meadow land, look like the regular blocks of a variegated patchwork. Just below, in the valley, a mile away, on the east side of the stream, may be seen the church steeples and scattered houses of New Paltz. The road, entering the village from the east, becomes the main street, and, on either side of it, nearly to the long covered bridge by which it crosses the Walkill, are the stores and shops, constituting the local sources of supply for five or six hundred inhabitants. The neat, unpretentious, dwellings interspersed, are mostly modern, for this street did not become the chief thoroughfare until long after the early settlement, when the increasing agricultural population sought an outlet for their produce by way of the Hudson river to New York.

¹ Spelled "Moggonck" in the Patent. In the Indian dialect it meant "on the great sky top."

The streets running north and south, parallel to the stream, were the scenes of pioneer activity, and to-day one may discover, here and there, the steep-roofed houses of colonial times, one of which shows the old port holes, and displays in iron letters the date, 1705.

Tradition attributes the settlement at New Paltz to one of the incidents connected with the Indian massacre at Esopus in June, 1663. Catherine Blanshan, the wife of Louis DuBois, was one of the captives carried away into the wilderness. DuBois with a band of the settlers started in pursuit, and, in following the stream which was afterwards called the Wall-kill, they noticed the rich lands in the vicinity of the present village of New Paltz. The search was successful, the prisoners were rescued from captivity, and in the more leisurely return to Esopus, Louis DuBois and his companions examined carefully the land which, by its beauty and apparent fertility, had before attracted their attention. Some years afterwards¹ he and his associates purchased from the Indians the large tract of land, estimated to contain some 36,000 acres, including part of the present townships of New Paltz, Rosendale, and Esopus, and the whole of Lloyd,—bounded on the west by the Shawangunk² mountains and on the east by the Hudson river. For this valuable grant the Indians received “40 kettles, 40 axes, 4 adzes, 40 shirts, 400 strings of white beads (wampum), 300 strings of black beads, 50 pairs of stockings, 100 bars of lead, 1 keg of powder, 100 knives, 4 quarter-casks of wine, 40 jars, 60 splitting or cleaving knives, 60 blankets, 100 needles, 100 awls, and 1 clean pipe.”³

¹ May, 1677.

² This word is usually slurred in pronunciation so as to sound like “*Shongum*.” Its meaning in the Indian dialect is somewhat doubtful. Rev. C. Scott, in an article on the subject (Collections of the Ulster Historical Society, I., pp. 229–33), suggests either “South Water,” or the “Kill or Creek of the Shawanees.”

³ Ulster Co. Hist. (Everts & Peck, 1880), New Paltz, p. 5. The translation above given has been the generally accepted rendering of the Dutch words which represent the consideration for the grant. Rev. Ame Ven-

This purchase was soon confirmed by a patent signed by Gov. Andross, dated Sept. 29, 1677, granting to "Louis DuBois and partners," the land described, for the yearly rent of "five Bushels of good Winter wheat." The instrument now in the Huguenot Bank at New Paltz, names the twelve patentees as follows: "Louis DuBois, Christian Doyo, Abraham Haesbroocq Andries Lefevre, Joan Broocq Pierre Doyo, Laurens Bivere Anthony Crespell, Abraham DuBois, Hugo Frere Isaack DuBois and Symeon LeFevre, their heyres and Assignes." All were Huguenots, who fleeing from kingly and church persecution in France, had found an asylum in the Lower Palatinate at Mannheim, and had probably spent some time in Holland also, whence they had come with the Dutch to Esopus. In memory of their German home on the banks of the Rhine and adjacent to the forest region of the Odenwald, they named their new home on the Hudson, New Paltz,¹ or the New Palatinate, and here established, to a considerable degree, the local government and peculiar customs of the German village community.

Local history asserts that "as soon as these hardy pioneers had established themselves upon their lands they proceeded to make an equitable division of them. This was done in a rude way, each family portion being measured off by paces and staked at the corners. These boundaries were never changed; but to these tracts were given special names, such as Pashe-moy, Pashecanse, Wicon, Avenyear, Lanteur, Granpere, etc., which have survived two hundred years. The lands were at first tilled in Common and the proceeds equally divided."²

nema, of New Paltz, who has recently given the subject attention, is inclined to think the Dutch word "*Zeewandt*," which has been usually translated "beads" (the white ones being used for wampum), should be rendered, "400 fathoms of material used for fish nets." He also reads, "40 oars," instead of "40 jars;" "60 pieces of duffel" (coarse woolen cloth), instead of "60 cleaving knives"; and "1 measure of tobacco," instead of "1 clean pipe."

¹ Sometimes spelled "Pals" in the early records; German, Pfalz.

² Ulster County History (Everts & Peck, 1880), New Paltz, p. 6. See Edmund Eltinge, Colls. Ulster Hist. Soc., Vol. I., Part 1, p. 47.

Perhaps no documents now exist which establish the evidence of this early cultivation in common of tracts of the arable land by the numerous co-owners, but tradition, both trustworthy and direct, places the matter almost beyond question. One of the worthy representatives of her Huguenot ancestors told the writer a few weeks ago that in her younger days she used frequently to hear an old resident of New Paltz relate how his mother, a self-reliant, vigorous woman, was wont, after becoming a widow, to take her turn in caring for the common stock and crops, as her husband had done before. The small tracts thus cultivated in common were doubtless the choicest portions of the land near the Wallkill, in which all the inhabitants desired to have some share. Each year the co-owners determined what crops should be planted, and chose some one of their number to care for the interests of all. If there are no early documents to verify this tradition of a common cultivation and division of the produce, there are those which intimate a common ownership even in the arable land, and show conclusively such common rights in both pasture and woodland as are thoroughly characteristic everywhere of Teutonic village community-life.

In a will of Louis DuBois, dated March 30, 1686,¹ it is provided in reference to New Paltz land that "them that have home lotts and have built thereon shall keep the same—upon condition that the other of my children shall have so much land instead thereof in such convenient places as may be found most expedient for them in any place belonging to my said estate."²

A deed³ in 1705, by Anthony Crespel, one of the patentees of the New Paltz, recites that he "Lawfully standeth seized and possesseth of y^e twelfth part of the whole pattend of y^e New paltz as by said patent" etc., and gives for divers

¹ There were two later wills.

² Ulster County Clerk's Office Records, Liber of Deeds, AA., p. 49.

³ Ulster County Clerk's Office Records, Liber of Deeds, AA., p. 386.

considerations to his daughter, "Severall lotts parcels and pieces of y^e above said part of land of the new paltz," one lot being described as "between a lott of Abraham dü boÿs and the Commons . . . Also the Just third part of y^e woods & Commons of y^e above & first mentioned twelfth part of land of s^d Crespel that is nott y^{ett} laÿd out and devided." It then provides that the land shall not "bee disposed of to strangers,"¹ but gives full power to the children "to sell convey and sett over their respective parts and proportions of the above s^d parcels and lotts of land unto any of y^e family in blood of the said Anthony Crespel." In the so-called "New Paltz Orders,"² the fencing of the common lands seems to include land not for pasturage, and presumably arable land. It is thus provided for in popular assembly: "We the inhabitants of y^e Niew Pals in generall are met to-gether y^e 23th day of Feb. 17¹¹/₂ to concluded concerning all our fences of the Land as also of the pastures to the plurality of votes according to the order of the warrant to the constable directed: . . . the N. Pals town shall to-gether make the fence from Jacob Hasbroucq, to the s^d gate, and so we shall begin the vasmakerslant³ fences to the kill or kreek at the Landing place, to the erf⁴ of John Hasbroucq and every one of us must make his part or share at six Raeles as now is . . . More concerning the old pastures every one is obliged and bound to doe as his nebourgh that is to say the just half of y^e fences of five Raels or otherwise & that good and sufficient. And as for y^e kettel doing Dammage and so taken they shall be put in pound by him that shall thereunto be chosen or impoured by the inhabitants of s^d place. And each and every horse or cow beast so taken

¹ The same exclusive provision which prevailed at Hurley. See p. 45.

² Records in Huguenot Bank at New Paltz.

³ The meaning of this word is doubtful. The spelling is probably faulty.

⁴ "Erf" means "inheritance," and in its use here shows that probably the Dutch spoke of the "home lot" as such, in distinction from the common lands. It is suggestive at least

in dammage shall pay a peace nine pence for a fine, the one half for him there-unto chosen and the other half for the Towne. And as for the hogs they shall have no Liberties for to Runne free ; but as for the sheeps they may runne free untill that time that they goe in Dammage in y^e Corne or in the pastures provided y^e fences be good and sufficient . . . And as for the horses which Rune upon the Land in the fale they shall be taken away the 30th of September . . . Concerning all the fences¹ . . . each and every one is oblidge and bound to make and kepe his owne fence at the time Limited or ordered by him thereunto chosen to take notice of s^d fences, but in case any one neglect or will not doe or make his fence he shall pay for a fine six shillings, and the viewers of fences shall make or have made the s^d fence or fences at his own charge as y^e Law Direct in such case." The "Orders" also imposed, upon any one leaving gates open, fines to pay the "cost and charges of the towne," and were recorded by "W. Nottingham Clerk."

The patentees are said to have been called the "Twelve Men" or "Duzine," and to have had both legislative and judicial powers in town affairs. Three years before the death of the surviving patentee, Abraham, son of Louis Du Bois, the twenty-four proprietors of the New Paltz entered into an agreement² dated April 21, 1728, which established the local government of the "Twelve Men" by popular election, and authorized them to fix titles "according to the severall Divisions and partitions that have been made between them [the patentees] by Parole without deed, and the other parts thereof yet remaining in common and undivided . . . within the bounds of the aforesaid Pattent.' It states that, "we Doe by

¹ It is interesting to compare these "New Paltz Orders" relating to the ancient institution, the "Common Fence," with the evidences of similar customs in New England, collected by Dr. Adams in his "Germanic Origin of New England Towns."—"Studies," I., p. 32 of monograph just mentioned.

² Records in Huguenot Bank at New Paltz.

these presents Covenant and Grant to and with each other that there shall and may be yearly and every year for ever, hereafter chosen and elected for the purposes above mentioned by the plurality votes of the freeholders and Inhabitants within the aforesaid Patent Twelve good able and sufficient men freeholders and Inhabitants who have an Interest within the said patent Representing the aforesaid Twelve Patentees.”

. . . Further we “Give Grant and Bequeath unto the aforesaid Twelve men or the Major part of them to be elected and nominated in manner as aforesaid full power and authority to act and sett in good order and unity all common affairs—Businesses or things Comeing before them belonging to or concerning the Right Title Interest or property of the Township of the New Paltz aforesaid and commonalty within the said Patent according to Law or Equity and to the best of their knowledge and understanding.” Then follows a covenant to pay all charges disbursed by the “Twelve Men” for defending title, and giving deeds of partitions made by the twelve patentees in their life time. Full power is also given them to make partition of undivided land, “as they shall from time to time see cause for . . . which Division is to be made in manner and forme following That is to say that the said Undivided Lands and premises, or such part thereof as they shall from time to time see cause for . . . shall be laid out in Twelve equal shares and Divisions soe that the one is not of more vallue than the other and Then the aforesaid Twelve shares or Divisions shall be numbered and then the aforesaid Twelve men shall Draw Lotts for the same,” each share in the allotment to be for the use of those who represent, by descent or otherwise, the several patentees. The “Twelve Men” were empowered to give deeds for the parcels, and such conveyances were to remain forever.

The character of the rights of commonage then enjoyed at New Paltz is well shown by a release¹ in the following year

¹ Now in possession of Edmund Eltinge, Esq.

(Apr. 5, 1729), from the "Twelve Men" granting to Solomon and Louis DuBois and their heirs "full power and authority at all times forever hereafter to cut down, load have take and carry away all manner of Timber trees and stones standing . . . lying and being within any part of the Commons and without the ffences and inclosures of any of the Inhabitants of the new paltz aforesaid in the same manner that the said owners and proprietors Doe use to Doe in the said Commons, and likewise to mow down and carry away any grass or hay growing without the ffences and inclosures and in the Commons¹ . . . [under] such regulations as the owners and proprietors aforesaid in the said town cut hay in the Commons, to-geather with free liberty of ingress, egress and regress to and for the said Solomon Dubois and Lewis Dubois and their heirs or assignes" . . . Provided always, "that they shall have no similar rights in inclosed lands nor take anything they may rightfully take in the uninclosed lands for any person outside of their ffour ffamilys liveing on the said tract of land of the said Solomon Dubois and Lewis Dubois."

The "Twelve Men" under their authority, conferred in the agreement of 1728, to lay out the land to be divided "in Twelve equal shares and Divisions soe that the one is not of more vallue than the other," had the lots set off regularly from time to time, of the same size and shape, adjacent and numbered from 1 to 12 in each Division,—the North and South Divisions together constituting one long strip (or Tier) of similar lots, running for the most part north and south, parallel to the Wallkill.² Almost all deeds of New Paltz property, executed after the signing of the agreement of 1728 and before the general partition of the lands by the State legis-

¹ In connection with these rights of commonage we find the ancient Pound. In 1765 one of the questions put to the voters of New Paltz was "whether Poundmasters shall be elected or every man be his own Pounder."

² In such regular division of the territory by the "Twelve Men," may be found an explanation of the rectangular boundary lines which strike the eye of one who approaches New Paltz from the east.

lature at the beginning of the present century, contain reference to this method of division. In one dated April 3, 1767, given by Noah Eltinge to Josiah Eltinge, the land is described as "on the east side of the Paltz River being . . . known by Lot number three, situate in the first twelve Lots or South Division of the New Division called the First Tier, lying eastward of the old Divisions on the east side of the Paltz River and adjacent thereunto."¹ One third part of one hundred and eighty acres was granted.

A will² of Roeloff Eltinge, dated 1745, gives among other bequests the half part of his share in sundry "Lotts of Land laid out within the Limitts of the Pattent of the new Paltz afores^d fronting upon hudsons River and extending westerly from the said River one mile & a half." In this same will there is evidence, not only that between the Tiers of divided lands large tracts lay undivided and owned in common, but also, that before the middle of the last century the shares in such common land were becoming minutely subdivided. The testator bequeathed to his son Noah all his "farme Lands meadows" etc., in the New Paltz, "and also all that the one third part of the one sixth and one sixtieth part of all the undivided Land within the Bounds of the Pattent of the New Paltz afores^d."

Thirty years later, and nearly a hundred years after the granting of the patent, fifty-two proprietors of the New Paltz entered into an agreement,³ dated April 30, 1774, for the common defence of their territory,—a fact which shows the per-

¹ Doc. in possession of Jacob Elting, Esq.

² Document now in possession of Jacob Elting, Esq.

³ Records in Huguenot Bank at New Paltz. There is also an earlier agreement, dated May 23, 1744, by which the signers pledge themselves, under heavy penalty, "To Defend Joyntly the whole Tract . . . and to stand in mutual Defence of each other Lot or Lots Farm and Farms against all Incroachments and Pretences of Right To the lands forever . . . For Fifteen whole and consecutive years." The "Twelve Men" were to determine the amount of money needed.

sistence of their village community customs and the extent to which the subdivision of the common property had then been carried. The agreement recites the patent of 1677, and the articles of 1728 by which the "Twelve Men" had been permanently established, and then goes on to say: "That each and every one of us whose hands and seals are hereunto set and our respective Heirs and Assigns, shall and will advance, disburse and Pay unto the said twelve Men for the time being or to the Major Part of them, such a proportionable part of the said common stock as we respectively have here-under annexed to our several and respective names and that as many times and as often as it shall be requisite and necessary for the defending the said Tract of Land, or any part thereof." It was stipulated that the major part of the "Twelve Men" should settle disputes as to what were necessary disbursements, and the proprietors bound themselves to the "Twelve Men" "in the Penal sum of Two Hundred Pounds current Money of New York." Among the fifty-two who signed were:

Daniel Lefever	$\frac{1}{64}$	part,	Benjamin I. Freer	$\frac{1}{256}$	part,
Jacob Louw	$\frac{1}{468}$	"	Jacobus Hasbrouck	$\frac{1}{80}$	"
Anthony Yelverton	$\frac{1}{32}$	"	Josia Eltinge	$\frac{11}{180}$	parts,
And ^s Bevier	$\frac{1}{105}$	"	Noach Eltinge	$\frac{1}{17}$	part,
Jonas Hasbrouck	$\frac{1}{120}$	"	Abraham doiau	$\frac{67}{720}$	parts.

Much discussion was provoked concerning the validity of the above agreement, and, as is so often the case, the prominent lawyers consulted differed in opinion. Egbert Benson, Oct. 5, 1791, asserted that "it is wholly incompetent to the purposes for which it was intended,"¹—that is, to bind the shares of the land in perpetuity to a proportional contribution. Earlier in the same year John Addison had advised the "Twelve Men" "that the Instrument is valid in Law, and the sums all recoverable."² This was also the opinion of Clinton. That the agreement was still in force twenty-

¹ Records in the Huguenot Bank at New Paltz.

² Records in the Huguenot Bank at New Paltz.

four years after its execution, is shown by an entry of May 23, 1798, in the book of the "Twelve Men" containing the records of their transactions: "It is agreed by the Majority of the Twelve Men . . . to Raise the sum of Two Hundred Pounds for and Towards Defending the Bounderies of the New paltz Pattent and the proportion of each man is affixed oposite to his name to Base the above mentioned sum and each Twelve man is to collect his proportion of the sum and pay it to the Twelve Men on or before the fifteenth day of August next."¹

For more than a hundred years, the "Twelve Men" or "Duzine" of New Paltz, had practically constituted the only legislative and judicial tribunal of the village. No doubt an appeal lay to the colonial government, but, so far as is known, none seems to have been taken. From 1677 to 1785, the "Common Book" of the "Duzine" contained the most important village records. In March of the latter year, an act² of the legislature incorporated the township under the state government, and confirmed the grants and partitions of the "Twelve Men."³ But apparently the freeholders of New Paltz still continued to elect each year, as before, their "Twelve Men" for the supervision of local affairs,⁴

¹ Records in the Huguenot Bank at New Paltz.

² An "exemplification" of this act is among the records of the town now in the Huguenot Bank. The act provided that those taking by lot under the partition "shall be deemed . . . to have been seized severally in fee simple of the said Lots, or parcels of Land respectively;" and it adds that "the partition hereby confirmed shall be deemed and adjudged to be as good evidence of an estate in severalty under the said Paltz Patent as if such partition had been made according to the course of the Common Law." There seems to be no record at New Paltz, as there is at Hurley, of provision being made, in the partition of the common territory, for such of the inhabitants as had never before been freeholders.

³ An advertisement of partition by the commissioners appeared in the Albany Gazette, Aug. 9, 1792.

⁴ Though, after the incorporation of the town, the "Twelve Men" had little else to do than to determine the land-titles of the town and preserve the records of previous divisions.

even into the present century. The last record in the Book of the Twelve Men tells us that, as late as April, 1824, "At the annual Townmeeting of the freeholders and Inhabitants of the Town of New Paltz on the first tuesday of April 1824 the following persons were chosen and elected by plurality of votes of the freeholders & inhabitants of the patent of New paltz for twelve men by Virtue & in persuence of a certain instrument in writing made for that purpose." The record also names the chosen representatives, designating for each, respectively, the share of some one of the original patentees. One of the "Twelve Men" elected at this time was Daniel DuBois, who had been chosen to the same office for the four preceding years. By members of his family, the papers of the "Twelve Men," now in the Huguenot Bank, were brought to "a meeting held at the house of Benjamin D. Smedes on the 3rd day of Apr. 1858 of the Inhabitants of the town New Paltz pursuant to public notice," for the purpose of choosing a custodian for the documents of "the Twelve."¹ These facts would seem to indicate that Daniel DuBois, who lived until thirty-three years ago (March 15, 1852), was the last survivor² of the last "Duzine;" and thus he might have claimed the unique distinction of perpetuating in his own person, as late as the middle of the 19th century, an institution older than the Christian era.

No account of the town of New Paltz would be complete, if it did not make some mention of the marked character of the religious life which produced, side by side with so interesting a civil organization, a noteworthy church establishment. When the Indians were overtaken by Louis

¹ The meeting "Resolved that the patent papers be kept and held by Methusalem Eltinge. Ab^m P. Lefever Pres.—Ab^m H. Deyo Jr. Sec."

² Dr. Peltz, however, in an address at the DuBois Reunion in 1875, says: "One gentleman sits before me to-day who has been chosen the representative of his tribe." Query: Did he refer to Ab^m P. Lefever, who was president of the above mentioned meeting, and who did not die till 1879? The records, however, do not show his election as one of the "Twelve Men."

DuBois and his band, in that journey which included the discovery of the New Paltz lands, the captive women were staying the hands of the savages by singing the 137th psalm;¹ and more than a dozen years afterward when the little group of Huguenot settlers, who had left their Dutch friends at the Esopus, reached the *Tri-Cor*² near the present village of New Paltz, one of the number read from the French Bible the 23rd psalm, and then led the company in prayer.

After their settlement, almost at once, the community erected a rough log house to serve both for school and church.³ These Huguenot pioneers at New Paltz, having been driven from France to the Palatinate in Germany, as a temporary asylum from the fires of persecution which were everywhere lighted in France, even before the formal Revocation of the Edict of Nantes, brought with them to their "new Palatinate" that fervor of religious life born only of martyrdom,—a fervor quite as strong as, and more tolerant than, that which inspired the early settlers of New England. It is not strange, therefore, that within six years the Huguenots at New Paltz obtained a minister, the Rev. Pierre Daillie,

¹ This interesting episode has been commemorated by Edmund Eltinge, Esq., of New Paltz, in a large historical oil painting now in his possession, which he had painted for him by a skilful artist over thirty years ago. In the foreground are the captive women near a group of Indians, and on the right, just emerging from the woods, are Louis DuBois and his Huguenot companions, dressed in the costume of their day, advancing from the thicket with their guns to put the Indians to flight. In the back-ground, beyond the Wallkill Valley, is the Shawangunk range with its prominent point, "Sky Top," strongly defined against the horizon; and farther in the distance, to the north, is a glimpse of the Catskills. The rich autumn foliage of the region is well put upon the canvas, and, altogether, the painting is a noteworthy representation of this memorable incident in the early pioneer life of the New Paltz settlers.

² *Tri-Cor* refers to the *three cars*, or wagons, in which the settlers had brought their worldly goods.

³ The Dutch had in their early charters to the West India Company provided for both schoolmaster and minister in the Hudson river settlements, and the Huguenots showed themselves equally zealous in the cause of education and religion.

“and formed themselves into a congregation by the name of the Walloon Protestant Church, after the manner and discipline of the Church of Geneva.”¹ The first record of this church organization is interesting. It is in French, and the following translation of a portion shows that the popular methods of government which marked the civil life of the community, prevailed thus early also in their church establishment: “The 22nd of January, 1683, Mr. Pierre Daillie, minister of the Word of God, arrived in New Paltz and preached twice on the following Sunday, and proposed to the heads of the families that they should choose by majority of votes, by the fathers of families, one Elder and one deacon, which they did, and chose Louis DuBois for elder and Hugh Frere for deacon to assist the minister in guiding the members of the church that meets in New Paltz;”²

This *l'église de Nouveau Palatinat*, as it was early called, is probably the only church in America whose records are written successively in three languages, each period illustrating a different epoch in the church life and government. Approximately, they may be said to have been kept fifty years in French, seventy in Dutch, and since the beginning of this century in English. Within twenty years after the election of the first church officers, the records appear to have been partly in Dutch, and this language was chiefly in use throughout the eighteenth century,—a fact which shows the dominating character of Dutch influence in colonial New York, even in a settlement which, like New Paltz, was at first entirely Huguenot.

In marked contrast with the religious intolerance of the New England colonists, was the broad Christian liberality of the Dutch and Huguenots who laid the foundations of New York State. Often, when their own French church was without a pastor, the Huguenot settlers of the New Paltz went

¹ Hasbrouck MS. See “Life and Times of Louis DuBois,” by Anson DuBois, DuBois Reunion 1876, Proceedings, p. 67.

² See Fac-simile of Record, DuBois Reunion, 1876, Proceedings, pp. 8, 9.

with their Dutch friends to the Dutch church at Kingston to attend the communion service, or to have the right of baptism administered to their children;¹ and, in turn, the increasing Dutch population at New Paltz not only worshipped in the French church of the Huguenots, but even acted as its officers and wrote its records in their native language. In this transition period of life and language, from French to Dutch, the ministers, it is likely, were frequently called upon to give alternate discourses in the two languages,² as it is certain they gave them in Dutch and English, during the later transition at the close of the last century.

So close, indeed, was the agreement between the Huguenots and the Dutch at New Paltz, that we find the former, although they had been accustomed to a more independent church government, joining those of the Dutch, who, in the sharp controversy between the *Coetus* and *Conferentia* parties, held with the *Conferentia* faction that their ministers must be ordained in Holland by the classis of Amsterdam. Thus the French Reformed Church of the early settlers merged into the Dutch Reformed Church of New Paltz, which to-day stands as the exponent in the community of a religious life that gained much of its original strength under French and Spanish persecutions. In New York, as in New England, the desire for religious freedom accompanied and inspired the persistent purpose to obtain popular local self-government, which made possible the formation of our United States.

Having examined, somewhat in detail, many marked types of village community government in New Netherland and New York, one may well pause to consider the precise signifi-

¹ In the early settlements of New Amsterdam, some seventy or eighty years before the time with which we are dealing, "for many years Huguenot and Dutch worshiped together."—Proceedings of Huguenot Society of America, I., p. 27.

² In a French will of 1730, there is a gift of a Bible, to go to the church, for the reading of the *French* service. The will is an eminently religious document, and by it the maker bequeaths everything to "*l'église du nouveau pals.*"

cance of the bond of union which thus brings together the Rhine and the Hudson into close institutional relationship,— a relationship closer perhaps than even that between Old England and New England. It should be noted in the first place that the Hudson river towns may properly be spoken of as *Dutch* village communities, although only fifty years under Dutch rule, and composed in part of emigrants from France, Germany, and Great Britain. A writer,¹ as late as 1750, says that more than half of the inhabitants of New York were Dutch, and not until the close of the last century did Dutch give way to English as the prevailing language among the people.² Dutch manners and customs, Dutch forms of government, civil and ecclesiastical, prevailed not only in the early settlements, but persisted and remained dominant long after English rule supplanted that of Holland.

These outward forms of Dutch influence in early New York are interesting chiefly as exponents of the character of the colonists. It was the spirit of the people of the United Netherlands, which in the Fatherland had, through centuries, kept the feudal system from gaining there the foothold it obtained in France and England, and had at last thrown off the Spanish yoke,—it was this spirit which, prevailing in the colonies along the Hudson river, contended persistently for the rights of popular representative government, until they were attained in the General Assembly of 1664, just at the downfall of the Dutch West India Company's monopoly, and which again, after twenty years of arbitrary English rule, forced from an unwilling government the Representative Assembly of 1683.

¹ Rev. Mr. Burnaby (1750), Valentine's History of N. Y. City, p. 296.

² The long prevalence of the Dutch language, which has been noted in the New Paltz church records, was not merely local, but general throughout the colony. Smith, in his History of New York, writing in 1756, (more than ninety years after the first English possession,) says that "the sheriffs find it difficult to obtain persons sufficiently acquainted with the English tongue to serve as jurors in the Courts of law."

If one traces the origin and growth of this liberty-loving sentiment of the Dutch people, one is carried back to the earliest ages of north European history,—to a time, a century or more before the Christian era, when a hardy race called by Cæsar, the Menapii, occupied the country between the Rhine and the Meuse, and the Schelde and the ocean.¹ They (the Menapii) “held alliance with the Romans, *but never submitted to their yoke at all nor permitted them to introduce their language*, but retained in perpetual use the Teutonic (Theotiscam) dialect, now Dutch. Therefore, on this account, they called themselves Franci (Free Men) from the liberty they enjoyed.² These early inhabitants of the Netherlands seem to have been not only *free-men*, but also, as their name imports, (it being derived from two German words *MEEN—AFFT*, Dutch, Gemeen-Schap,) a community of nations or a confederation.³ If this be so, one may trace from this earliest alliance of independent Teutonic tribes, those ideas of government which, sixteen hundred years later (in 1579), were embodied in the union of Utrecht; and, in turn, from this more recent confederation of States in the Netherlands, one may derive by a continuous race-tradition, through the Dutch village communities on the Hudson river, that principle of the union of sovereign powers which gave form to our United States.⁴

¹ Gen. J. Watts de Peyster, *Netherlanders*, p. 23.

² Gen. J. Watts de Peyster, *Netherlanders*, p. 19.

³ Gen. J. Watts de Peyster, *Netherlanders*, p. 24.

He cites many authorities and among them Olivarius Vredius *Brugis Flandorum apud Joannem Baptistam Kerchovium . . . Anno 1639.*

⁴ Brodhead, *History of New York*, p. 362, bears out this theory of the influence of Teutonic example by stating that the doctrine of States Rights is three centuries old, and by asserting that “The Union of Utrecht . . . was essentially the model for the first union of American Colonies.” He even explains on the same theory, the confederation of the New England Colonies against the Dutch and the Indians in 1643, and notes that the Plymouth immigrants had learned valuable lessons in constitutional liberty during a twelve years sojourn in Holland. However that may be, it is certain that the Puritans have as little right to claim originality in establishing a confederacy, as in using the venerable town-meeting for the management

Special evidence of the close relationship between the free institutions of the Rhine and the Hudson is furnished by the village of New Paltz. The first proprietors were all Huguenots,—DuBoises, LeFevres, Deyos, Freres, and Hasbroucks, who, fleeing from France, had escaped the oppression both of the church and of the feudal system, and had probably gained familiarity with the free village community government, afterwards established here, during their residence on the banks of the Rhine in the German Palatinate,¹ where to-day, in the clearings of the adjacent Odenwald, are to be found almost perfect types of the primitive Germanic mark.

Yet another tie binds New Paltz and her local institutions to the old world. Only fifteen years was the “New Palatinate” a purely Huguenot community. As early as 1703, the Dutch element was introduced in the person of Roeloff Eltinge upon his marriage with Sarah DuBois, and thereafter the Eltings (and to a less degree other Dutch families) became prominent in the affairs of the township; so much so, indeed, that seventy years later, one member of the family—Noah Elting—owned one-seventeenth of all the common and undivided territory of the original grant. It is a curious and

of their local affairs. Both were Teutonic heritages reaching America from Holland and Germany directly, by a purer line of descent, than from England, which, to carry out the figure, may be called a relative of the *half blood*. How strong the influence of Holland and Germany was, in shaping the growth of our country, must be apparent to any careful reader of the events just prior to the Revolution. Not only in New York, but elsewhere in the colonies, patriotic minds were impressed by “the Helvetic Confederacy and the States of the United Netherlands as glorious examples of what ‘a petty people in comparison’ could do when acting together in the cause of liberty.” Frothingham, *Rise of the Republic of the United States*, p. 199; quoting Richard Bland of Virginia (1766).

“United States,” as a legal term, it is interesting to note, dates from Monday, Sept. 9, 1776, when Congress “Resolved, That in all Continental Commissions and other instruments, where, heretofore, the words ‘United Colonies’ have been used, the stile be altered, for the future, to the ‘United States.’” *Journals of Congress*, Vol. I., p. 470. The expression had before been used in the Declaration of Independence.

¹ Conf. Fiske, *American Pol. Ideas*, p. 52.

interesting fact that Jan Eltinge¹—the father of the first New Paltz freeholder Roeloff—was, as is shown by his certificate of church membership,² born in 1632 at Beyle, in the province of Drenthe in Holland; in which, says Laveleye, “the Germanic *mark* still exists; . . . surrounded on all sides by marsh and bog, this province formed a kind of island of sand and heath, on which ancestral customs were preserved in their entirety. Even in our day we find the ancient organization of the Saxon *mark* ;”³ De Amicis, also, in his recent work on “Holland and Its People,” speaking of Drenthe, says: “Every thing in this strange province is antique and mysterious. The customs of primitive Germany are found here, tillage of the ground is common on the *Esschen*, the rustic horn calling the peasants to labor, the houses described by Roman historians, and over all this ancient world the perpetual mystery of an immense silence.”⁴

It is not strange, therefore, that in New Paltz the union of the Huguenots and the Dutch, who had brought the forms of primitive local government from two such sources as the forest regions of the Odenwald and the marshy peat fields of Drenthe, should result in a continuance of ancient village community customs here on the Hudson river, even into the present century.

From the banks of the Rhine, the germs of free local institutions, borne on the tide of western emigration, found here, along the Hudson, a more fruitful soil than New England afforded for the growth of those forms of municipal, state, and national government, which have made the United States the leading Republic among the nations.

Thus in a new, and historically important sense, may the Hudson river be called the “Rhine of America.”

¹ He was a magistrate at Hurley, in 1683.

² Colls. Ulster Hist. Society, Vol I., Part 2, p. 177. The original certificate is in the possession of Edmund Eltinge, Esq.

³ Laveleye, *Prim. Prop.*, p. 282.

⁴ De Amicis, *Holland and its People*, p. 390.

II

TOWN GOVERNMENT

IN

RHODE ISLAND

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor.

History is past Politics and Politics present History — *Freeman*

FOURTH SERIES

II

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IN

RHODE ISLAND

BY WILLIAM E. FOSTER, A. M.

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TOWN GOVERNMENT

IN

RHODE ISLAND.¹

The application of the comparative method to the study of early American history has within recent years been attended with results of the most substantial value. The scattered communities along the Atlantic coast which, since 1776, have been united in a common bond of government had their origin in widely diverse sets of conditions. While, therefore, their development has been characterized by institutions bearing a general analogy to each other, there is sufficient individuality and local differentiation to be observed in any one instance, to render a somewhat close comparison of their points of resemblance and difference extremely serviceable. It is plain, moreover, that, the farther down in the scale of local division we can go, the more fruitful will be the study of these local institutions.

While, then, the nation is made up of the several States,—once colonies or provinces,—and while the States are made up of counties; we need to notice that, descending still farther, the counties are made up of towns, or, as in some States, parishes. We may pass, for our present purpose, any consideration of the counties² in connection with this question.

¹Read before the Rhode Island Historical Society, Jan. 22, 1884, and before the Historical Seminary, Johns Hopkins University, April 18, 1884.

²See Dr. Edward Channing's paper, on "Town and County Government, in the English Colonies of North America," Johns Hopkins University Studies, 2d series, X.

While in the Middle and Southern Colonies, owing to the scattered condition of the population, and the comparative fewness of compact settlements, the county became a more important political division than the town,—in all the New England Colonies, on the other hand, the county has never possessed any political significance.¹ It has been merely a convenience of administration.

In the town, however (as existing in New England), we find most of the conditions for a unit of government. Its territory is not too large for efficient combination and coöperation. Its population is, in general, compactly massed. Its citizens are a homogeneous whole. To this it should be added that the town, in all the New England Colonies, has from the first had a strong hold upon the interest of the citizens. This was noticed by M. de Tocqueville,² who so long ago as 1835, declared that the coöperation of the citizen “insures his attachment to its interest; the well-being it affords him secures his affection; and its welfare is the aim of his ambition, and of his future exertions.” The strong hold which the doctrine of States-rights has always had in the colonies and States south of Mason’s and Dixon’s Line, has been a striking fact in our political history. To a far greater extent than in New England, the States have, in the South, rivalled the national government, in the interest, the concern, and the affection of the citizens. Is not this difference to be explained, in part, by the fact that in New England the town has been almost as formidable a rival as the State, in this respect? It has thus, perhaps, resulted, that between the two tendencies, the regard for the national government has not, in New England, been materially encroached upon.

In this paper we shall examine some of the peculiar and interesting conditions under which this institution—the town—has manifested itself in Rhode Island; indicating the con-

¹ In R. I., county officers have no functions beyond those of the courts.

² “Democracy in America,” (Ed. 1862), I., p. 85.

trast to be observed between the beginnings of government here and in the other New England colonies, and also some of the marked characteristics which have continued to distinguish the local institutions of Rhode Island to this day.

THE INDEPENDENT ORIGIN OF THE TOWNS.

The colony of Rhode Island differs from the colony of Massachusetts Bay, for instance, or from the colony of Pennsylvania, in the fact that her settlement was not a deliberate act resulting from a formed purpose. The elements of which the colony came in time to be composed were at first entirely independent of each other. Rhode Island, moreover, had no deliberate "founder," in the strict sense of the word. It is true that such honor and distinction as we have come to associate with the name of founder, belong in Rhode Island to Roger Williams, in virtue of the many and signal services which he rendered to this colony, and the far-reaching influence which has followed his self-sacrificing labors. Yet it is only necessary to compare his coming to Rhode Island with that of Winthrop to Massachusetts Bay, or that of Penn to Pennsylvania, to see that his agency in the matter was not the result of a conscious purpose. There is certainly nothing to show that Roger Williams came from England to America with the intention of founding a colony. Nor is it clear that he brought with him from Salem to Providence any intention quite so distinct as that. He left Salem because of the official measures taken against him by the Massachusetts government. In steering his "course to Narragansett Bay,"¹ to use his own language, his benevolent intentions were, upon his own testimony, in behalf of the Indian occupants of the soil (with whom a few years earlier he had had several interviews), rather than in behalf of any countrymen of his own, for

¹ Narragansett Club Publications, VI., p. 335.

whom a colony might thus be founded. His primary purpose, he afterward declared, was "to do the natives good and to that end to have their language."¹ He even adds more explicitly that he "desired not to be troubled with English company." It is quite true that he was not without English company,—either in his journey from Salem, or in his short stay on the banks of the Seekonk, or in his final settlement here at Moshassuck. But it is perfectly obvious that this "company" was almost forced upon him. "Out of pity," he declares, "I gave leave to several persons to come along in my company," and accordingly he was joined by Harris, Smith, Angell and Wickes.

But Williams's mind was one which felt very readily the weight of any strong consideration—particularly a benevolent one. And so, enlarging his original intention, he considered, to quote once more his own language, "the condition of divers of my distressed countrymen."² The result was that he advanced at last to the distinctly formed plan of "a shelter for persons distressed for conscience."

But when did he thus enlarge his conception? We must look a little backward, and a little forward as well, from the month of January, 1636, in which he left Salem. So early as the previous October the sentence of expulsion³ had been passed. That the intervening three months should not have been partly given up to carefully weighing and considering the matter with his Salem friends would not be quite natural.

It is in this light that we may read Governor Winthrop's entry in his Journal, on hearing of Mr. Williams's departure,—that "he had drawn above twenty persons to his opinion, and that they were intended to erect a plantation about the Naragansett Bay."⁴ The matter had reached that stage.

¹ Williams's testimony, Nov. 17, 1677, Proceedings of Harris Commission.

² R. I. Col. Records, I., p. 22.

³ See the examination of this "Sentence of expulsion," in the Rhode Island Historical Society's "Collections," VII., pp. 95-100.

⁴ Winthrop's Journal, I., p. 175.

Let us now look forward from January, 1636, and see how gradually and in what an unpremeditated¹ manner this infant "Plantation about the Naragansett Bay"—this "shelter for a few of his distressed countrymen,"—developed by slow and gradual stages into a chartered colony. Not until August do we come upon the noteworthy agreement, August 20, 1636, of those who were "desirous to inhabit in the town of Providence."² By this act they signified their readiness to submit to whatever arrangements might be found desirable, "only in civill things," by their thirteen predecessors, whom they mention as the "present inhabitants." This, so far as any documents now remaining to us are concerned, was the beginning of the organization known as "the town of Providence," though the language, "Towne meeting" is used in an entry dated June 16.³

"The town of Providence." And what were the boundaries of this town of Providence? Whose territories marched with it on the north, on the west, and on the south; and by what charter or official sanction did it hold? Boundaries it had none, until the Indian deeds⁴ approximately—and only approximately—marked them out. With those of no other English settlements did any of its lines coincide, except that it was known to lie somewhere west of the Plymouth Colony. It was, in fact, a settlement in the wilderness with undetermined bounds. And by no charter or documentary authority, from white men, was it secured in its possessions.

Here, then, in the North, was "the town of Providence,"—Williams's town. But at about the same time, another company of his "distressed countrymen,"—most of them residents

¹ Compare R. I. Hist. Soc. Collections, VII., pp. 101-3.

² R. I. Col. Records, I., p. 14.

³ R. I. Col. Records, I., p. 12.

⁴ Printed in R. I. Col. Records, I., pp. 18, 22-25, 31-38. See also the *Naragansett Historical Register*, II., pp. 222-25, 287-97, where they are carefully reprinted.

of Boston—had determined to remove to some place. They were avowedly attracted by this beautiful bay, with its fertile shores and its then delightful climate. They finally settled near the northern end of the island known as Rhode Island. This was the beginning of the town of Portsmouth. But what relation existed between the town of Providence and the town of Portsmouth? None whatever. They were not two members of the same colony. They were not even two organizations planted by the same authority. Nothing but the word “independence” properly characterizes their attitude, both to each other, and to the rest of America. Allegiance to the King (and later to the Commonwealth) was all that they acknowledged.

These were the two parent settlements. In a short time there came to be a settlement at Newport, as an outgrowth of that at Portsmouth; and one at Warwick, in part settled by Portsmouth men and in part by Providence men. But though, historically, this was the origin of Newport and Warwick,—politically the towns of Newport and Warwick acknowledged no connection and no obligation, at first and for some time. The first instance of coalescing, or running together in any way, was in the case of the two towns on Rhode Island,—Portsmouth and Newport,—and this occurred four years after Roger Williams came to Providence. It was not until 1647, more than ten years after the beginning of Williams’s settlement, that the four towns came together under a common government, and that any such entity as a “Colony of Rhode Island” existed.

Let us see how this consolidation, and creation of a colonial government came about. There are doubtless other causes than those which are now recognized, but the chief agencies appear to be three in number: First, a common purpose animating these settlers; second, the danger of a common opponent without; lastly, but by no means of least importance, the absolute need, in their internal administration, of “Something” to quote from Judge Staples, “to give stringency to

their laws as among themselves.”¹ Up to this date, however, the town of Providence, dating from 1636; the town of Portsmouth, dating from 1638; and the town of Newport, dating from 1639; all three of them during a part of this time (and the town of Providence during the whole of it), existed as independent communities; more so than the two neighboring towns of Salem and Ipswich in the Massachusetts Bay Colony,—more so than the towns of Boston and Springfield in the same colony. To find an analogy, in fact, we cannot stop short of comparing colony with colony, or colony with one of these towns. The town of Providence was, in fact, until 1647, as much an independent, self-centred, community, as the Colony of Massachusetts Bay, or the Colony of Maryland.

Was there not resistance to the proposed consolidation? We may be sure there was. It is not to be imagined that so great power would pass from the hands of the several towns without a struggle. The union was, however, seen to be inevitable, and it was finally brought about; but in such a way that the language of John Quincy Adams, used many years later and with reference to another matter, might with almost equal propriety be applied to this. “The constitution,” says Mr. Adams (speaking of the adoption of the United States constitution in 1787–89), “The constitution had been extorted from the grinding necessity of a reluctant nation.”² And so it might be said of the union of towns³ which the meeting of the first General Assembly of Rhode Island signalized, in 1647, that it was “extorted from the grinding necessity” of four reluctant towns.

Roger Williams was dispatched to England, and from what was at that time the highest authority in England,—the par-

¹ “Proceedings of 1st General Assembly,” p. vii.

² John Quincy Adams’s address on “The jubilee of the constitution,” 1839, p. 55.

³ These towns, as the author has elsewhere pointed out, “were scarcely less than little ‘States,’ in the functions which they exercised.” (Foster’s “Stephen Hopkins,” I., p. 158).

liamentary government,—he obtained the patent of 1643-4.¹ This patent established as one government, “The Incorporation of Providence Plantations, in the Narragansett Bay in New England.” Not until this point can we speak of the colony as existing; and it is of distinct importance to notice that, while in the case of most American colonies, the charter has preceded and has been the model of the colony, the order is here reversed, and the charter is rather the outgrowth of the nascent colony with its requirements, more or less urgent, and more or less fundamental. That this latter is the order of nature one need hardly hesitate to acknowledge; nor did twenty years pass before this same natural law of development called for the replacing of this earlier “patent,” with the more highly organized “charter” of 1663.

It is well to pause here and notice how different was the experience of Rhode Island in this regard from that of the other New England colonies. The Plymouth settlers, before landing from the *Mayflower* on American soil, signed in their cabin the memorable compact which combined them into a “civil body politic.” The Massachusetts Bay settlers, after obtaining their charter, carefully brought it across the Atlantic with them. The Connecticut settlers planted Hartford under a specific “commission” from the Massachusetts General Court, which was granted,—to quote its language,—in order “that some present government might be observed.”² But in the scattered communities which grew up on Rhode Island soil between 1636 and 1647, there were lacking not only organic law in common, but even documentary agreement in common, and also any delegation of authority from outside their limits,—until the patent, whose provisions went into operation in 1647.

¹ See the address of Judge John H. Stiness, Feb. 4, 1885, on “The First Charter,” in the R. I. report on “The Providence County Court House,” 1885, pp. 13-58.

² Mass. Col. Records, I., p. 171. (In the original, abbreviations are used.)

CHARACTERISTICS OF THE TOWNS.

Let us look now at some of the characteristics which marked these local communities from the outset. As a conspicuous example, their extraordinarily exaggerated separatism may be mentioned. In Providence, for instance, this rendered any progress towards formal organization extremely slow. The first organized action is that of the "agreement," signed Aug. 20, 1636, in which thirteen "present inhabitants" are named,—one being Roger Williams. A letter written by Williams to Governor John Winthrop (the elder), at about this very time,¹ is valuable as throwing some light on the condition of mind in which these recluses approached even so rudimentary a measure of local government as this. "We have no patent," he remarks, "nor doth the face of magistracy suit with our present condition."

"Hitherto," he remarks, further on, in the same letter, "the masters of families have ordinarily met once a fortnight, and consulted about our common peace, watch, and planting."² But as yet all right of ownership stood in the name of Roger Williams, himself, until, some time in the year 1638, he made over "equal right and power," etc. to his twelve associates. And not until July 27, 1640, did "the inhabitants of the town of Providence" reach the point of a regular election of town officers, and "agree for the towne to choose" the various officers required.³ So far, indeed, were they from consciously founding a colony, that they thus omitted the actual organization of a town government, by appointment of officers to administer it, until apparently forced to it step by step.

This agreement, says Staples, "went into immediate operation, and constituted the town government for several years."⁴

¹ In August or September, 1636. (Narragansett Club Pub., VI., p. 4.)

² Narragansett Club Pub., VI., p. 4.

³ Staples's "Annals," pp. 40, 41, 42, 43.

⁴ Staples's "Annals," p. 44.

Another thing is significant as showing that the aim of these first settlers was not consciously the founding of a great and extensive centre of business or influence. In the laying of the foundations of other colonies, great care was taken in the choice of the men who were to compose the infant community. Winthrop, at Boston; Bradford, at Plymouth; Hooker, in founding the Connecticut colony;—and, in fact, every deliberate organizer of a colony went out with picked and chosen men,—men who had just the qualities needed to build up a political society. Was this so in the case of the men who came to Providence with Williams? Nay. “It can scarcely be believed,” says Mr. Dorr, “that if Williams had known the nature of the work he had unwittingly begun he would have selected as his associates all the men who gathered around him.” “Scarcely any, save Williams, had any political experience.”¹ They came with him because they had been his friends or associates, or wished to become associates. At Portsmouth, indeed, it was slightly different. Such men as Coddington, Aspinwall, Hutchinson, and Holden were not without experience in political matters; but what this community lacked in unfamiliarity with administration, it would seem to have amply made up in incompatibility of temper.

This latter characteristic, in fact, indicates a third feature in these early town governments,—namely, a lack of harmony. Repulsion, rather than attraction, was to be observed wherever their various elements were brought into contact with each other. They wanted very little else but to be let alone. If any one from outside their limits would come to them, and wished to become one of themselves,—that was one thing. It was quite another thing, however, if they were expected to receive those who simply cared to make visits back and forth, or if they were expected to keep thoroughfares open into the other colonies. For this they had no mind. (We are speaking,

¹ Dorr's “Providence,” pp. 6-7.

of course, of the very earliest years of the settlements.) They did not exert themselves for exchange of merchandise by way of trade, nor did they aim at the broadening effect of commercial intercourse, nor did they lay themselves open to outside influence of any kind. Nor, on the other hand, were they much more inclined to cultivate intercourse among themselves. And not only were the different communities frequently at swords' points with each other, but each separate community seemed to be capable of bringing forth an abundance of discordant elements within its own limits. The Portsmouth community found itself at so great difficulty in reconciling itself to Gorton that he withdrew to Warwick. During his brief stay in Providence, antagonism of the most bitter nature had been developed between him and Roger Williams. Between Williams and Harris, however, was an even more bitter contention, which seems to have lasted with unabated vigor to the close of their lives. At Pawtuxet, also, another active opponent of Williams, who, to put it mildly, was capable of somewhat excited invective, existed in the person of William Arnold. In the Newport settlement, William Coddington was a thorn in the side of more than one of the community, and was in frequent collision with William Brenton. And as if this were not enough, the advent of the Quaker element, in 1654, added one more inharmonious note to the chorus of discords.

Another characteristic is to be noted, in the lack of the tendency to organize, in these several communities, in the matter of local institutions. No common meeting-house, no common burying-ground, no common school-house, no common town-house, revealed the fact that these settlers saw before them a future of growth and development, for their newly-planted settlement. On the contrary, says Mr. Dorr, "the fields, the houses, and the barns of the Plantations were the primitive places, both of secular and religious meetings."¹

¹ Dorr's "Providence," p. 9.

A local community, in the Massachusetts or Connecticut Colony, was, in fact, a crystallization around the meeting-house and the school-house, as a nucleus. In the early town of Providence there was no nucleus of this kind, except the early grist-mill.

Another characteristic is, of course, the now world-renowned principle of separation between the civil and religious functions. Later, it became inseparably associated with the name of the colony; but its origin was in the exigencies of the separate towns.¹

FUNCTIONS EXERCISED BY THE TOWNS.

Thus much for some of the characteristics of these towns, but we must consider the functions exercised by them. For these functions, in fact, determined in part their characteristics; and shaped the government which was organized under the two colonial charters; and continued to be exercised in a more or less complete form, long after the adoption of the colonial government.

There is, (as should be expected,) a variation in these particulars in the various towns. Let us look for a moment at the town of Providence, as it existed from 1636 to 1647. The government was at first a pure democracy. Not an aristocracy, in which certain chief members of the community assumed the authority. Not even a representative republic, in which the interests of all were subserved by the delegation of actual legislation to a portion of their number. There was no selection; and there was no delegation. "It would," says Staples,² "be interesting to peruse the proceedings of a colony of civilized men, commencing a political existence with the principles of perfect equality, and to mark the

¹For an examination of this principle as established in Rhode Island, see R. I. Hist. Soc. Collections, VII., pp. 100-3.

²Staples's "Annals of Providence," p. 38.

growth and increase of difficulties which gradually" "led them to the abandonment of their pure democracy, to the delegation of part of their powers, and to the institution of a representative government." But the records are unfortunately meagre.

This was the time when the town of Providence paid no heed nor regard to any other authority whatever, except a king 2,500 miles and more across the sea; and when every citizen of this same town of Providence was on perfect political equality with every other, and acknowledged the authority of no other. This was individual sovereignty, in actual operation. It did not, of course, continue long.

Another function of the towns was connected with their administration of justice and punishment of offenders. "Not only for troubled consciences," says Judge Durfee, "did the new accessions to their population come," but the settlement was also a refuge "for troublesome eccentricities. Adventurers came full of restless ardor, chafing at every restraint." "Men of vicious propensities came," also, "driven out of their old haunts, and seeking fresh fields for indulgence."

At the outset in both Providence and Portsmouth, "the major assent" of the freemen in open town-meeting was what decided cases of equity, impositions of penalty, and miscellaneous legal questions. It was before the Providence town-meeting, that Joshua Verin was brought, in May, 1637, and, to quote again from Judge Durfee,¹ "was tried, convicted, and disfranchised," for restraining liberty of conscience.² In September, 1638, the Portsmouth town-meeting summoned before its august presence, eight Portsmouth citizens, whom it tried, convicted, and sentenced, respectively, for the offence of drunkenness and rioting.³ In another instance, the Portsmouth town-meeting condemned and divided the property of

¹ Durfee's "Gleanings from the judicial history of Rhode Island," p. 2.

² See the original record, R. I. Col. Records, I., p. 16.

³ R. I. Col. Records, I., p. 60.

an absconding debtor.¹ There are some minor variations between the practice of Providence and that of Portsmouth. For instance, in the former town the administration of justice was committed to the whole body of citizens, with at first absolutely no discrimination. The next step was to select two "deputies." In Portsmouth, on the other hand, the citizens began by choosing one of their number "judge." Later in the same year, three "elders" were associated with him, "in the execution of justice and judgment."² Yet even they were obliged to make a quarterly account of their rulings, to the town-meeting (in early records designated "the Body"). The town-meeting, moreover, in every one of the Rhode Island towns, exercised from the outset the functions of a court of probate, nor did the creation of county organizations, in 1703, serve to indicate to these towns the desirableness of a transfer of these functions to a county court of probate, as in most other New England colonies. To this day, in fact, the only courts of probate in Rhode Island are, in the towns, the town council itself sitting in that capacity;³ and in the cities, such a body or judge as may be appointed⁴ by the city council for this purpose.⁵

From such beginnings, by a series of extremely slow accretions, and with modifications more slowly introduced than elsewhere, has developed the present judicial system of Rhode Island.⁶

¹ *Ibid.*, I., p. 62. Compare also the instance of capital punishment, cited by Governor Hopkins, in his *History*. (In *R. I. Hist. Soc. Collections*, VII., p. 38.)

² *R. I. Col. Records*, I., p. 64.

³ "Public statutes of Rhode Island," 1882, ch. 179, sec. 1.

⁴ *Ibid.*, ch. 179, sec. 2. The town councils have the option of appointing a "judge of probate," but have seldom availed themselves of it.

⁵ Another function exercised by the towns in Rhode Island, but usually by county officers elsewhere, is that of the care and control of highways. For a curious instance of the infelicitous working of this arrangement, see *Science*, Aug. 29, 1884, IV., p. 175, *note*.

⁶ Its growth and development have been traced by Chief Justice Durfee, of the Rhode Island Supreme Court, in his recent monograph, "Gleanings

Another function exercised by these towns was connected with financial administration. This has always been recognized as an indispensable accompaniment of local self-government; and there is therefore nothing noteworthy about it except as connected with its re-appearance after the union. There can be no doubt that a hesitation on this point lay at the foundation of much of the reluctance to enter into the union.

Passing now from our consideration of the origin, the characteristics, and the functions, of those towns before the year 1647, let us examine the frames of government successively imposed upon Rhode Island by the Patent adopted in 1647, by the Charter of 1663, and by the various modifications subsequently introduced; and notice how the pronounced independency of these early town governments gave character to it all.

GOVERNMENT UNDER THE PATENT OF 1643-4.

The General Assembly of 1647 was the beginning of legislative action in Rhode Island; and in organizing under the Patent obtained three years before, it adopted as its fundamental body of laws, "that remarkable piece of colonial legislation" as Judge Durfee designates it,¹—"the code of 1647." By this code a legislative body was created (consisting of a president, 8 assistants, and 24 commissioners). But this scheme, unlike most systems of representative government, placed no power to originate legislation in the hands of these "representatives," with but a slight proviso. "All laws," says Arnold,² "were to be first discussed in the towns." When all four of the towns had acted upon the

from the *Judicial History of Rhode Island*," (R. I. Historical Tracts, No: 18).

¹ Judge Durfee's "Gleanings," p. 6.

² Arnold, I., p. 203.

proposed law, *each by itself*, and not before, and favorably considered it, it was to be passed upon by the "General Assembly," whose action was thus simply a final ruling upon it. "Thus," says Arnold, "the laws emanated directly from the people." From this provision, says Governor Hopkins, "came the common story, that some towns had heretofore repealed acts of the General Assembly."¹

Another provision of the code deserves consideration, as showing the exceeding jealousy with which these colonists looked upon the assumption of authority by *any* man. Namely, that no person should "presume to beare or execute any office, that is not lawfully called to it and confirmed in it," nor presume "to do more or less" than he was expressly authorized to do.² They believed in no "loose construction" of their "constitution." The most striking feature of the code is that connected with the question of sovereignty, as it concerned Great Britain. Nothing has been more common in the granting of privileges by a royal government to a colony or dependency, than to enumerate certain rights, and cover the rest by a general provision which entitled the colony to whatever was not at variance with the laws of the home government. Was this the case with Rhode Island? Hardly. "Wee do agree," they say, "to make such lawes and constitutions," (i. e., conformable to the laws of England) "so far as the nature and constitution of our place will admit."³ Instead of shaping their laws to those of Great Britain, they were willing to adopt such of the laws of the home government as would conform to theirs. And the surprising fact in connection with it is, that, in this, they were but following the language of their Patent, as granted by the English government.

We have said that these towns, and later the colony, owed

¹ R. I. Hist. Soc. Collections, VII., p. 45.

² R. I. Col. Rec., I., p. 197.

³ R. I. Col. Records, I., p. 158.

allegiance to no one but the government of Great Britain across the sea. One might almost go farther and say, in view of this remarkable provision, that they regarded themselves largely as independent even of that. It is true that at this time the King was not on his throne, and that the ascendancy of the parliamentary and revolutionary government might be supposed to have loosened and unsettled for the moment the ordinary ties of allegiance. It is true, that when in 1663, the extraordinarily liberal charter of the colony was obtained from Charles II., the Rhode Island government failed not in its formal acknowledgment of his rule. But it is also true, and it should never be overlooked, in tracing the growth of that spirit of independence in this colony, which led to the independent principles and the resolute deeds of the revolution, that the colony *started* on a basis which almost wholly ignored any outside authority whatever. It had its origin in towns which were politically independent. And that same spirit of independence was transmitted to the colonial organization.

If, now, we examine the operation of government since 1647, we shall be no less struck with the survival of this early spirit of independence, growing out of the town governments. A formal union had taken place under the first patent. But when in 1651 William Coddington obtained from the home government the act which placed in his hands the long-desired supremacy, the stability of this colonial union received its first test. It yielded. The colony fell apart. Again, as at the beginning, Portsmouth and Newport acted together. Providence and Warwick, left thus to themselves, formed a separate government. The government of the towns, not indeed each one by itself, but by twos in combination, was resumed. Doubtless, if the tendency had not been arrested, the next step would have been to the original condition;—the government of each of the four towns, independent of every other.

THE CHARTER OF 1663.

But the tendency was arrested. There were enough of the citizens who were by this time convinced of the absolute necessity for joint action, to unite in sending Roger Williams and John Clarke to England to secure still further charter rights. Unfortunately, the instructions which they received, if any, have not been preserved, so that we are unable to judge whether the distinct advance which the charter of 1663 marked in the direction of a stronger central government, was or was not expressly authorized by the colonists. It probably was not, and undoubtedly was exceedingly distasteful to them. But none the less, it was felt to be a tendency which was inevitable and imperative.

In the patent adopted in 1647, no attempt had been made to declare or prescribe the boundaries of the new colony. The charter of 1663, however, did attempt this, and for the first time expressed in formal, official, language, what the colony claimed for itself. This was in 1663. Not until 1747 was the last of these lines fully settled and determined, and the right of possession of the territory by Rhode Island formally acknowledged by the neighboring colonies. And this is a consideration of no slight importance in considering the gradual growing together of the Rhode Island towns into one government, and the overcoming of the centrifugal by a centripetal tendency. In the days of 1787 to '89, when the union of thirteen somewhat inharmonious States was the one thing ardently hoped for, there was a toast which went freely circulating about the country,—“A hoop to the barrel!” This colony of Rhode Island in its early history needed a hoop badly enough, to be sure. Yet it may be considered to have had one in the pressure it experienced from its hostile neighbors, in the steady encroachments of the adjoining colonies on the territory which it claimed, and in the uncompromising hostility with which its planting and its rise were regarded by them. It was this constant, though unfriendly

pressure which became one of the strongest agencies in compacting the colony into shape.

ANDROS'S MEASURES.

Yet the centrifugal tendency was not altogether a thing of the past when the last quarter of the 17th century was reached, and when the advent of Sir Edmund Andros, with his measures of radical reconstruction, once more, and for the last time, dissolved the union which had constituted the colony of Rhode Island, and threw it back into its original state of town organizations simply. It was a singular proceeding, and one well worthy of careful study. Not so much a revolution, as a resumption of original relations which had been interrupted. Not an act of violence and anarchy, but apparently, under the circumstances, the only natural step to take.

No more marked difference can be conceived of than that between Rhode Island and the other New England colonies, in relation to what is known as the usurpation of Andros. In the other colonies it was an interruption of ordinary relations, and an interference with the exercise of every orderly function of government. But in Rhode Island before 1647, says Arnold,¹ "each town was in itself sovereign, and enjoyed a full measure of civil and religious freedom. They had now only to fall back upon their primitive system of town governments to be as free" as before.² On the 29th of June, 1686, the General Assembly voted that it should be "lawful for the freemen of each town in this collony to meet together," and make all necessary provision "for the managing the affairs of their respective towns."³ The Assembly then dissolved. In

¹ Arnold, I., p. 487.

² R. I. Col. Rec., II., p. 191.

³ In the interval between 1647 and 1686, however, 4 new town governments had been organized;—King's Towne and Westerly in the Narragansett Country; and Jamestown and New Shoreham, on the Islands.

1690, the government under the charter was as peacefully resumed as it had been set aside, the interference of the royal agent being now at an end. In all these occurrences the principle assumed as a basis of action, without apparently a question or protest, was, that these separate, independent town organizations had at their own pleasure united in 1647 in a league for their mutual welfare and defence;—a league which was subject to dissolution at any time by these same independent towns, at their pleasure. This was the theory upon which they acted in 1686; and it bears a striking resemblance to the extreme theory of States-rights, or secession, as applied to States;—the theory upon which the hesitating States defended their attitude in 1787–89, in delaying to ratify the United States constitution; the theory on which the States of Virginia and Kentucky acted in the passage of the disorganizing “Resolutions of 1798,” and “Resolutions of 1799”; the theory on which the thirteen Southern States acted in 1861, in withdrawing from the Union.

A LOCAL RHODE ISLAND SENTIMENT CREATED.

How the existence of this principle and this spirit in Rhode Island, passed gradually from an insistence on local town sovereignty, as opposed to the claims of a centralized colonial government, to an insistence on colonial and state sovereignty, as opposed to a centralized national government, is now to be considered.

How did this take place? The answer is, that the once heterogeneous community of which the colony of Rhode Island was made up, had become by slow and gradual stages an extremely homogeneous community. Homogeneous, indeed, it could not help becoming. After the first generation of its settlers, immigration from without was not encouraged, and for years its families went on marrying and inter-marrying, with an almost inappreciable infusion of outside blood. Traditions, handed down through successive generations, deep-

ened and intensified the strongly local sentiment which early in the history of Rhode Island had become a predominant and characteristic feature of the colony. It scarcely needed the steady, unremitting pressure of hostile encroachment from without,—which, however, was never absent,—to cause this tendency to pass, as it were, into the very blood of Rhode Island citizens.

FUNCTIONS OF THE GENERAL ASSEMBLY.

It is an interesting study to notice in what form this local tendency manifested itself, after the colonial government had secured a firm foothold, as opposed to the separate town governments. As was natural, this was to be seen in the prominence given to the legislative branch of the colonial government, at the expense of the executive and judicial. The General Assembly, that body which in its organization came nearest to a connection with the popular will, never abandoned the position of superiority in which the original patent had placed it; and while it has since then strengthened itself as compared with the power possessed by the towns, it has never suffered either the executive or the judicial departments to gain a position of relative preponderance over it.

If the patent of 1643 be compared with the charter of 1663, as regards the powers committed to the General Assembly, it will be seen that while the remarkable restriction by which the originating of legislation was originally devolved upon the towns had disappeared; and the General Assembly, as constituted in 1663, was invested with full power and authority “to make, ordeyne, constitute, or repeal, such laws, statutes, orders and ordinances,”¹ as it shall decree;—yet so apprehensive were the towns of any tendency to drift away from “the people,” that the election of delegates to this body was to recur so often as once in six months. For no longer

¹R. I. Col. Records, II., p. 9.

period were the towns willing to entrust the management of their affairs to the body which they themselves had created. At every meeting of the General Assembly, moreover, regular or adjourned, the charter was to be formally read.

Another feature of no less importance in this connection is the attempt, made with great determination and persistency, to connect this semi-annual session of the colonial government as really and fully as possible with the actual, individual, undelegated suffrages of every citizen of every town. At the outset, in so small a colony as this, it was possible; and twice a year, therefore, in May and October, the citizens themselves, of Providence, of Warwick, of Portsmouth,—of whatever part of the State,—assembled in person at Newport, and there in solemn council cast their votes for those who they decreed should deliberate for them for the ensuing six months.¹ This over, they returned to their homes, having inaugurated the session, so to speak, and left it to run of itself for the remainder of the time. Of course, the natural tendency of any such system as this was to a gradual modification by reason of the inconvenience and even impossibility of personal attendance, in many instances; and this was met by the gradual introduction of the system of proxy votes. But the votes of the citizens, personal and by proxy, continued to be cast *at Newport*, until 1760.² Thus closely was the General Assembly linked with the actual assemblage of the people of the colony.

But if its relations to the people, on the one hand, were thus interesting and intimate, no less interesting was its relation, on the other hand, to the executive and judicial departments of the government. Indeed, that relation might almost be expressed by the word “identity.” Let us see how it was in the case of the executive. Look at the language of

¹ Compare Freeman’s “Growth of the English Constitution,” etc., (Tauchnitz ed.), pp. 17–23.

² R. I. Col. Records, VI., pp. 256–57.

the charter. It reads: "The governor, or in his absence, or by his permission, the deputy-governor of the said company, for the time being, the assistants, and such of the freemen of the said company as shall be so as aforesaid, shall be called the General Assembly." That body, therefore, "called the General Assembly" *consists*, not merely of the "deputed" freemen called "deputies" and of "assistants," but also of the governor himself, or the deputy-governor. The governor was *one of* the General Assembly. Had he any power apart from it? In 1731 an occasion arose for testing this question. Governor Jencks, justly disapproving of the act of the General Assembly by which an issue of "bills of credit" to the amount of £60,000 had been decreed,¹ "negatived" the bill. His power to do this was immediately questioned. The question went by appeal to the law officers of the Crown,² in London, and the decision³ there reached by an examination of the provisions of the charter sustained the claim of the General Assembly, and settled it that "in this charter no negative voice is given to the governor," and that when the governor is present "he is merely a part of the assembly and included by the majority."

And he has no veto power to-day. In this particular, Rhode Island stands almost alone among the 38 States, Delaware, North Carolina, and Ohio being the only others whose governor has no veto.

Look now at the relation of the General Assembly to the judicial department. It *was* the court, at first and for a long time. Just as in Massachusetts the "General Court," as it was designated, exercised judicial, as well as legislative functions,—so in Rhode Island, the code of laws adopted in 1647, constituted the General Assembly "a Generall Court of Tryalls for the whole Colonie."⁴ In like manner the charter of 1663

¹ R. I. Col. Rec., IV., pp. 454.

² The Attorney General, P. Yorke; and the Solicitor General, C. Talbot.

³ John Carter Brown MSS., Nos. 582, 566, 567.

⁴ R. I. Col. Rec., I., p. 191.

established the same arrangement under the new organization. "The charter," says Judge Durfee, "did not *create* judicial tribunals, but empowered the General Assembly to create them; and accordingly the General Assembly, at its first session under the charter, provided that the governor or deputy governor, with at least six assistants, should *hold* "the general court of trials."¹ It was not until 1729 that the "Inferior court," the "Court of Common Pleas," was established. It was not until 1747, that a "Superior Court" was established, which should, in the functions which it exercised, supersede the General Assembly, (i. e., the governor and assistants). By the act passed in that year, there was now to be, in the place of the governor and assistants, "a chief judge and four assistants." But it would be a mistake to suppose (and this has been very lucidly traced by Judge Durfee,² in his interesting monograph), that the General Assembly hereupon relinquished all claim to the exercise of judicial functions. By no means. The result was, that the two bodies came, more than once, into collision with each other. In 1752, the case of *Mawney vs. Peirce* came up to the Superior Court, in the regular course, and was decided in favor of the plaintiff. Thereupon the unsuccessful party appeared before the General Assembly, as before a *court* having appellate jurisdiction, and petitioned for a new trial.³ And it was granted him. The General Assembly thus deliberately overruled the decision of the highest actual judicial authority in the colony. The case of *Trevett vs. Weeden* in 1786 is too well known to need more than bare mention. In this case also, the General Assembly was astounded that the Superior Court had declared one of its acts of legislation unconstitutional, and actually summoned the judges before it, and compelled them to answer for their action. Judge Durfee

¹ Judge Durfee's "Gleanings," p. 11.

² Judge Durfee's "Gleanings," pp. 58-65.

³ R. I. Col. Rec., V., p. 359.

remarks, that there were not a few who maintained "that after the revolution¹ (the English revolution), the General Assembly of Rhode Island was as omnipotent as the parliament of England."

Since the decision rendered by Chief-Justice Ames in 1856, and the action of the General Assembly in 1860, the General Assembly, says Judge Durfee, "has never intentionally at least, encroached upon the proper province of the judiciary."

We have been thus minute in touching upon the predominance of the General Assembly in the organization of the colonial government, because it represented, so very perfectly and intimately, the survival of the spirit of local town authority.

SURVIVAL OF THE LOCAL SENTIMENT.

To quite a late period, the towns still kept alive a very vigorous flame of the same local spirit. Perhaps one of the most striking instances to be met anywhere in the annals of Rhode Island, is one which occurred late in the eighteenth century. The town in question was the town of Scituate, not one of the original four towns, but one created in 1731, by an act of the General Assembly.

Coddington's commission, in 1651, had been held to dissolve, virtually, the colonial government under the existing patent. Andros's usurpation, likewise, in 1686, was considered as again resolving the government into its elements. Did the Declaration of Independence, in 1776, possess similarly significant powers of dissolution? Here was a town government which held that it did. In the paper drawn up by a committee of the town of Scituate, dated April 28, 1777, (the chairman being a distinguished general of the revolution), it was maintained² that upon the Declaration

¹ Judge Durfee's "Gleanings," p. 55.

² Arnold, II., p. 400. The original is in Foster papers, II., p. 19.

of Independence, the charter became void, and hence that no legal government existed in the State; and that "upon the Declaration aforesaid, the power again vested in the people where, we are convinced it still remains, as we do not find the people have, since that time either by any person legally authorized by them or themselves fixed any settled form of government." In the view of this committee, therefore, what had been the "Colony of Rhode Island and Providence Plantations" was at that moment reduced once more to a government by towns, and immediate steps towards placing the government again on a deliberately-organized political basis were imperatively necessary.

However sound this view of the case may have been, it does not appear to have been shared by any other of the 29 towns then existing, and the "State of Rhode Island and Providence Plantations," obstinately refusing to be regarded as non-existent, continued to exercise the functions of government.

We may also glance briefly at the somewhat remarkable phase which the process of development took, in one of the four original towns,—the town of Providence. It started, as was noticed, with a pure democracy, purer than has been witnessed anywhere else in the world unless it be the Ekklesia of ancient Athens, or the assemblies of certain Swiss cantons. Inevitably, a system of representation came to be introduced. The power, for instance, of deciding on the allotment of certain disputed lands, or the punishment of certain offences, was delegated to certain officers, known as deputies. Those who constituted "the people" remained an unchanged body until a new element gradually made itself manifest. Persons began to be received as townsmen who were not, and who did not become owners of land,—“purchasers,” “proprietors.” Hereupon was introduced a line of distinction which soon established a very marked and noticeable division. On the one hand, the “proprietors,” on the other, the non-proprietors,—the simple townsmen. As is very evident, here

were the very conditions needed for the development of an aristocracy.

That in fact *is* what resulted from it, though only after slow stages, and with many protests and efforts at resistance. Gradually the form of government became a close corporation. The original purchasers who received each one hundred acres, admitted some years later, certain other purchasers, who received each twenty-five acres. "The whole number of purchasers," however, says Staples, "never exceeded one hundred and one persons."¹ Their successors in the corporation were their heirs and grantees. Gradually there grew up, outside of this landed aristocracy, a body of citizens interested in the conduct of the town's affairs, and desirous of having a voice in it. The purchasers began in 1662, says Staples, "to hold meetings distinct from town-meetings, for the transaction of business relating to the propriety, but they had the same clerk, and used the same record book till 1718."² What was the status of the body of citizens which lay outside of this circle, and which in each succeeding year was becoming more numerous, both by accessions from without and by the natural increase of population? These men could become "freeholders,"—this the colony charter provided for,—but they could never become proprietors. Thus were developed, in conflict with each other, on the one hand an aristocracy based on land, and on the other, a class equally desirous of representation in the government, but studiously kept from attaining to the privileges of the "proprietors." Without expressing any view as to the wisdom or expediency of this course, we may recognize it as a sufficiently singular departure from the pure democracy of the earliest times. The action, however, says Mr. Dorr, by which the proprietors became a close corporation, and rigidly insisted on the line of separation, was

¹ Staples's "Annals," p. 60.

² *Ibid.*, p. 131.

not taken without a struggle on the part of many of the proprietors themselves.¹

Looking now at this tendency to town action,² and town sentiment, as a characteristic of Rhode Island government, from the first, it is seen to have been at all times a predominating tendency. It was inevitable that when in the years, 1774 to 1790, Rhode Island was brought into association with the other colonies, and finally in 1790 became a part of the Union, this principle should continue to characterize her action. In the structure of government and law, which, by slow and gradual advances became embodied in the constitution of the United States, these are elements which can be traced to this one and that one of the thirteen original colonies. What elements in it are to be traced to Rhode Island? Two,

¹The connection above cited as existing between the proprietorship of land and the development of an aristocratic element in government, at Providence, is sufficiently curious, but it is not the only Rhode Island instance. For another instance, see the peculiar state of society in the Narragansett Country, as described in Dr. Channing's paper on "The Narragansett Planters."

²The city of Providence, (which exchanged a town government for a city charter in 1832, and which has grown in these 54 years from a population of less than 20,000, to nearly 120,000, is perhaps the only instance of a city similarly organized which still continues to hold an annual town-meeting, though, in some instances, as in the case of Hartford, Conn., there is an organized municipality within, and forming a part of a larger territory bearing the same name, and governed by town officers. This town-meeting, always called for the consideration of precisely the same business,—the administration of certain valuable lands and funds bequeathed in 1824 to the then town of Providence, is a curious survival of an old institution. The stranger in Providence, on the 20th of December, 1884, would have had his attention arrested by the clanging of bells from four church towers, and on entering the room designated for the town-meeting, would have witnessed the choice of a moderator, the ordinary routine of motions, votes, and speeches, as in any village town-meeting, and perhaps an undercurrent of humorous enjoyment of the experience. This town-meeting is held in consequence of certain provisions in the will of Ebenezer Knight Dexter, dated May 28, 1824, and recorded in Providence Wills, XIII., p. 194.

above all. First, the separation of the civil and religious functions in government; second, the recognition of local self-government, as a tendency counterbalancing that in the direction of centralization. Yet both of these principles, though in themselves wise and desirable, may, if carried to an unbalanced extreme, become something quite the reverse. It is not difficult to see that Rhode Island has itself furnished a field for illustrating this tendency, as regards local government. Nowhere else has the tendency to centralization been encountered by a more thorough-going tendency to decentralization. No other State, even at present, has two capitals.¹ In no other State is there a provision analogous to that recognizing what is in effect a third seat of government, once in four years.² In no other is each one of the towns separately represented in the State Senate.³ In no other State was the system of rotation among a half dozen different local centres,⁴ of the successive sessions of the General Assembly, so long retained. In no other State was the original welding together of the various elements into one colony, so difficult a process and one which required to be several times repeated, in consequences of as many repeated dissolutions.⁵ In no other State was the colony so direct an outgrowth,—or rather

¹The last State, other than this, to retain the double-capital was Connecticut, which abolished it in 1873.

²By statute it is provided that, after each presidential election, the electors chosen in this State "shall meet at Bristol, in the county of Bristol." ("Public statutes of Rhode Island," 1882, ch. 12, sec. 6.)

³The States in which each *county* is separately represented in the upper house of the State Legislature, are by no means exceptional. The town, however, in Rhode Island, is here, as well as in other connections, the real unit.

⁴As an instance in point may be mentioned four successive sessions of the General Assembly, in the years 1789-90; (1) in September, at Newport; (2) in October, at East Greenwich; (3) in October-November, at South Kingstown; (4) and, in January, at Providence. On the following September, the session was held at Bristol. (R. I. Col., Records, X., pp. 338, 357, 362, 367, 388.)

⁵See pp. 10-12, 20-21, 23-24. Compare Foster's "Stephen Hopkins," II., 170, *note*.

creation,—of town organizations previously existing, and wholly independent of each other.¹ In no other State, moreover, had the principle of independence associated itself so strongly with the minds of the individual citizens, as well as the colony and the town.

In any consideration, moreover, of the refusal of the Rhode Island State government in 1787-90, to accede to the constitution of the United States, it is necessary to observe the close connection of this action with the predominatingly local characteristics which had so strongly marked the earlier stages of Rhode Island history. The national constitution then offered,—and later happily acceded to by this state,—was at the widest possible remove from those theories of local sovereignty, and those political methods of combination in the manner of a league merely, which had come to be the cherished doctrines of Rhode Island citizens. Those earlier Rhode Islanders, who, to use the language of Roger Williams, had “drank so deep of the cup of liberty,” had found it difficult in the extreme to merge their independent town governments in a common colonial government in 1647. Their descendants, in 1787-90, found it no less difficult to merge their independent Rhode Island government in the common national government now proposed.

That the United States constitution is not “a compact between sovereign States,” is a thesis which has been stoutly maintained,—and as warmly denied,—by the giants of debate in both houses of Congress. It is worth while to notice that in the minds of the Rhode Island legislators, who, in 1787-90, so desperately resisted the constitution, there was apparently no room for question on this point. As they regarded it, this national constitution was *not* a league between sovereign states. For that reason they opposed it with all their might.

Mr. Bancroft, the historian, in an address before the New York Historical Society, in 1866,² remarked that “more ideas

¹ See pp. 7-10.

² Jan. 2, 1866.

which have since become national have emanated from the little colony of Rhode Island than from any other." This colony has, in fact, been a sort of microcosm, in which there have been developed, on a smaller scale, the more important issues which have operated in a larger way on the stage of national government.¹ Nor should the significance of the long contest of 1787-90, in Rhode Island be misunderstood. The fact to which it points is not that a tendency had existed to emphasize unduly and to press to a most mischievous extreme, the local, as opposed to the national idea. That was inherent in the very nature of the State's political history up to that period. The fact of commanding importance is rather that, in the determined and even desperate encounter between these two tendencies in Rhode Island, the national principle here gained a decisive triumph,—how decisive may be seen from the fact (elsewhere cited by the present writer), that, "from this time on, so long as there was any active Federalist party, Rhode Island was a Federalist State."²

Briefly to recapitulate, we have seen that the political history of Rhode Island, in the eighteenth and nineteenth centuries, no less than in the seventeenth, is everywhere tinged by the influence of these early town governments of the seventeenth century. We have seen that the town governments ante-dated the colony; that they were of distinctly independent origin; that they embodied the political views of men originally averse to organized government; that the colonial government growing out of them was only very reluctantly and very sparingly entrusted with power by them; that the functions exercised by them before the consolidation were such as belong to independent governments; that the powers dele-

¹ Compare also the remark in a recent publication, apropos of Rhode Island:—"The diversity of character and interest in the smallest of the colonies is another illustration of the truth taught by Greek and Italian history, that it is not always the large States that afford the most instructive data for political history."—*The Nation*, Aug. 7, 1884, XXXIX., p. 117.

² Foster's "Stephen Hopkins," II., p. 154.

gated by the towns to the colonial government have been in at least two instances retaken from it and again exercised by the towns; that the predominance of this local, or town idea of government, has ever since the adoption of the colonial government under the charter, given character to the political development of Rhode Island. No one can traverse this interesting period of local history, moreover, without perceiving that, while there has been a gradual progress from the rudimentary to the more highly-organized forms of civil government, and from narrowly local to broader and more comprehensive political theories, yet this advance has required long periods of time for its issue and development. It is hardly fitting to judge of the present or the future, in the study of Rhode Island institutions, otherwise than as related to what we thus know of the past.

III

The Narragansett Planters

"Historians have dwelt too much upon the differences in social life between the different colonies, and too little on the points of likeness. Let us consider, by way of illustration, the way of living on the Narragansett Shore of Rhode Island, and see how closely it resembled that of Virginia."—*T. W. Higginson*.

"More strictly, perhaps, than in any other portion of New England, could the term 'aristocracy' be applied to the ruling class of this region."—*Wm. E. Foster*.

"In 1780 South Kingstown was by far the wealthiest town in the State, paying double the taxes assigned to Newport and one-third more than Providence."—*S. G. Arnold*.

"All along the belt of land adjoining the west side of Narragansett Bay, the country, generally productive, was owned in large plantations by wealthy proprietors, who resided on and cultivated their land."—*E. R. Potter*.

3

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IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor.

History is past Politics and Politics present History — *Freeman*

FOURTH SERIES

III

The Narragansett Planters

A STUDY OF CAUSES

BY EDWARD CHANNING

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THE NARRAGANSETT PLANTERS.¹

In the southern corner of Rhode Island there lived in the middle of the eighteenth century a race of large land-owners who have been called the Narragansett Planters. Unlike the other New England aristocrats of their time these people derived their wealth from the soil and not from success in mercantile adventures. They formed a landed aristocracy which had all the peculiarities of a landed aristocracy to as great an extent as did that of the southern colonies. Nevertheless, these Narragansett magnates were not planters in the usual and commonly-accepted meaning of the word. It is true enough that they lived on large isolated farms surrounded by all the pomp and apparent prosperity that a horde of slaves could supply. But, if one looks under the surface, he will find that the routine of their daily lives was entirely unlike

¹The Narragansett country—properly so-called—included all the lands occupied by the Narragansetts at the coming of the English. In this essay, however, it is used in its more popular sense as the name of the land along the west shore of Narragansett Bay from Wickford to Point Judith. In 1685 it was detached from Rhode Island and placed under a government of its own as the King's Province. When it again became a part of Rhode Island it was called King's County. This name clung to it until the Revolution when it became a burden and was largely replaced by the term South County. In 1781 it became Washington County, which name it still bears.

As will be seen I have taken South Kingstown as the typical Narragansett town. This is merely because the records of South Kingstown are accessible and in an excellent state of preservation. I have examined the records of Westerly with more care but, for various reasons, have confined myself to a description here of North and South Kingstown.

that of the Virginia planters. The Narragansetter's wealth was derived not so much from the cultivation of any great staple like tobacco or cotton as from the product of their dairies, their flocks of sheep, and their droves of splendid horses, the once famous Narragansett pacers. In fine they were large—large for the place and epoch—stock farmers and dairy-men.

Narragansett society was unlike that of the rest of New England. It was an anomaly in the institutional history of Rhode Island. Indeed many writers have questioned its existence and it must be admitted that a descendant of one of the Narragansett farmers, or planters if you will, was not overstating the fact when he asserted that much of what has been written about his ancestors possesses "a Munchausen flavor." But there was a foundation for the existence of a state of society as depicted by Updike and Judge Potter, and the present paper is an attempt to show what that foundation was. I hope at no distant day to exhibit these Narragansett farmers as they still live in contemporary records. Before examining the causes of this social development let us dispose of one statement which does not seem to be well founded.

It has been claimed that the progenitors of the Narragansett farmers were superior in birth and breeding to the other New England colonists, and that to this the aristocratic frame of Narragansett society is due. I do not find this to have been the case. Nor do I believe the settlers of this particular portion of Rhode Island to have been one whit better born or bred than the founders of other Rhode Island, Massachusetts or Connecticut towns. The proportion of those who wrote their names in early Narragansett is smaller than in the surrounding colonies, and there were no common schools in the King's Province until after the Revolution. It will not do to lay too much stress on these facts. Still, if lack of education meant anything in the middle of the seventeenth century it shows that the fathers of North and South Kingstown were not above the average of New England colonists.

The later leaders of Narragansett society were, for the most part, well-educated men. The Updikes, who inherited the Smith property, enjoyed the teachings of the best tutors—men like Checkley,¹ the editor of an edition of Leslie's *Easy Method with the Deists*, and Daniel Vernon, an Englishman who was learned in the languages. McSparran, Fayerweather and Robinson are said to have possessed large collections of books; and we know that Colonel Updike, who lived in the middle of the last century, had a library so full of treasures that it could have been surpassed by few private libraries of colonial Rhode Island.² This refinement, however, belongs to the best period of Narragansett social life. It was a result of a peculiar social development and not a cause of that development.

Undoubtedly the most potent factor in that growth was the economic condition of the environment of the settlers of the King's Province. From McSparran Hill and Boston Neck

¹Cf. Updike's *Narragansett Church*, p. 205, and Daniel Updike's *Reminiscences in Updike Papers*. The following from Updike, p. 208, will show under what influences the young Narragansett farmers were reared. It is from Checkley's pamphlet:

Question.—Why don't the *Dissenters* in their public worship, make use of the Creeds?

Answer.—Why? Because *they* are not set down *word for word* in the Bible.

Question.—Well; but why don't the *Dissenters*, in their public worship, make use of the *Lord's Prayer*?

Answer.—Oh! because *that* is set down *word for word* in the Bible.

Note.—They're so perverse and opposite
As if they worshipped God for spite."

²The following titles taken almost at random will convey some idea of the range of this library. I am indebted for them as well as for much valuable material and many kind suggestions to Colonel Updike's descendant Daniel Berkely Updike now of Boston.

An exact abridgment of the commentaries or reports of the learned and famous lawyer, Edmond Plowden. Englished by Fabian Hicks. London, 1659.

Eirenarchia, or of the office of the justices of peace. First collected by William Lambard. London, 1614.

along the shore to the Champlin tract in Charlestown—a district twenty miles long and two to four miles wide—the soil like that of the island of Rhode Island is more fertile than any where else in New England. The Narragansett country is intersected by large salt water ponds or lagoons, which separated the cornfields of one man from the pastures of his neighbor more effectually than any fences could have separated them. Any one familiar with the difficulties of the early settlers as to fences will understand the great importance of this. Then, too, the soil and herbage were well suited to grazing, while a large portion of the territory was fit for sheep-walks, though good for little else. In fact a glance is sufficient to show how favorable these conditions were for stock-farming on a large scale.

This was soon recognized. As early as 1677 Capt. John Hull¹ wrote to one of his partners in the Pettasquamscot Purchase that he had sometimes thought that if a good stone wall was built across the northern end of Point Judith Neck, so that

The dialogue in English betweene a Doctor of Diuinitie and a Student in the Lawes of England. 1593.

Guliel[mi] Johnsoni, Chym[ici] Lexicon Chymicum. Francof[orti] et Lipsiæ, MDCLXXIIX.

Sacro-sanctum Novum Testamentum Domini servatoris nostri Jesu Christi. Londini, CIOIXIIII.

ΤΗΣ 'ΟΜΗΡΟΥ 'ΙΑΙΑΔΟΣ. Cantabrigiæ, 1686.

The Iliad. Translated by Alexander Pope.

The works of Hesiod. Translated from the Greek by Mr. Cooke. 2d ed. London, 1743.

Theognidis Megarensis [Opera]. Lipsiæ, 1520.

The works of Virgil. J. Trapp, editor. London, 1735.

Works of Sallust. London, 1715.

C. Julii Cæsaris quæ extant. Londini, 1739.

Works of Tacitus. London, 1737.

Terence's Comedies, translated into English. London, 1734.

P. Ovidii Nasonis Metamorphoseon libri XV. Londini, 1719.

Des[iderii] Erasmi Rot[erodami] Colloquia familiaria.

Dialogues, French and English, (from Moliere). London, 1767.

¹ American Antiquarian Soc. Coll., III., p. 127.

no mongrel breed could come among them, that they might raise a breed of large and fair mares and horses which in time would prove a valuable article of export to the West Indies. His proposal was probably carried into effect, for a few years later Hull wrote to William Heffernan accusing him of horse-stealing. Hull drily offered to give Heffernan some horses that he might have no further excuse for thieving. A few years later horses were so plentiful that special regulations as to their registration were found necessary, and in 1686 Dudley¹ and his associates ordered thirty of them to be seized and sold, the proceeds to pay for the building of a jail. Whether these horses were the progenitors of the Narragansett pacer, whose origin is still obscure, may well be doubted. One tradition states that William Robinson imported the first pacing horse from Spain, while another is to the effect that Old Snip, the ancestor of the Narragansett pacer, was found among the wild horses on Point Judith. Whatever their origin; these pacing horses formed a very valuable article of export to the sugar islands, where they were held in great estimation.²

Sheep were raised in large quantities. Their wool was worked up at home, and also seems to have been used to a considerable extent outside the Narragansett country. But it was from their dairies that the greatest profit was made. The herds of cows which the great farmers left behind to be inventoried were very large. Mrs. Richard Smith brought

¹ Fones Records, near end of volume. The record of the Court held by Dudley in 1686 is incomplete in Potter's *Early History of Narragansett*, p. 239, and in *1 Mass. Hist. Soc. Coll.*, V., p. 246.

² The roads in early Narragansett, were so bad that the riding horse was the great vehicle of transportation. Wheeled conveyances were introduced at an early day, for in McSparran's *Journal*, I find under date of Sunday Oct. 14th, 1744: "Returned in my chair drawn by Mr. Updike's chaise-horse Old Joe." On Sept. 24th, he had "visited Abigail Samson, a rich mustee—went and came through the River safe in my chair. O God to thee be the praise of all my preservations." This *Journal* is very fragmentary. It has only recently been brought to light and is now in the possession of the Diocese of Rhode Island.

the recipe for Cheshire cheese with her and the cheese of Narragansett was at one time famous in New England, and also formed an important article of export.

It would be unsafe to assert that without slave labor stock-farming on an extensive scale would have been impossible in colonial New England, yet it is difficult to see in what other way the necessary labor could have been procured. At all events slavery, both negro and Indian, reached a development in colonial Narragansett unusual in the colonies north of Mason and Dixon's line. In 1730 South Kingstown contained 965 whites, 333 negroes and 223 Indians. Eighteen years later the proportion was nearly the same: 1,405 whites, 380 negroes and 193 Indians.¹ Undoubtedly a few of these negroes and Indians were free, but then the indented servants (practically slaves for a term of years), here reckoned among the whites, were probably sufficient in number to more than balance the free negroes and Indians. The proportion then of slave to free was between one-half and one-third, a proportion to be found nowhere else in New England.

One of the surest indications of slavery on a (proportionally) large scale is to be found in the strictness of the slave code; and the slave code of Rhode Island, supplemented by the by-laws of South Kingstown, was by no means a mild one. The following is merely a summary: (1704, 1750) No negroes or Indians—freemen or slaves—to be abroad after nine at night, on penalty of not exceeding 15 stripes; (1704, 1750) No house-keeper to entertain a negro or Indian slave without consent of owner first obtained; (1750) No house-keeper to suffer any servant or slave to have any dancing, gaming, or diversion of any kind, on penalty of £50 or one month's imprisonment—if the host was a free negro or Indian, he, she, or they should no longer be suffered to keep house, but

¹ Census of 1730, in Potter, p. 114; census of 1748, in R. I. Col. Rec., V. p. 270. South Kingstown is taken as the town where the Narragansett planters ruled supreme.

should be "dispossessed of his, her, or their, house or houses, and shall be put into some private family to work for his or their living, for the space of one whole year, the wages accruing by said service to be for the benefit of the town." (1714) Any one could seize a suspected colored person found abroad after nine; and (1714) no ferryman could transport a negro without a certificate from owner or justice.¹

The earlier laws did not seem strict enough in the eyes of the rulers of South Kingstown, and they made a by-law to the effect that if any negro slave be found at any negro house or cottage, both slave and free negro should be whipped. In 1726 they also prohibited the negroes and Indians from holding any more social gatherings out of doors.

For theft a white man was tried in those old days at the General Court of Trials,² but (1718) a slave suspected of theft could be convicted by two Justices of the Peace—apparently without a jury—and sentenced "as fully and effectually, by whipping, banishing, etc., as the General Court of Tryals . . . have been authorized, used, or accustomed to do."³ The slave owner could appeal, but only if he gave bonds to prosecute the appeal. No (1750) liquor, not even cider, could be sold to a slave, and (1750) no one could sell to a slave without the master's permission, "or otherwise trade, so as to receive anything from a slave," on penalty of ten pounds. The South Kingstown people supplemented the law against stealing by the following by-law which I give in full: "Whereas it hath been found very prejudicial in this town by negroes keeping of creators as there own it is therefore voted that for the

¹ There was, strictly speaking, no slave code in Rhode Island. The laws cited here will be found on pages 35, 49, 50, 77, 113 of an edition of Acts and Laws of Rhode Island, printed at Newport by the Widow Franklin, in 1745; and also on p. 93 of a supplement which is in the Harvard College library. I have given the year of the statutes in the text and no trouble should be experienced in looking them up. The by-laws of South Kingstown are taken from the records of that town.

² Acts and Laws as above, p. 117.

³ Ibid., p. 77.

futur no negro nor there wives or pretended wives nor any that shall live under them shall not keep any stock of creatures in this town of any sort," under penalty of 31 lashes.

These laws and by-laws are mentioned merely as showing that the rulers deemed it necessary to prevent any conspiracy among the slaves, and also were annoyed by their thieving propensities. This development of slavery for the time being bred habits of command and independence among the slave-owning class and no doubt contributed much to the exclusiveness of Narragansett society.

The Narragansett country was owned by a comparatively small number of persons and this contributed to the production of an aristocracy in two ways. It made farming on a large scale possible and it gave all political power to a few persons, as in Rhode Island only freeholders could vote. There was no peculiar land system in the colony, but the King's Province was colonized in a different way from any other portion of New England. The rest of Rhode Island and the neighboring colonies had been settled by communities, though in the case of the four earliest Rhode Island towns, their settlement was very much less a matter of deliberate purpose than in the other colonies. The Narragansett country was the scene of the rivalries of two land companies and besides for half a century it was a bone of contention between Connecticut and Rhode Island.

The first speculators in the field were originally five in number—John Hull of Pine-tree shilling fame among them. They were with that conspicuous exception Rhode Islanders, and they purchased the lands about Pettasquamscot Rock¹ with

¹As to the Pettasquamscot Purchase see Potter, R. I. Hist. Soc. Coll., III., pp. 275-299; Arnold, *passim*; cf. also Brinley's Brief Account of the several settlements in and about the Lands of the Narragansett Bay, in 1 Mass. Hist. Soc. Coll., V., pp. 216-220. The evidence in the lawsuit about the "Ministerial land" in Torrey Papers contains much bearing on the early history of this company. In Hull's letter book and Sewall's letter book are many letters relating to this business. Sewall's first wife was Hull's daughter and the property thus came into the Sewall family.

the full countenance of the Rhode Island authorities. Owing to the number of Indians whose consent was necessary they did not obtain a complete title—so far as the Indians could give one—until 1660.¹

The second and more important company was composed of Humphrey Atherton and his associates: John Winthrop of Connecticut, Simon Bradstreet, Daniel Denison, Josiah Winslow, Thomas Willett, Edward Hutchinson, William Hudson, Amos Richardson, the two Richard Smiths, the two Stantons, etc. They were all anti-Rhode Islanders in spirit² and with a few notable exceptions in 1660 residents of Massachusetts or Connecticut. In 1659 Atherton bought the lands about Smith's trading house in Wickford and a year later, in consideration of his discharging a mortgage which the Narragansetts had given Connecticut of all their unsold lands, those lands were mortgaged to the Atherton associates. The natives could not raise the sum required under this latter mortgage. It was foreclosed and formal possession taken, although the leading members of the Atherton company agreed, between themselves, not to enter upon the lands so obtained in the immediate future.³

¹ It seems not improbable that the whole subject of landholding among the New England Indians has been entirely misunderstood. Cf. Henry C. Dorr's valuable essay on *The Narragansetts* in *R. I. Hist. Soc. Coll.*, VII., pp. 137-237. Especially pp. 158, 163-66, and 168.

² If anyone thinks that I have gone too far in ascribing anti-Rhode Island spirit to the Smiths and Stantons let him read the letter signed by them in the Trumbull Papers (5 *Mass. Hist. Soc. Coll.*, IX., p. 27). As the book is not everywhere accessible I quote a few sentences: "For Rhode Island is (pardon necessity's word of truth) a rodde to those that love to live in order—a road, refuge, asylum, to evil livers. . . The public rolls record what malefactors, what capital offenders, have found it their unhallowed sanctuary. . . . They make religion the Indian's scorn by working and drinking on the Lord's Day," etc. This letter is signed it will be observed by the two Smiths, father and son, and by the elder and younger Stantons.

³ The important papers relating to these purchases by Atherton and his associates are to be found in Potter's *Early History of Narragansett* (*R. I. Hist. Soc. Coll.*, Vol. III); in the first part of the volume entitled *Trumbull*

These two purchases included the land bought by Hull and his Rhode Island friends, but after much dispute the matter was amicably settled by arbitration in 1679. The opposition of the Rhode Island colony was not so easily appeased. There is no room here to thoroughly elucidate this question, but the following brief summary will show the nature of the controversy. The jurisdiction over the Narragansett country was claimed by both Connecticut and Rhode Island. If, in the end, the former should be successful, the Atherton purchases would be sustained. If, however, Rhode Island could make good her claim, then the first of these purchases would be null and void, as having been made in direct opposition to a law of that colony passed two years before the date of the first deed. The original mortgage had been made to Connecticut, which, in case Rhode Island was successful, would be a foreign jurisdiction and the mortgage would therefore be void in Rhode Island law. As may be supposed the contest between Rhode Island, on the one hand, and Connecticut and the Atherton Company, on the other, was long and bitter.¹

Papers, recently published by the Mass. Hist. Soc. as Vol. IX of the 5th series of their collections; in the so-called "Fones Records" now in the office of the Rhode Island Secretary of State; and in a manuscript labelled "Proceedings about the Narragansett Lands" now in the possession of the Massachusetts Historical Society.

¹I hope before long to have something further to say concerning the Atherton Company and the history of the dispute. For the present, reference is made to Clarence W. Bowen's "Boundary Disputes of Connecticut," where the question is treated from a Connecticut standpoint. It is greatly to be desired that Mr. Bowen's example should be followed by other students of American history, as the constitutional and political history of the several States seems to be receiving far less attention than it deserves. In the Introduction to Updike's "Narragansett Church," there is an account of the controversy, and Judge Potter's "Early History of Narragansett" is in reality a history of the dispute. Owing to defects in form and also to the fact that since Judge Potter wrote, much new material has come to light, his book is of less assistance than would at first be expected. Both these books do scant justice to Atherton's associates, and the same may be said of what Arnold has written on the subject in his "Rhode Island."

Misunderstandings were frequent and charges of corruption or worse have been urged. In 1672 a truce was made. Richard Smith became a Rhode Island assistant and the Atherton deeds were confirmed by that colony in the most positive manner. In 1708, however, this confirmation was disregarded by Rhode Island. Nor do the Atherton proprietors seem to have adhered much better to their side of the bargain, as in 1679 the whole question, on their representations, was reopened, and some years later the district was taken from Rhode Island and given a government of its own. Finally, however, Rhode Island prevailed, but in the meantime the principal land owners in the King's Province had absorbed nearly all the land, for only men of large means and of considerable political power could maintain themselves during the long struggle.

Considering the area of the province the estates were very large. Thus, according to a reliable tradition, the Smiths owned at one time a tract of land nine miles in length, by three in width, while Thomas Stanton is reported to have acquired "a lordship" of some four and a half miles long and two miles wide. Col. Champlin, a neighbor of the Stantons owned two thousand acres, and farms of five, six, and even ten square miles existed. The Pettasquamscot purchasers seem to have divided their lands into moderately small parcels, but towards the middle of the eighteenth century the Robinsons and Hazards appear to have acquired in one way or another very large estates in the midst of the Pettasquamscot country. For example, William Robinson is said to have occupied several thousand acres, while Robert Hazard, "the great farmer" is *estimated* (by a descendant) to have farmed

Undoubtedly those speculators showed a grasping spirit in their dealings with the natives, and neither they nor Massachusetts historians who have defended them have done justice to Rhode Island. There are two sides to every dispute, and it may pertinently be asked if the time has not come when the matter, in justice to both parties, can be viewed like any other historical problem, in an historical way and not as a matter of sentiment.

as much as twelve thousand acres—a large proportion of which was probably fitted for sheep walks and pasturage rather than for agriculture.

Of course in the lapse of time these great estates became divided, but not to such an extent as would have been the case elsewhere. In the first place, the real estate of a debtor actually residing in Rhode Island could not be attached for debt. In the second place, although a man could leave his property by will to whomsoever he chose, yet if he died intestate the whole realty descended to the eldest son, by the well-known rule of English common law. In 1718, an act was passed diminishing the share of the eldest son. But ten years later this law was repealed as, according to the preamble of the repealing act, it tended to destroy inheritances. Probably the influence of this rule of primogeniture has been much exaggerated. In fact, the large estates, while remaining to a great extent in the families of the original purchasers from the natives, seem to have been divided in a more or less equitable fashion.

The local and colonial importance of these Narragansett landowners was greatly enhanced by the political power which they, as freeholders, enjoyed under Rhode Island law. In the other New England colonies, especially in New Haven before its absorption by Connecticut, there were great and, from some points of view, very oppressive restrictions on the exercise of the suffrage. But these restrictions were mainly of a religious character. They can hardly be said to have originated in any social differences though they undoubtedly produced such distinctions. In Rhode Island, however, after 1663,¹ no man could become a freeman and have a voice in

¹ I have not cited the acts upon which this section is based, owing to the fact that such references would be of little value to any one, unless he had access to the particular editions of Acts and Laws which I have used. The acts can be found easily enough, however, through the tables attached to the different editions of Rhode Island statutes.

town or colony affairs, unless he was of "competent estate." What constituted a "competent estate" does not seem to have been ascertained by law until 1729. In that year it was enacted that no one should be admitted to the freedom of a town unless he possessed a freehold to the value of £200—a considerable sum in 1729—or of the annual value of £10. The smaller land owners, mechanics and tradesmen were thus disfranchised. Some years later the minimum valuation was increased to £400, but owing to the depreciation of Rhode Island currency the increase was more fictitious than real. This limitation of the suffrage does not appear to have been strictly observed by the freemen, as in 1742 an act was passed to the effect that no person could vote as a freeman unless he possessed a freehold of the required value. Authority was given to anyone to challenge the vote of any person claiming to be a freeman. The eldest sons of freemen, however, possessed *ipso facto* the right to vote as fully as if they themselves and not their fathers were freeholders. Now, in the Narragansett towns the number of freeholders was very small and in this way whatever power belonged to the local authorities was exercised by the local magnates. To fully understand the meaning of this we must study the peculiarities of the Rhode Island town system.¹

Like those of the neighboring colonies the Rhode Island towns enjoyed the right to make such by-laws "as should be necessary for the management, rule, and ordering of all prudential affairs." In fact the town was as much a unit as the town of the Bay colony. But there the resemblance ceases, for, as we have just seen, these by-laws were made by a few men whom worldly prosperity had enfranchised.

¹ The following extract from the Records of South Kingstown shows that disputes as to the exercise of the right to vote were not infrequent. It was in 1753 that certain men were appointed to "view and estimate the value of estates of those who shall present themselves in order to be made freemen of the town when a dispute shall arise as to the value of their freehold."

The administrative functions were confided to a body which may be said to form a connecting link between the Massachusetts board of select men and the select vestry of Virginia. This was the town-council. It was composed of a small number of men annually selected by the freemen out of their own number and of such justices, wardens and assistants as happened to reside in the town. In the old time the justices were annually selected by the Assembly and commissioned by the governor, while the assistants were elected by an election of two degrees. Thus the constitution of the town council was different from that of the board of selectmen, all of whom were elected by the qualified voters in town meeting. In fact, it differed from the select vestry of Virginia only in being annually renewed, and an examination of the records shows that in Narragansett the same men often served for many years.

The authority of this town council, too, was much more extensive than that of the selectmen. It acted, and does to this day, as a court of probate, with an appeal, however, except in the early times, to the Superior Court. The town council had the absolute disposal of all questions of settlement. It could prohibit any new comer from settling within the town limits; and if its commands were not obeyed it could order the proper officer to remove the persistent immigrant. Then, again, the town council had exceptionally large powers with regard to the laying out and building of all roads, whether town ways or county turn-pikes.¹ In this respect it had more power than even the select

¹ Labor on the roads was provided in Narragansett as in Massachusetts, Virginia and England. The following from South Kingstown Records, under date of 1724, is evidence on this point, and also as showing the value of a man's labor: "Voted that the fines on them that refuse or neglect to work on his Majesty's highways in said town when legally warned there to shall for the future be 3 sh. per day for a single hand, and for the neglect of a cart and team with one hand, the fine shall be 7 sh. 6 d. for each day's neglect."

vestry. One of the results of this extension of local authority, to what in other colonies was a county matter, was that sometimes the roads between two towns did not meet. Except in the earlier days there was no jury as in Massachusetts, but the town council appointed three disinterested persons, who, with a justice of the peace and a constable or town-sergeant, laid out the road and assessed the damages. It is true that if any one felt aggrieved he could appeal to a jury, but this was a right to be seldom resorted to, as, if the jury decided against the appellant, he was obliged to pay all the costs of the appeal. The other duties of the council were not unlike those of the Massachusetts selectmen and need no description here.

Enough has been said to show that there was every reason why the Narragansett freeholders, possessing as they did a political influence unique in the institution of colonial New England, should, other conditions being favorable, develop into a distinct class.

The prominent position which the Episcopal Church occupied in the social organization of the old South County has not been exaggerated. But that position was due in great part to the exertions of McSparran, and it should be borne in mind that the lines upon which Narragansett society was to develop were laid down before McSparran—the first successful missionary whom the Venerable Society for the Propagation of the Gospel in Foreign Parts sent to the King's Province—arrived at Kingstown, and certainly long before he acquired much influence in the community. Many persons, ignoring the early history of the Narragansett country, seem to take it for granted that the progenitors of the great families were Episcopalians. Such, however, was not the case. We are told, for instance, that the elder Richard Smith possessed a conscience too tender for the English Gloucestershire or the Old Colony Taunton. He sought refuge in the Narragansett wilderness where he bought and hired large tracts of land from the

natives and opened a trading house for their convenience.¹ His son Major Richard Smith, who joined him in 1659, had served, if tradition is correct, as an officer in Cromwell's victorious army.² Assuredly neither of them was the man to entertain a kindly feeling towards Episcopacy. Their early neighbors and associates were either fellow-members of the Atherton Company or men sent out by it, and they hailed, almost to a man, from Massachusetts or Connecticut, where the English Church of the Restoration was regarded with almost as much horror as the "Babylonian woe" itself. So much for the religious opinions of the fathers of North Kingstown.

As to the founders of South Kingstown—the Pettasquamscot Purchasers, so-called—their adherence to the Congregational form was so clearly proven that the English Privy Council³ in the middle of the eighteenth century decided that the phrase "an orthodox person that shall be obtained to preach God's word to the inhabitants," which occurs in one of their early votes as descriptive of the person who should have the use of a valuable farm, meant Congregational and not Episcopal. In fact, the word "orthodox" was used in this vote as descriptive of Congregational, that being the orthodox faith in the

¹ Cf. Letter of Roger Williams in Potter's *Early History of Narragansett*, R. I. Hist. Soc. Coll., III., p. 166.

² Paper labelled: "James Updike's Recollections" among the Manuscripts which Mr. D. B. Updike, now of Boston, inherited from his grandfather, the learned author of *The Narragansett Church*. Mr. Updike, with true Rhode Island courtesy, allowed me to inspect these manuscripts which are cited here as Updike Papers.

³ This lawsuit so famous in the history of Rhode Island, and, indeed, of New England, has never been adequately described. Updike (*"Narragansett Church,"* pp. 68-82) has something about it. Judge Potter (R. I. Hist., Soc. Coll., III., pp. 123-130) gives a brief and unsatisfactory account of it. In the Prince Library, now on deposit in the Boston Public Library, there is a manuscript volume labelled *Torrey Papers*. It contains copies of a very large number of the documents which passed in the various suits about this land. Others will be found among the Court Records at Kingston. Cf. *Prince Catalogue* under *Torrey Papers*.

minds of the voters. No better proof of the anti-Episcopalian leanings of the founders of South Kingstown could be desired, as by this decision the King in Council deprived the Episcopal McSparran of the use of what he had fondly hoped would prove to be a valuable glebe.

The strength of the Friends in early Narragansett cannot be so easily ascertained. The first Robinson and the early Hazards were of that persuasion, but unfortunately the records of the South Kingstown Monthly Meeting, which might have thrown some light on the question, were destroyed by fire more than a hundred years ago, and up to the present writing I have not been able to get reliable information on the point.¹

A Baptist congregation was gathered in what is now North Kingstown, at an early day, and a Presbyterian church had been founded in the southern portion of the then town of Kingstown before the end of the 17th century. But until the arrival of Mr. Niles in 1702² there seems to have been no settled minister in the place. Roger Williams preached to the assembled Indians and English at a much earlier date,³ and other godly men at one time or another ministered to the spiritual needs of the Narragansett people, but there was no regular preaching there before the coming of Niles. This is dwelt on here as being a remarkable fact even for Rhode Island, where great freedom was allowed in religious matters.

¹The Records of the New England Yearly Meeting (1685-1787) are at the Friends' School in Providence; those of the R. I. Quarterly Meeting are in the hands of Samuel R. Buffington, of Fall River, Mass., and the later records of South Kingstown Monthly Meeting are in the possession of William Y. Collins, of Hope Valley, R. I.

²Cf.—Deposition of Samuel Niles in the "great lawsuit," preserved among the Torrey Papers in the Prince Library, now on deposit in the Boston Public Library. See also Updike's *Narragansett Church*, p. 35 *et seq.*

³Cf.—A Summary View of the Religious State of the Colony of Rhode Island and Providence Plantations from A. D. 1636-1774—among the Stiles MSS. now in the library of the Mass. Hist. Soc. See also R. I. Hist. Soc. Coll., VII., p. 65.

Mr. Niles remained in the Narragansett country for a few years and, after his retirement, the pulpit remained unoccupied until 1732, when the Rev. Joseph Torrey took charge of the congregation. At first the society flourished under his fostering hand, for Mr. Torrey was a man of uncommon energy and pluck, as his successful opposition of the "litigious McSparran"—as Stiles maliciously called that worthy—plainly shows. In the early years of his pastorate his hearers numbered among them many of the most important men of the town; but, towards the end of his life the attendance fell off and at his death the society became practically extinct.¹

Far different is the history of the Episcopal Church. Like their Congregational rivals, its early ministers found little to encourage them in the listlessness of the great farmers;² but, from the day that McSparran appeared in their midst, until thirty-six years later he met with a painful accident which proved fatal,³ the English Church flourished and grew until it had conquered for itself a place among the institutions of the South County. Nevertheless its presence there does not account for the peculiar social features of the community in which it obtained so firm a foothold that even the Revolution

¹ Cf.—Updike's *Narragansett Church*, p. 117, and Stiles's *Summary View* as above.

In 1753 there was still a puritanical spirit among the Narragansett people, for in that year eight men were chosen "First day constables to keep good order on the first day of the week."

² McSparran's *America Dissected*, in Updike's *Narragansett Church*, p. 511; also Potter in *R. I. Hist. Soc. Coll.*, III., p. 133.

³ This deplorable event is thus described in a manuscript entitled "Reminiscences" for the use of which I am again indebted to the descendant of the learned author of the *Narragansett Church*. The story is as follows: "Dr. McSparran caught his death at father's. He went to prayer and had read and was going to kneel and being a fat heavy man and putting his hands on the table to ease himself down the table split off and his weight came down and he hit the edge of his eyebrow against the sharp edge of the table leg and he bled profusely—but he would have nothing done until he had finished his prayer. They bound it up and he got home and never recovered. My father watched with him when he died."

could not shake it. It was because the Episcopal form was well suited to the time and the place that it became almost the established church of the country, and added a pleasing color to the social life of the Narragansett farmers.

To sum up, in colonial Narragansett the nature and constitution of the place, the extension of slavery, both of negroes and Indians, the mode of colonization, the political predominance enjoyed by freeholders in Rhode Island, were all favorable to the production of a state of society which has no parallel in New England. That these causes did produce such a result no one who has carefully studied the early records can deny.

IV

PENNSYLVANIA BOROUGHES

"The municipality and township is the unit of our political structure. These local organizations conserve the largest mass of the interests, and direct the greater part of the daily life of our people. National and State laws touch only the circumference of the political and social being of the citizen; municipal ordinances and regulations affect his interest and comforts, daily and hourly, and are in contact with him at all points."—*Gov. Hoyt's Message, Jan. 4, 1881.*

"Local assemblies of citizens constitute the strength of free nations. Municipal institutions are to liberty what primary schools are to science; they bring it within the people's reach; they teach men how to use and enjoy it; a nation may establish a system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty."—*De Tocqueville.*

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

FOURTH SERIES

IV

PENNSYLVANIA BOROUGHES

BY WILLIAM P. HOLCOMB

BALTIMORE

N. MURRAY, PUBLICATION AGENT, JOHNS HOPKINS UNIVERSITY

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CONTENTS.

	PAGE
I. INTRODUCTION.	
1. BEGINNING OF BOROUGHES IN PENNSYLVANIA.....	7
2. THEIR ANTIQUITY IN ENGLAND.....	8
3. BOROUGHES IN OTHER STATES.....	8
4. MEANING OF TOWN AND BOROUGH IN PENNSYLVANIA.....	10
II. GROWTH OF PENNSYLVANIA TOWNS.	
1. CHESTER THE FIRST TOWN AND STARTING POINT.....	11
2. LAND SYSTEM, AND ITS INFLUENCE ON THEIR GROWTH...	11
3. PROPRIETARY INFLUENCE. INSTRUCTIONS ABOUT FOUND- ING THE FIRST TOWN.....	15
4. PENN'S ESTABLISHMENT OF VILLAGES.....	17
5. LEGISLATIVE AND OTHER INFLUENCES.....	20
6. TOWNS LAID OUT BY SPECULATORS.....	21
7. NUMBER OF TOWNS AND CITIES IN 1880.....	22
III. EARLY BOROUGH GOVERNMENT.	
1. GERMANTOWN. ITS ORIGIN, AND FORM OF GOVERN- MENT FROM 1691-1707.....	23
2. HOW BOROUGH GOVERNMENT CAME TO BE ADOPTED. INVOLVED IN THE QUESTION OF ADOPTION OF COUNTY AND TOWNSHIP. INFLUENCE OF NEW JERSEY ON PENNSYLVANIA INSTITUTIONS.....	31
3. BRISTOL A TYPE OF BOROUGHES IN 18TH CENTURY.....	33
IV. THE PRESENT BOROUGH.	
1. BOROUGH LEGISLATION IN THIS CENTURY.....	42
2. OFFICERS IN SMALL AND LARGE BOROUGHES.....	45
3. POWERS OF THE BOROUGH COUNCIL.....	46
4. ADMINISTRATION OF JUSTICE.....	46
5. POSSIBILITIES OF THE BOROUGH SYSTEM TO SECURE GOOD GOVERNMENT EXEMPLIFIED IN YORK AND NORRIS- TOWN.....	48
6. DISTINCTION BETWEEN A BOROUGH AND A CITY.....	49
7. LACK OF SUCH ANOMALIES IN THE PENNSYLVANIA BOR- OUGH, AS ARE FOUND IN BOROUGHES OF ENGLAND.....	50

PENNSYLVANIA BOROUGHES.

The charter from Charles II. granting William Penn a princely domain to the west of the Delaware river, gave him the authority to "divide the country into Townes, Hundreds, and Counties, and to erect and incorporate Townes into Borroughes, and Borroughes into Citties, and to make and constitute ffaires and markets therein, with all other convenient priviledges and munities." This has been the fundamental clause in the municipal history of Pennsylvania since 1681. It gave Penn the right to perpetuate the institutions already in existence on the banks of the Delaware, or to modify them if he chose, and transplant to the new province other English institutions that he might consider necessary for the well governing of his people. This right he exercised by establishing the county as the largest political division of the province, by modifying the existing town with its court into the township under the authority of the county courts, and lastly by founding towns and villages, which he incorporated into the city and borough. Thus, by introducing the county, the township, the borough, and the city, he fixed the seal of his enduring influence upon the local government of Pennsylvania. The boroughs were established within a few years after the proprietary's arrival, and though they were but a handful during the colonial period, they form the connecting links between their numerous successors and the ancient boroughs of England. He who lives in a Pennsylvania borough to-day is as closely connected with the times of Edward the

Confessor as his brother farmer in the township or "tûn-scipe," for both borough and township are common institutions of Anglo Saxon days. Many years ago Thomas Madox thus discoursed on the antiquity of boroughs: "Monsieur Littleton saith, Boroughs are the most ancient Towns in England; for in old times Cities were Boroughs, and so called. The truth of the matter is this, Burghes might well be the most ancient Towns in England. It was according to the Native Language of this Countrey to style them so. The Anglo Saxons called a City as well as a Town Burh or Burgh."¹ The burh had an earlier meaning than that of the town; it was once, according to the dictum of Stubbs, "merely the fortified house and court yard of a king or noble; then it became the more organized form of the township," and gradually grew into the town with its charter of privileges, with its port-reeve, or its bailiff or mayor, its aldermen, and other corporate officers.

Considering the importance of the borough in the municipal history of the middle ages, and in both municipal and parliamentary affairs of modern England, and the frequency with which the word occurs in the annals of her history, it seems not a little strange that in the spread of English institutions in the United States, it has not found a more general acceptance. It may be that towns in several of the States are occasionally called boroughs, just as writers speak of boroughs in Italy or France, in a general way, but the three States of Pennsylvania, New Jersey and Connecticut are the only ones now possessing borough systems. In New Jersey the first boroughs date back into the early part of the last century; they developed on independent lines, without uniformity of purpose or system till the enactment of a general law in 1878, which now regulates their future incorporation. Connecticut introduced a borough system with the beginning of the present century, to secure better local government for

¹ *Firma Burgi*, p. 2.

the larger villages than was afforded by the "town" system. Virginia thought to have a borough system at the beginning of her colonial life, and as early as 1619, says Mr. Stith, had eleven boroughs which sent members to her first legislative assembly.¹ These were not boroughs in the sense of incorporated villages or towns, as the towns were yet to be; they were really plantations and hundreds, though by a stretch of language two or three of them were sometimes called cities. Representation being given these divisions in the House of Burgesses, after the manner of parliamentary representation in England,² it was quite natural to style them boroughs, and the historian probably had the parliamentary boroughs in mind when he gave this name to the Virginia plantations. In her subsequent history, Virginia had two municipal boroughs that also had representation in the House of Burgesses, but there are now none in the State. Town has been the name generally given to the incorporated village, and in this, as in many other particulars, Virginia has set the fashion for the Southern States.

Lord Baltimore's charter of 1632 empowered him to "erect and incorporate Towns into Boroughs, and Boroughs into Cities," but Maryland did not produce towns any more than Virginia, and those that did struggle into existence were called towns and cities, not boroughs.³ In the grant of Maine to Sir Ferdinando Gorges in 1639, he was permitted to incorporate "Citties, Borroughs and Townes," and constitute the usual fairs and markets therein, but neither in the forests of Maine, nor in any New England colony did the boroughs take root with the original settlements. In New York the

¹ History of Va., p. 161.

² It is stated on p. 420 of Campbell's "History of the Colony and Ancient Dominion of Virginia" that actual residence in the place he represented was not necessary to render a candidate eligible to a seat in the House of Burgesses. This is un-American now-a-days.

³ As late as 1716, a law speaks of boroughs that might be erected thereafter. See Laws of Maryland.

incorporated village is so styled till it becomes a city. This custom prevails in several States, particularly in the West, where the institutions of New York have been largely adopted. In Kansas we find the anomaly of styling all incorporated villages cities. It is no uncommon thing there to find a mayor and council presiding over their little city of less than four hundred souls. Thus in various States of the Union we see the borough, the town, the village, the city, all meaning essentially the same thing, all derived from the municipal life of England. They might all have been styled boroughs, but it was the taste of the people to call them otherwise.

It may perhaps insure greater clearness to explain here that we have used the word "town" in this paper as it is used in Pennsylvania, where it is applied indifferently to a large village, a borough, or a city, but not to the township. The term borough has not this general application, like the town, but always means the incorporated village or town possessing a particular form of government. Boroughs are by courtesy sometimes called cities, but cities are not called boroughs.

Writers upon the political history of Pennsylvania have, so far, given little or no attention to her borough system. This may partly arise from the fact that there were but few boroughs in the early years of the colony, and these had no greater signification in the general politics of the province than the township. Being so few and small, and without separate representation in the Assembly, they escaped notice. Mr. Foster has ably shown us what political influence has been exerted upon Rhode Island by her towns throughout the whole extent of her history.¹ No such dominant power was exerted by the towns of Pennsylvania. Nevertheless, in the quiet of her early years, the Keystone State was laying

¹See Foster's "Town Government in Rhode Island:" Johns Hopkins University Studies, Fourth Series, No. II.

the foundations of a borough system that has since become a most important factor in her local government. To judge how important this factor has become, let us first take a view of the outward progress of the towns before beginning the study of their government. Let us see what care was taken to foster their growth.

GROWTH OF TOWNS.

It is now a little over two hundred years since the good ship "Welcome" sailed up the Delaware with William Penn and his companions on their way to build a new State. Many great changes has Pennsylvania seen since that day. Within the limits of the province the little village of Upland was then the nearest approach to a town. It had been founded by the Swedes about the year 1645, and in 1682 it possessed a mixed population of Swedes, Dutch and English, and had a court with jurisdiction over the neighboring territory along the Delaware, but it was not an incorporated village. For some reason Penn changed its Swedish name to Chester.

When he erected the three counties of Chester, Philadelphia and Bucks, he made Chester "shire town" of the county which took its name, and here was passed the "Great Code of Laws" for the guidance of the new commonwealth. Upland had been living and growing as best it might, with little thought of companions or rivals, but with the arrival of Penn came a new era of planting villages and towns, and Upland awoke one day to find itself distanced by a younger competitor. The builders of the province were very anxious to establish towns, for they recognized them as the nerve centres of the body politic. The land system they adopted was intended to promote rapid settlements and encourage towns, but the wisdom of their ways is not always apparent. William Penn adopted no new system of distributing lands peculiar to Pennsylvania, but followed the examples of neighboring provinces. Especially was his own personal experience in the settlement

of West Jersey of value to him, and in general he introduced the same system with modifications into his own province. For example, the constitution of the land office became almost the same as provided for in the West Jersey "concessions." In Pennsylvania it consisted of the secretary, auditor-general, receiver-general, surveyor-general, the deputy surveyors, and the commissioners of property, who acted in the proprietary's place during his absence, with authority to purchase lands and grant them for such sums or quit-rents as they deemed reasonable. By the Frame of Government of 1683, there was to have been a "Committee on Plantations" in the Provincial Council, with the special duties of locating cities, ports, market-towns and highways, but as the council was much smaller than originally intended, no committees were created, and such matters were settled by the whole council. With the commissioners, the council and the special land officials, Pennsylvania was not lacking in men to carry out a consistent policy, but unfortunately she was lacking in a sound system that would inspire confidence and secure satisfaction among new settlers. Mr. Gordon, who has carefully studied this subject, tells us that there was no general and accurate system for the division of lands. "No system whatever," he says, "can be traced in the records of the land office."¹ Another high authority says, "In the times of the proprietaries the land office was said by the legislature to be pretty much of a mystery. This is not to be wondered at when it is considered that the grants of lands and confirmations of titles were matters in the breasts of the proprietaries and their officers, who dispose of their territory according to their own will and pleasure, professedly by formal methods, but frequently by informal modes and agreements of their own, varying with the expediency of the times or the change of officers, or special influences."² It was often

¹ History of Penna., p. 549.

² Sergeant's Land Laws of Penna., p. vi.

the case that more than one system was in operation in the province at the same time, and it is manifest that such a lack of fixed policy must have retarded the growth of the colony. The large number of officials simply made confusion worse confounded. The quit-rents to which most of the lands sold by the proprietaries were subject, were most vexing to the spirit of the settlers, and kept them in a chronic state of unrest. The first purchasers under William Penn paid one shilling a year for a hundred acres,¹ but a half-penny or a penny an acre became more customary rates later, and sometimes the exactions were heavy enough to check materially the growth of a town.²

Offsetting these disadvantages were other influences that encouraged town building, especially the personal influence of the proprietaries, who owned large tracts of land known as manors, reserved from the Indian purchases. In the "Concessions" of Berkeley and Carteret in East Jersey these rules were expressed, "That in Laying out Lands for Citties Townes Villages Burroughs or other Hamletts, the said lands be devided into seaven parts, one seaventh part whereof to be by Lott laid out for us, and the rest devided to such as shalbe willing to build thereon, they paying after the rate of one halfe penny or one penny p'acre according to the value of the Lands yearly to us."³ Penn pursued a similar plan on the west side of the Delaware. At first from every hundred thousand acres sold or surveyed, one-tenth was to be reserved to himself, to be kept together in one tract. Later instructions to his surveyors indicate that the proprietary share was increased beyond the original tenth. It became an

¹ Gordon's History of Penna., p. 550.

² Quit-rents and quarreling over the same lots retarded the growth of York. This confusion was probably increased through the neglect of the land office to give proper titles or record the deeds of sale, for the officers were remiss in these important duties. John Penn himself, once stated that the deeds were not always recorded. Hist. of York, p. 35.

³ New Jersey Archives, vol. I., First Series, p. 42.

object of the proprietaries to have these manors settled, and it several times occurred, as in the instances of York and Pittsburg, that the proprietaries directed that towns should be laid out in their manors and lots offered for sale.

In 1681, Penn issued his "Conditions or Concessions" which were agreed to by his purchasers. They are interesting and instructive as being the most definite expression of his plans of settlement. They were not new however, except in details, for the policy of issuing such instructions had been pursued in New Jersey. In 1665, Berkeley and Carteret made certain "Concessions and Agreements" which served as a model twelve years later for the "Concessions and Agreements" of the West Jersey Proprietors, and these in turn served as suggestions for Penn's "Conditions or Concessions." As Penn was one of the proprietaries who authorized the "Concessions" of 1677, we see how natural it was for him to adopt similar measures in his own colony. One of the first things the proprietaries of West Jersey did towards settling their province was to issue instructions to their commissioners in 1676 to sound the Delaware and find a good healthy location for a town where navigation was also possible. It is curious to note likewise, that the first thing to be done in Pennsylvania was to sound the river and found a city, that it might be the centre of trade and the political capital of the territory. So important was it held to found this city at once for the colony, that the first article in the "Conditions" of 1681 begins by saying "That so soon as it pleaseth God that the abovesaid persons arrive there, a certain quantity of land, or ground plat, shall be laid out for a large town, or city, in the most convenient place upon the river, for health and navigation; and every purchaser and adventurer shall, by lot, have so much land therein as will answer to the proportion which he hath bought or taken up, upon rent."¹ It was fully expected that more than one city would

¹See Conditions or Concessions in 2nd vol. of Poore's Charters and Constitutions of U. S., p. 1516.

find a local habitation and a name, for the same article continues thus—"But it is to be noted that the surveyors shall consider what roads or highways will be necessary to the cities, towns, or through the lands. Great roads from city to city not to contain less than forty feet in breadth, shall be first laid out and declared to be for highways, before the dividend of acres be laid out for the purchaser, and the like observation to be had for the streets in the towns and cities, that there may be convenient roads and streets preserved, not to be encroached upon by any planter or builder, that none may build irregularly to the damage of another."

Not having visited his colony, Penn thought that Upland might be a good place for his city. He instructed the commissioners who came over before him, to sound his side of the Delaware, "especially Upland, in order to settle a great towne." "Be sure to make your choice" said he, "where it is most navigable, high, dry and healthy. That is, where most ships may best ride, of deepest draught of water, if possible, to load and unload at ye Bank or Key side, without boating and litering it. It would do well . . . yt the scituation be high, at least dry and sound, and not swampy, wch is best Knowne by digging up two or three earths, and seeing the bottom."¹ Having found such a choice spot, they were to lay out ten thousand acres contiguous to it as the "bounds and extent of the libertyes of the said town." In laying out the lots they were to "let every house be placed in the middle of its platt as to the breadth of it, so that there may be ground on each side, for gardens or orchards, or fields, that it may be a green country Towne, which will never be burnt, and allways be wholesome." The original intention was to lay out the city on a large scale; the agreement was that the adventurers were entitled to city lots in the proportion of ten acres to every five hundred bought in the country, if the place would allow it, but it would not. Such a ratio would

¹ Hazard's Annals of Penna., p. 528.

have required a "greene country Towne" of six or seven thousand acres, whereas the plot of the city contained but eleven hundred and eighty acres, or less than two square miles. To allow each purchaser as much as was first intended would have made the town more suitable for farming than anything else. The plans were changed and smaller lots were given in the town, but the owners were allowed to make up their proportion in the adjacent liberty lands. Penn, himself, gave up his own tenth and said to his commissioners, "I shall be contented with less than a thirtyeth part to witt three hundred acres." As the plot contained less than 1200 acres, it is to be presumed that he reserved still less than this. Mr. Gordon says "there is no record of this alteration, nor any written evidence that it was approved by the inhabitants, but a regular series of uniform facts upon the books of the land office establish it beyond a doubt."¹

The commissioners looked about them to get a suitable locality, but did not fix upon any spot with certainty till Penn came, when they suggested the location between the Schuylkill and Delaware, which the proprietary wisely determined should be the place of his first great experiment in founding a city. He soon went to work with his surveyor-general, Thomas Holme, to lay out the city for which he had already chosen the name of "Philadelphia."

The streets were laid out in the well-known checker board style, nine running from the Delaware to the Schuylkill, and twenty-three crossing these at right angles, running north and south, all varying from 50 to 100 feet in width. Five squares of several acres each were located in different parts of the town. These, in brief, were the main provisions about laying out the first city of Pennsylvania, the one that has been a pattern for all the rest. After the work was accomplished the founder was pleased to write to the Free Society of Traders in London, in 1683, that "Philadelphia, the expecta-

¹Gordon, p. 78.

tion of those that are concerned in this province, is at last laid out, to the great content of those here, that are anyways interested therein.”¹ In a letter to the Marquis of Halifax, in Feb. 1684, he says, “Our capital town is advanced to about one hundred and fifty tolerable houses for wooden ones; they are chiefly on both navigable rivers that bound the ends or sides of the town. The farmers have got their winter corn in the ground. I suppose we may be five hundred farmers strong. I settle them in villages dividing five thousand acres among ten, fifteen or twenty families as their ability is to plant it.” What a really beautiful picture of colonization Penn sets before us! As the colonists come pouring into Philadelphia from various parts of Europe, we see them striking out in all directions into the new and untried regions, families and friends joining together and dotting the landscape with their little villages. What a common religion, mutual interests or ties of blood and friendship naturally do to draw the people together, the proprietor wisely encourages.

In the fourth article of the “Conditions” it was specified “that where any number of purchasers, more or less, whose number of acres amounts to five or ten thousand acres, desire to sit together in a lot or township, they shall have their lot or township cast together, in such places as have convenient harbours, or navigable rivers attending it, if such can be found.” It often happened that several families taking up a tract would from natural causes soon form a village in the township, and this gregarious instinct of man seems to have been anticipated in some notable instances where a plan was formed to have at the centre of the township a townstead or village, in which each purchaser of land in the township was to have a share of lots.²

¹ Proud’s History of Penna., Vol. I., p. 262.

² Thomas Holme’s map of 1684, to be found in the library of the Penna. Historical Society at Philadelphia, contains the plans of the early surveys. It will be noticed that the township of Newtown in Bucks County was laid

In Penn's second extended account of the province to the Free Society of Traders, he says: "We do settle in the way of Townships or villages, each of which contains 5000 acres, in square, and at least Ten Families; the regulation of the Country being a family to each five hundred acres. Some Townships have more, where the interests of the people is less than that quantity, which often falls out. Our Townships lie square; generally the village in the Center; the Houses either opposit, or else opposit to the middle, betwixt two Houses over the way, for near neighborhood. We have another Method, that the Village be in the Center, yet after a different manner. Five hundred acres are allotted for the Village, which among ten families, come to fifty acres each. This lies square, and on the outside of the Square stand the houses, with their fifty acres running back, where ends meeting make the Centre of the 500 acres as they are to the whole. Before the doors of the Houses lies the High way, and cross it every man's 450 acres of Land that makes up his complement of 500, so that the Conveniency of neighborhood is made agreeable with that of the Land." Here were definite methods of settlement, but it was much easier to put them on paper than into practice which is fully sustained by the fact that the plans were very soon lost sight of, and surveys were made promiscuously as the purchasers wished, with no regard to townships or villages. As early as 1687 Penn issued a proclamation concerning the seating of land, designed to

off with a townstead of 640 acres at its centre (the number of acres is given in Davis's History of Bucks County, p. 232). Around it, radiating from this centre, were marked off sixteen narrow wedge-shaped farms extending to the limits of the township. The farms have lost this peculiar shape, but the townstead remains the site of the present borough. Wrightstown township was laid off in the same way, and the village on the old townstead has always been called Penn's Park. This plan of surveying townsteads was not followed frequently enough to call it a system, but the case of Newtown is one interesting instance of the origin of a flourishing borough.

enforce the neglected regulations, but it had little or no success. For many years however (probably down to 1784), the clause "according to the method of townships appointed by me" was inserted in the warrants, though it had long ceased to have any force.¹

There was no settlement that grew with anything like the rapidity of Philadelphia, and it was many years before any village reached a thousand inhabitants. Philadelphia prospered so well that Penn desired to try his hand again at city building, and published proposals in London in 1690, to locate a city on the Susquehanna river. "There I design," he says, "to lay out a plan for the building of another City, in the most convenient place for communication with the former plantations on the East: which by land, is as good as done already, a way being laid out between the two rivers very exactly and conveniently, at least three years ago; and which will not be hard to do by water, by the benefit of the river Scoukill; for a branch of that river lies near a Branch that runs into the Susquehannagh River, and is the Common Course of the Indians with their Skins and Furr into our Parts, and to the Provinces of the East and West Jersey, and New York, from the West and North west parts of the continent whence they bring them." Though this was eight years later than the founding of Philadelphia, he had not yet given up the idea of proportionate ownership in town and country, for he says "I do also intend that every one who shall be a Purchaser in this proposed settlement, shall have a proportionable Lot in the said City to build a House or Houses upon."² The shares of land were to be three thousand acres each to be sold for £100 a share, and at that rate for greater or lesser amounts. No quit-rents were to be

¹ For the subject of the settlement of Pennsylvania, and an exhaustive treatise on the land titles, see articles by John M. Scott in Hazard's Register, vols. XII. and XIII. See vol. XII., p. 342, for criticism on the township method.

² Hazard's Register, p. 400, vol. I.

demanded till five years after settlement, and then but a shilling for a hundred acres. As the project came to naught, we must infer that there was no disposition among the people of England to invest, and no conviction that another commercial centre was then necessary. It was left to a pioneer late in the next century to found this city on the Susquehanna.

We have quoted thus at length from the writings of William Penn concerning his new colony, to indicate not only the methods of settlement, but his great personal influence in the outward form which the colony assumed: to bring forth one more evidence that he was not only the statesman and philanthropist, but the active man of affairs, and while entertaining the sublime principles of civil and religious liberty, and battling for their advancement in two hemispheres, he still had time for the practical details of colonizing a state. Enough has been said to convey the idea of town building in the colonial period. The sons of Penn introduced no new theories over which we need tarry, and the same personal interest is not attached to them that belongs to their greater father.

LEGISLATIVE AND OTHER INFLUENCES.

When the proprietary government ended, the State legislature continued the work of promoting settlements. Several towns were laid out by direction of the legislature, especially in the western part of the State, during the last part of the eighteenth and the beginning of this century. The establishment of Erie was through such legislative influence. In 1795 the Governor was instructed by act of assembly to appoint two commissioners to survey town lots and out lots. No town lot was to be more than two-thirds of an acre, and no out lot more than five acres. The Governor was to sell one-third of the town lots, and one-third of the out lots surveyed, under the condition that the purchaser, within two years from the time of sale, should erect on each lot "one house, at least sixteen feet square, and containing at least one

brick or stone chimney.”¹ The same commissioners were also instructed to lay out the towns of Franklin and Warren, and in 1796 the legislature, we find, passed an appropriation bill of \$4,719.63, to pay a debt incurred in laying out these and other towns in that part of Pennsylvania.² Notwithstanding the encouragement given to towns by the proprietaries and the legislature, their growth was retarded by various causes in the eighteenth and the first part of this century. The population in the early days was largely agricultural; we have seen that the land office lacked system, and consequently there was much uncertainty of titles, especially to western lands, which checked the growth of population considerably;³ border life was full of dangers in the eighteenth century; the quit-rents were obnoxious and a source of dispute; and when the mines and forests began to be utilized, there was a lack of means of transportation to convey their products to good markets.⁴ When a better system of internal communication was established, and the hidden resources of the country were more extensively developed, the growth of towns received a new impetus. It was no longer necessary for the government to lay out towns; private individuals with an eye to fortune promptly came forward. About the years 1828 and 1829, when the coal mines were opened and internal improvements rapidly projected, intense excitement prevailed in some counties, and the wildest speculation in town lots set in. It is said that in Schuylkill county nearly all the towns have been laid out by speculators. Pottsville is a conspicuous example of this exciting time, and its growth was then considered chimerical, though since far surpassed by many cities. It increased from five houses in 1824 to five hundred and thirty-five in 1831, and in 1880 its population reached 13,253.

¹Laws of Penna., vol. III., p. 758.

²Laws of Penna., vol. IV., p. 67.

³History of Western Penna., p. 49.

⁴Gordon's Gazetteer of Pa., p. 33.

The town had its origin in a spirit of rivalry. Several prominent adventurers laid out towns in the same vicinity, each on a favorite location. Town lots doubled, trebled and quadrupled in price as the more greedy speculators came, and they passed from hand to hand like currency. In 1828 several of these villages were incorporated into the borough of Pottsville¹ making a town of "magnificent distances." The same features of the sudden rise of towns in the mining districts has also been witnessed in the oil regions of the State, but the "oil town" has its ups and downs, and like the oil well is not a constant quantity. Many a little village that has lighted its borough lamps in the first flush of success has failed to keep them burning, has abandoned its organization and gone into an early decline.² In Crawford county five of its smaller boroughs have decreased in population between 1870 and 1880, whilst others have sprung into life. Other counties have the same experience to tell.

Last among the important causes of town life, and the most important, is the manufacturing industry, too common a feature of the country to need any further comment. It will be seen in reviewing the history of the towns, that they have long since outgrown the first discouraging influences, and in the nineteenth century they have made a rapid advance. In 1880 the census gave the number of boroughs then existing as 549, with a total population of 713,714, giving to each an average of 1,300. This large number is owing to the absence of any limits to the size of a borough; consequently they range all the way from the tiny village with a score of houses to the great town of York with probably sixteen thousand people. The population of the twenty-four cities of Pennsylvania was 1,419,159 at the same period, so that one half the

¹ Day's Historical Collections, p. 60.

² Some towns in the mining regions have also decreased, but the instability is most conspicuous in the oil regions. Greece City and Pitt Hole City are good examples of towns abandoning their borough governments.

State population was then living in boroughs and cities. In addition to this, it was estimated that there were thirty-one towns with upwards of one thousand inhabitants each, yet unincorporated and consequently subject to township legislation. These, in time, will become boroughs together with many of the smaller villages.

These figures it is hoped will show in an outward way the position and relative importance of the borough system in the municipal government of Pennsylvania. Let us now turn from numbers to the more immediate line of our study, the historical development of the borough organization.

BOROUGH OF GERMANTOWN.

The first borough organized in Pennsylvania of which we have any account was Germantown,¹ and the history of its government forms the most curious and interesting chapter on the early boroughs. It was founded by a colony of Men-

¹ If Philadelphia was ever a borough it matters little in our study, for no records are preserved of such an organization, at least, historians and annalists of Philadelphia make no mention of any. The exact nature of its government between 1682 and 1701, the time when it became a city, has never been very adequately treated. Even the last encyclopedic work of Scharf and Westcott fails to do so. From the scattering records we meet in the minutes of the provincial council, in reference to the municipal affairs, it seems quite clear that the council and the county court of Philadelphia exercised considerable authority in governing the town during this period. For instance, in July, 1693, the Governor and council endorsed an order of the county court against negroes of the county round gathering in the town of Philadelphia on First-days.* In another case the court ordered the inhabitants along Front street to represent to the council the need of a channel to convey the water. The inhabitants consented to have the water-way, and the council thereupon ordered three men to oversee the work.† In October, 1693, the governor and council issued their regulations controlling the market, ‡ and the clerk of the market was also appointed by

* See first vol. of Colonial Records, p. 341.

† See first vol. of Colonial Records, p. 343.

‡ Colonial Records, vol. I., p. 353.

nonites from Germany and Holland, many of them from the town of Crefeld, still so noted for its weaving. Penn had preached among these people, and many of them inclined to his faith, hence they were the more willing to come and settle in his province. A number of them came and settled near Philadelphia in 1683. Among them was one Francis Pastorius, a highly-educated man, who easily became the leading spirit among them and acted as their agent or trustee. Several thousand acres were laid out in 1684, and the purchasers met in Pastorius's cave to draw lots for situations, then began to build huts and dig caves for their winter shelter. Their first settlements were not at all compact, but they soon began to build a village. Pastorius has given us an interesting record of this beginning. "On the twenty-fourth day of October, 1685, have I, Francis Daniel Pastorius, with the wish and concurrence of our Governour, laid out and planned a new town which we call Germantown or Germanopolis, in a very fine and fertile district with plenty of springs of fresh

the council. In 1694 the council issued an order for laying out a street upon petition* from the inhabitants. In 1699 the people of the town signed a petition setting forth the neglect of the care of streets, and requested the council to appoint persons to remedy this. † These facts would point to the absence of any organized borough government. On the other hand there are a few things to keep us from denying positively that Philadelphia was ever a borough. In the minutes of the provincial council in July, 1684, it is recorded that Thomas Lloyd, Thomas Holme and William Haigue were appointed to draw up a borough charter for Philadelphia, providing for a mayor and six alderman. Watson, the annalist, says that the town had a mayor named Humphrey Murrey signing its official acts in 1691. ‡ In the preamble to the first city charter, in 1701, Wm. Penn said that he had "by virtue of the King's letters patent, under the great seal of England, erected the said town into a borough, and by these presents do erect the said town and borough of Philadelphia into a city." We are obliged to leave this subject without further investigation, for the present, not having access to anything that is at all conclusive on the subject.

* Colonial Records, vol. I., p. 409.

† Col. Records, vol. I., p. 527.

‡ Watson's Annals, vol. I., p. 25. (Edition of 1850).

water, being well supplied with oak, walnut and chestnut trees, and having besides excellent and abundant pasturage for the cattle. At the commencement there were but twelve families of forty-one individuals, consisting mostly of German mechanics and weavers. The principal street of this, our town, I made sixty feet in width, and the cross streets forty feet. The space or lot for each house and garden I made three acres in size; for my own dwelling however, six acres.”¹ The cross streets did not have many houses however, and the village consisted mainly of one long street with houses on each side, generally with their gabled ends towards the highway. These weavers proved to be as industrious as spiders; their village flourished, and they set a good example of industry to the neighborhood. Weaving, making paper and digging gardens became a little monotonous in time, and they tried to throw more variety into life by going into politics. In 1689 a borough charter was procured which did not go into effect till 1691, when Germantown properly became a borough. This being the oldest borough charter known to exist in Pennsylvania, it is highly important to examine it with care, especially as it bears a closer analogy to the old English borough charters than any subsequent ones. This quaint document abounds in strange German names in its preamble, which is as follows: “I William Penn, Proprietor of the Province of Pensilvania in America under the Imperiall Crown of Great Brittain by virtue of Letters Patents under the great seale of England DO grant unto ffrancis Daniel Pastorius, Civilian and Jacob Telner Merchant, Dirck Isaacs Optegraaf Linen maker Herman Isaacs Optegraaf, Towne President, Tennis(?) Abraham Isaacs Optegraaf Linen maker Jacob Isaacs, Johannes Casselle, Heywart Hapon(?) Cøender Herman Bon, Dirck Vankolk, all of

¹ Memoirs of Penna. Historical Society, vol. IV., p. 90. For the general subject of the settlement see S. Pennypacker's articles in vol. I. of Pa. Hist. Magazine.

German Towne, yeomen that they shall bee one Body polittique and corporate aforesaid in name, and by the name of the Bailiffe, Burgesses and Comonalty of German Towne, in the County of Philadelphia, in the Province of Pensilvania.”¹ These persons and their successors, under the corporate name of the borough, were to be at all times thereafter “able and capable in law with joynt stock to trade, and with the same or any part thereof to have, take, purchase, possess and enjoy Manors, messuages and lands, tenements and rents of the yearly vallue of fifteene hundred pounds per annum.”

One of the corporation was to be elected the bailiff, and four others the burgesses. Six of the members were to be chosen committee men, and these, with the bailiff and burgesses were to be called “the General Court of the Corporacon of German Towne.” The bailiff and two burgesses, or three burgesses in the absence of the bailiff, and four committee men were necessary to make it a General Court and enable them to transact business. The court could be summoned whenever it was thought advisable; it had the legislating power to enact such “good and reasonable laws, ordinances and constitutions” as were deemed necessary for the welfare of the borough; it could impose fines, fill any vacancies in the offices, and admit others to membership in the corporation. Once a year the court was to meet and elect the officers of the town from the members of the corporation. Thus this little borough began its political career by limiting the right of full citizenship to a select few. To be outside the corporation was to be politically *nil*. This was much like the custom in the boroughs of England. There were very few boroughs that had charters designating the corporation as a small definite number of persons, but, as stated by the municipal commission of 1835, “in many places, custom (supported by the silence of the charters as to any general right to the franchise, and by its disuse and oblivion, where any such may

¹ Penna. Archives, vol. I., pp. 111-115.

have formerly existed) has practically established the same restricted contribution."¹ The freemen in the English borough in many cases lost all share in electing the corporate officers. This same evil we see was introduced at Germantown, but it never extended to any subsequent borough, and remains the solitary instance of such a restricted franchise. In the later boroughs the electoral privileges were nearly or exactly the same in municipal affairs as in voting for members of the general assembly.

The members of this general court at Germantown, or any three or more of them, including the bailiff and two burgesses, or in his absence, three burgesses, were authorized to conduct the government of the corporation according to the rules of the general court and their best judgment. It was necessary for the court to have a seal, so Pastorius chose the appropriate design of a trefoil or clover-leaf, on one leaf being a vine, on another a stalk of flax, and on the third a weaver's spool, with the motto—"Vinum, Linum, et Textrinum."

The bailiff and two oldest burgesses were to be justices of the peace, and clothed with full powers of such officers. A public market was allowed every sixth day in the week. The charter also granted the bailiff, burgesses and commonalty the right to hold a court of record every six weeks in the year, in the presence of the bailiff and three of the oldest burgesses of the corporation, "to hear and determine all civil causes, matters and things whatsoever, arising or happening betwixt the Inhabitants of the said corporacon." The court of record for the trial of petty cases was an old institution in the boroughs of England. It was never so important there as the court of quarter sessions, and in many boroughs fell into disuse. Its survival in Germantown makes one of the most conspicuous features of its borough government.² This won-

¹ Report from Commissioners on Munic. Corpo. in Eng. and Wales, p. 18.

² See Charter of Philadelphia for 1701, which also provided for a court of record. Proud's History of Penna., vol. 2. Appendix No. 6.

derful tribunal began its sessions in 1691. "The sixth day of the eighth month the first Court of Record was held at Germantown in the publick meeting house before Francis Daniel Pastorius Bailiff, Jacob Telner, dirk Isaacs op de Graef and Herman Isaacs op de Graef, three eldest burgesses, Isaac Jacobs van Bibber, Recorder, Paul Wulf (?) Clerk Andrew Soupli, Sheriff, van Luken, Constable, Proclamation being made by Andrew Soupli the Charter was read the officers attested."¹ The first case for consideration was one concerning Caopan Caristen and his wife, who were both bound over to the court for menacing the constable when trying to serve a warrant on them. The majesty of the law asserted itself; the unfortunate couple submitted to the bench and were fined two pounds ten shillings. This being the sole business, the court adjourned till another month. Often there was no business before the court, and such cases as did come up were such as are now settled by a borough council or a justice of the peace. We read in the records that the overseers of fences made several complaints about the insufficient fence of Hermann and Abraham op de Graef and others; that there were frequent violations of the liquor law by selling without a license, and on one occasion "The Sheriff Jonas Potts, gave Abraham op de Graef the lie for saying that the said sheriff agreed with Matthew Peters to take his fees, 7 s. 6 d., which upon acknowledgment was forgiven and laid by." The most remarkable record of the court, and a model of its kind, is the verdict of a coroner's jury, who, after due deliberation, no doubt, returned the verdict, "We the jury, find that through carelessness the cart and the lime Killed the man, the wheel wounded his back and head, and it Killed him."

¹ The original records, written in fine German script in the German language, may be seen in the library of the Penna. Hist. Society, at Phila. The court ordered its records transcribed into English and these may be seen there also. Extracts are printed in S. Pennypacker's *Sketches of Germantown*, and also in *Watson's Annals of Philadelphia*. See also *Coll. of Hist. Soc. of Pa.*, vol. 6, p. 243.

The possession of this court led the citizens to believe that they should be independent of the authority of the Philadelphia county court. They lived to themselves, settled their own quarrels, and the court of record even ordered the overseers of ways to cause certain roads to be made; they believed the county was not essential to their happiness or welfare. When urged to pay their share of the county taxes they demurred, and on January 5th, 1701, the corporation presented a petition¹ to the provincial council, stating that they considered themselves exempt from the county court, as they had their own magistrates and defrayed all their own expenses without aid from the county; they did not care to support a government with which they had nothing to do, and wished the Governor to declare them exempt. They were told that they had the right to vote for the members of the general assembly, and received the benefit of the roads outside their borough limits, which were constructed at the expense of others. The Governor and council adhered to their policy of making the county sovereign over the smaller divisions. It was ordained in the court laws of Germantown that once a year the people should be called together and the ordinances read aloud to them. Mr. Pennypacker exclaims,² "Oh ye modern legislators! think how few must have been the statutes, and how plain the language in which they were written in that happy community."

It was with difficulty that the corporation maintained its existence, as the people cared little for politics, especially courts. In a letter to Penn, Pastorius once expressed a concern that he should not be able to get men to serve in the general court for "conscience sake," and he trusted to find a remedy in the expected arrival of some immigrants.³ It was said "they would do nothing but work and pray, and their

¹ See Colonial Record, vol. II., p. 8.

² Historical Sketches, p. 47 or vol. I., Penna. Magazine of Amer. History.

³ Hazard's Register, p. 280, vol. I.

mild consciences made them opposed to the swearing of oaths and courts, and would not suffer them to use harsh weapons against thieves and trespassers.”¹ At last in 1707 they failed to find officers enough to serve, and as there could be no due elections they forfeited their charter. This non-political attitude, so characteristic of the average German of that day, can scarcely be understood now by our local politicians whose crowning glory is to fill some minor office. It was rather through religion than law that these praying Teutons chose to govern their fellow men.

The movement to incorporate Germantown was premature. The village being only a long street of houses needed no other regulations than those which the township could readily provide, and it remained under the township's authority till near the middle of this century when it again became a borough.

This short-lived municipality holds a unique place in the history of Pennsylvania boroughs. Though settled by Germans its form of government was supplied by the proprietary, and in its form it is more nearly identical with the boroughs of England than any town settled wholly by the English. The bailiff and sheriff, the port reeve and shire reeve of Anglo-Saxon days, are both absent from the later boroughs and likewise the recorder. In no other borough of Pennsylvania has there ever existed a corporate body independent of the community as at Germantown. This was a radical defect in the municipal corporations of England and Wales,² happily avoided in the new province. The growing political freedom would not long have tolerated such an innovation of popular rights, had it again been attempted. As there was no restricted corporation in the later Pennsylvania boroughs

¹ Historical Sketches, p. 48.

² Report of Municipal Commission (1835), p. 32. According to Merewether and Stephens in their *History of Boroughs and Municipal Corporations* (p. xx.), large numbers of freemen were often made burgesses by being admitted to the corporations on the mere caprice of the members, and this served to keep the authority in the hands of a few.

there was also no court of the corporation, and the legislative body became the borough council elected by the citizens.

Having reviewed the constitution of this borough at length, we are better prepared to explain how the boroughs came to be adopted in Pennsylvania, which also involves the general question of the introduction of the whole system of local government. The order of creation of the political divisions under Penn's proprietary government, was first the erection of the three counties of Chester, Philadelphia, and Bucks (at first called Buckingham); second, the laying out of townships as fast as parties bought the lands and desired them surveyed; and third, the incorporation of towns or villages. The existence of the county is readily accounted for, both from its previous introduction into the adjacent colonies of Maryland and New Jersey, and the importance of the shire as an administrative division in England. But to account for the township, and the peculiar division of powers between it and the county, is not at first so easy. Why was not the town system¹ that existed under the Duke of York's laws perpetuated, or the New England town system adopted, or why was not the county made still more important, as in Virginia? We believe that a probable explanation of the facts is to be found in the local government of New Jersey. In East Jersey under the proprietaries Berkeley and Carteret, several towns were settled of five or ten thousand acres each, which had their town courts, and were even provided with charters² for their better government, and the freemen were allowed to choose their own magistrates. These towns were the same institutions that Penn found on the Delaware. They were practically independent communes till 1675, when the assembly of East Jersey enacted that the whole province should come under the jurisdiction of the county courts.³ This

¹ For an account of this system, see University Series I., No. 3, Part 2.

² Collections of N. J. Historical Society, vol. I., p. 184.

³ Ibid., vol. I., p. 94.

made the county supreme over the town. In West Jersey the counties and towns also became the political divisions, and in 1682 Burlington and Salem counties were given county courts by act of assembly.¹ As Penn and other Friends were deeply interested in the Jerseys, and acquainted with their institutions, it is reasonable to suppose they would establish quite similar institutions on the other side of the Delaware.

When the counties were introduced into Pennsylvania with their courts having authority over the township, as in New Jersey, it is evident the old system of town courts was no longer necessary, and with the abolition of this institution, the transition from the Duke of York's town to William Penn's township became at once easy and natural. The township, as established in Pennsylvania, was less adapted to governing large villages than the New England town system, and it followed of necessity that villages desiring better improvements and regulations than the township would give them, must be specially incorporated, and the first village that received a municipal charter took the good old English name of "borough." This was at a time when there were no boroughs in New Jersey, New York, Maryland or Virginia, and New Castle was the only incorporated town on the Delaware. In the minutes of the Council at Fort James, New York, of May 17th, 1672, we read that it was ordered as follows: "That for y^e better Governm^t of ye Towne of New Castle for the future, the said Towne shall be erected into a Corporacon by the name of a Balywick, That is to say, it shall be Governed by a Bailey and six Assistants, to bee at first nominated by the Governor and at y^e expiracon of a yeare foure of the six to go out & foure others to be named to succeed out of whom y^e Governo^r will elect one; Hee is to preside in all y^e co^{tr}s of the Towne & have a double vote. A constable is likewise annually to be chosen by y^e Bench. The

¹ *Ibid.*, vol. III., p. 24.

Towne Court shall have power to try all causes of debt or damage to the value of ten pounds without appeal.”¹ This seems to have been the only possible colonial town that could have suggested a borough system for Pennsylvania, and though the constitutions of Germantown and New Castle reveal some similarity in details, they differ too much to consider the former a copy of the latter. The essential difference between them was this, that the borough had no jurisdiction over the surrounding country, as did the bailiwick, which was consistent with the old idea that a bailiwick signified either a county in which the sheriff exercised jurisdiction as bailiff of the king, or it meant the liberty or franchise of some lord who had exclusive authority within its limits to act like the sheriff of the county.² There is but one inference left us and the one strongly sustained by the character of the Germantown borough and its successors, that Pennsylvania owes her borough system to the direct influence of Mother England, whose numerous examples became the models for another institution that her partially developed local government seemed to require.

BOROUGH OF BRISTOL.

The boroughs erected in Pennsylvania during the eighteenth century were Chester in 1701, Bristol in 1720, Lancaster in 1742, Carlisle in 1782, Reading in 1783, York in 1787, Easton in 1789, Harrisburg in 1791, Pittsburg in 1794, and Lebanon and West Chester in 1799. Of these the borough of Bristol, now a thriving town of some six thousand inhabitants, will serve as a fair type of the borough of the last century. It is pleasantly situated on the Delaware, about eighteen miles above Philadelphia, and nearly opposite

¹ Documents on Col. Hist. of N. Y., vol. XII., p. 496.

² See the Dictionary of English History.

the city of Burlington, which was the outgrowth of those instructions to the commissioners of West Jersey in 1676.

Bristol owes its origin to the desire of the earliest settlers in the lower part of Bucks county, and especially those in what was once called Buckingham township (now Bristol), to establish a market town for the county. In accordance with this want, several persons in the county selected the site of the present town, and "projected the same into ways and streets, having regard to the divisions of divers men's Land by the sd streetts in the sd town."¹ They then desired the Governor and council to smile approvingly on their work, and asked them to make such changes as they thought desirable, also to grant them a weekly market and permission to build wharves. The council considering the request so reasonable, erected the town in 1697, which means simply that they approved of what had been done, granted a few privileges, and promised to have an eye on the place in the future. By the year 1720, the inhabitants thought it to their advantage to be incorporated, and a number of them petitioned the Governor Sir Wm. Keith for a borough charter, which he granted under the authority of the Crown of England. It was much briefer than many of the later documents, especially the charter of Carlisle, a document of fifteen folio pages. It defined the boundaries of the town, ordained certain streets, regulated their width, and required that they should be kept free. Two burgesses, one high constable, and such other officers as were necessary to keep the peace of the borough were to be elected.²

The expression "keeping the peace" recalls a very old principle in the history of boroughs. Says Mr. Toulmin Smith in his *Local Self-Government*, "The term borough implies according to the common law of England, certain conditions and functions of local self-government inherent to

¹ Colonial Records, vol. I., p. 480.

² For the charter see Hazard's Register of Pa., vol. III., p. 312.

it as an associated body. Among these one of the most distinctive and express has, from the earliest times, been the control and management of all that relates to the keeping of the public peace."¹ Before the days of King Alfred a law was passed requiring 120 shillings to be paid for a breach of the peace or "burhbreahe" as it was called.²

The charter did not definitely specify anything about the legislative body, and as the earliest records are lost, we cannot tell what was the complete organization of the government, but it was probably nearly the same as it was in 1732, when there was a common council of six, a constable, two burgesses, two assessors and a pound keeper. There was to be an annual election on a fixed day each year when the officers were to be nominated and elected by the "freeholders, officers and housekeepers of the borough." In some of the charters the language was more explicit in regard to the qualifications for voting. In Lancaster and Carlisle the electors were the "burgesses, constables, assistants, freeholders and such inhabitants, housekeepers within the borough, who have resided there one whole year preceding the election, and hired a house and ground within the borough of a yearly value of five pounds or upwards."³ In Bristol, the burgess first chosen, or having a majority of the votes in an election, was made the chief burgess or chief magistrate of the town. The other was styled the second burgess. They were empowered and authorized to be "conservators of the peace" within the borough, and without any legal proceedings could remove nuisances and encroachments out of the streets and landing places.

As of old the officers were to be fined if they refused to serve. The fine was not to exceed ten pounds for the burgess, and five for the constable. Before entering upon the

¹ The same author, in "The Parish," has this note on page 230. The term borough (A. S. Burh) means neither more nor less than "pledge;" that is to say, a place where all the men dwell in mutual "pledge."

² Merewether and Stephens, p. 17.

³ Charter of Carlisle in Laws of Penna., vol. III.

duties of office, each officer was to take an oath as prescribed by various acts of Parliament. Friends were exempt from oaths, and qualified by "taking and subscribing the attestations or engagements" especially allowed to them. The chief burgess was obliged to go to Philadelphia within five days after the election, to be qualified before the governor or such persons as his excellency might appoint for the purpose. This chief burgess could then qualify the other officers, or it could be done by any two justices of the peace in the county. The chief burgess was a justice of the peace in the county as well as in the borough, which was a recognized custom in England at that time. For instance in the borough of Lancaster, England, by its charter of 1684, the mayor was a justice of the peace for Lancaster county during his mayoralty.¹ It was the same with the chief burgesses in the other boroughs of Pennsylvania, but it seems to have been objectionable, and the law requiring them to be justices in the counties was repealed by legislation before many boroughs were created.² The high constable of Bristol was made the clerk of the market and could have "assize of bread, wine, beer, wood, and other things."

It was lawful for the burgesses and constable to summon and assemble town meetings whenever they thought it advisable. At these meetings ordinances, rules and by-laws might be passed, if not repugnant to the laws of Great Britain, and the citizens could repeal or amend the same. Fines could also be imposed for violation of the ordinances. The inhabitants of Bristol seem to have put a different interpretation upon the expression "town meeting" from that of other boroughs. The town meeting in Bristol was nothing but the meeting of the town council, burgesses, and high constable, and sometimes one or two other officers as the pound keeper. This is shown from the borough records, which for many

¹ See Municipal Report of England, 1835 (Lancaster).

² Laws of Penna., vol. II., p. 359.

years call all council meetings "town meetings." Provision was made in most of the early borough charters for town meetings in the sense of popular assemblies of the people, but they were only called on special occasions, when an important tax was to be laid, or a charter amended or some other unusual measure was to be considered. Such meetings are occasionally held even now. As recently as 1872 at a council meeting in Bristol, so many of the citizens were present that they resolved themselves into a town meeting¹ to discuss the question of an amendment to the charter. Reading had quite an important town meeting sometime after the Revolution, when the descendants of Thomas and Richard Penn revived some neglected and almost forgotten claims, and demanded accumulated ground rents. The meeting was called to discuss the subject.² In 1795 a town meeting was held at Harrisburg, at which the citizens agreed to have their properties assessed for a tax of 2,600 pounds to secure the purchase and destruction of an adjacent mill-dam that was thought to be the cause of great sickness in the town.³ In Lancaster and Carlisle the burgesses, high constable and assistants could assemble town meetings as often as they found occasion, and pass ordinances or impose fines in them. Town meetings of this description are not the same as the town meetings which include the township as well as the village, and are the regular assemblies for legislation and elections, but they rest on the same democratic idea of the rule of the many, and are Pennsylvania's truest survivals of the Teutonic folk-moot. These popular assemblies in the towns are held only at long intervals, and the main part of

¹ In 1803 the council of Bristol resolved "that any well-behaved citizens could in the future attend the meetings of the borough council, that they might know what business is done, and to form a better judgment thereof," and the chief-burgess was instructed to give due notice of the meetings thereafter.

² *Stahle's Description of the Borough of Reading*, p. 10.

³ *Annals of Harrisburg*, p. 92.

the legislation is performed in the council meetings. A noteworthy example of what comes nearest to the New England town system in Pennsylvania, is that of the early history of Darby township, near Philadelphia. In the township was the village of Darby where the meetings were held. A few extracts from the township book will indicate the character of the meetings. "Agreed that this meeting begin at eleven o'clock in the forenoon, and that the constable give notice the day before." "And it is also agreed that the said town's meeting be held the third day of the last week in the twelfth month (yearly to appoint officers for the ensuing year, at which time the officers is to give up their accounts.)" Another minute reads, viz.: "Agreed that none of the inhabitants of this Town take any horses or mares, either to keep in winter or summer, nor no cattle in summer except they keep them within their own fenced lands, upon the penalty of five shillings per head for every month." The date of these and other records is not later than 1693-94. Mr. Smith says in his *History of Delaware County*,¹ from which these extracts were taken, that "In early times, township meetings assumed the right of enacting rules and regulations, or rather to make laws for their respective townships. Unfortunately but few of the ancient records of our townships have been preserved."

The records of Bristol borough give us a good idea of the politics of a small Pennsylvania town in the last century. The most fruitful subjects for legislation in the town council were the encroachments of buildings upon the streets, and animals straying at large. What town has ever been without its ordinances against pigs and goats, cows and horses? The usual ordinances against fire were proclaimed. Indeed the borough has not yet ceased to pass such laws. Between Bristol and Burlington was a ferry that was a matter for frequent consideration. The council would lease the ferry

¹ *Hist. of Del. Co.*, p. 188.

and fix the rate of tolls. When the time came for the ferryman to pay his rent it mostly happened that he represented his tolls as too light to pay such a sum, and the council was always merciful enough to let him off with paying half. The rate of taxes for borough purposes was fixed by the council. In 1733 the tax levied was two pence per pound on all estates, and six shillings a head for all single men. In 1745 at a time of much expense to the town, the legislature fixed the limit of taxation at three pence a pound. Borough finances were not then so important as now. It was in the days before the public schools. The wants of our forefathers were simpler than now, and the old town pump answered in place of costly waterworks. The principal items of expense were for the repair and care of streets which were under the supervision of the burgesses and council. The taxes of the town were assessed by two assessors elected by the people. After their work was done, the council and burgesses set a day for hearing appeals, and they then rectified any errors.

The elections were not always what the citizens desired, for they were obliged to change the place of voting to a private house to avoid disturbances.

The little town had trouble with some of its citizens at other times than on election days. A record of October, 1768, gives a long account of the disorderly conduct of some of the inhabitants. The council ordered that the officers were to disperse any number of persons collected on the streets. If they were children, the parents were to be notified. The record says, "And whereas a number of the said Inhabitants and others make a practice of sitting and tippling in public and some in private houses on the said First day of the week called Sunday to the ruin and prejudice of themselves and families, it is hereby ordained that every person detected thereof, shall for every such offense pay the sum of five shillings or be confined at hard labor in the workhouse five days on an allowance of bread and water only. And the said constables and their successors are hereby enjoined to be

diligent in inspecting every suspicious house within the said borough on every the succeeding first days called Sundays in order to detect and bring to punishment every person guilty of the above mentioned crime." The workhouse, to which the miscreants were sent, was another institution from our Mother England. The legislature had given the borough the power in 1745 to erect a house of correction and workhouse "for the public use of the said Borough, to be employed for the keeping, correcting and setting at work of all rogues, vagabonds, sturdy beggars, and idle and disorderly persons, who by the laws and usage of Great Britain, or by the laws of this province, are to be kept, corrected or set at work."¹ The workhouse had its proper officers, president, treasurer, and assistants appointed by the council and burgesses, and they formed a legal corporation. The same regulations governed the institution as governed the county workhouse.

Two privileges at that time indispensable to all towns, were granted to Bristol and the other boroughs of the century, namely the markets and the fairs. The markets were allowed every Thursday in Bristol, the fairs twice a year, and two days each. Wherever the fairs were held, they were centres of attraction for the neighborhood. Many things were bought and sold, including general merchandise and often live stock. It was a time of great jollification, and the fairs in Bristol were attended by all classes. Some went to make purchases, but others cared more for a frolic. Horse racing, drinking, gambling and stealing prevailed to an alarming extent."² On the last day of the fair the masters allowed their negro slaves to attend, and they went in great numbers to have a jubilee. All this troubled the worthy councillors; they thought it not

¹ Laws of Penna., vol. I., p. 211.

² Davis's History of Buck's Co., p. 341.

Towns occasionally had markets and fairs before they became boroughs, as was the case with both Chester and Chichester or Marcus Hook. See Smith's Hist. of Del. Co., p. 203 and note E in the Appendix.

right, and on the tenth of November, 1773, they resolved that the fair was now useless on account of the large number of stores, and that the "debauchery, idleness, and drunkenness, consequent on the meeting of the lowest class of people together is a real evil and calls for redress." They had no authority to abolish them as they were granted in the charter, so they urged the legislature to do it, but it was not done till 1796.¹ Other boroughs had much the same experience with their fairs. At York they degenerated into "wild merriment and riotous confusion," and in 1816 were thenceforth forbidden. In Harrisburg a local chronicler gives a more pleasant picture of the fair at about this period (1798). "On Friday and Saturday last was celebrated in this town the anniversary fair, with all its accustomed singularities. The lasses, as usual, assembled like bees on a summer's day. The swains, too, were very numerous; so that none of the former, it is to be presumed, went home with a heavy heart in consequence of neglect from the latter."² The old time borough fairs were generally given up at the close of the last century, and the agricultural and mechanical fairs in the different counties have become their survivals. In England they have held on to these time-honored institutions even later than in the United States. "Sixty years ago," says Thorold Rogers, in his treatise on Work and Wages, "a visit to an autumn fair, for the sake of laying in winter supplies, was part of the ordinary life of a small country gentleman or a wealthy yeoman," p. 148. Such were the general characteristics of the first boroughs of Pennsylvania. Some other more special characteristics, *e. g.* the relationship to the county, will be described in the account of the present borough regulations. Their organizations were not complex, and as the elections were in the hands of the main body of freemen, and there were no privileged corporations to perpetuate authority and

¹ Laws of Penna., vol. 4, p. 74.

² Annals of Harrisburg, p. 369.

shield abuse, no large outlays of money for improvements, to tempt the cupidity of men, and as the towns were small, and every officer known to all his neighbors, it was not possible for the boroughs to be otherwise than successful in government.

THE PRESENT BOROUGH.

There was considerable similarity among the boroughs, for one charter often served as a model for some other, the two being in some instances almost identical.¹

There was, however, no general legislation concerning them beyond an occasional act; every borough had to apply to the legislature for any special privilege, and the charter was always given by special act.

This did fairly well while there were not many boroughs, but in the present century, when the number began to increase rapidly, the amount of borough legislation increased correspondingly.

The act of 1834 was the first important general borough law. It gave the county courts of Quarter Sessions the power to incorporate boroughs, and change their boundaries. The most important borough act that the State ever passed was that of 1851, which was to serve as a general law regulating all the boroughs that were to be incorporated in the future, and as many of the existing boroughs as chose to accept its provisions. What the famous acts of 1835 and 1882 have been to the municipal boroughs of England, the acts of 1834 and 1851 have been in a measure to those of Pennsylvania. Though these two acts gave the courts much authority in regulating boroughs, the boroughs were not forbidden to apply to the legislature for special privileges, as

¹ Carlisle and Reading, then Reading and Harrisburg, till the charter of the latter was changed. Cf. Dr. Charles Gross, on "The Affiliation of Mediæval Boroughs," reprinted from "The Antiquary," and showing the same phenomenon of charter repetition in England.

their wants multiplied; special legislation continued, and requests of all sorts went up to the legislature from different towns. One borough wanted authority to organize fire companies; another to elect auditors, or change the time or place of holding its elections; another wished to become a separate school district, or to have its tax rate limited within certain bounds; and still another wished to change its boundaries, discontinue a street, or elect constables; to establish public pumps, or provide wardens and watchmen.

Some idea of the quantity of borough legislation performed at Harrisburg in times past, may be gained from looking into Beitel's Digest of the Titles of Corporations, which contains fifty-eight pages of mere references to acts of legislature relating to the boroughs between 1769 and 1873, most of which were passed since 1800. In 1873, the last year of the old Constitution, there were 105 borough acts passed by the legislature. Under the new State Constitution the legislature cannot incorporate cities, towns, or villages, or change their charters, or pass any special laws regulating the affairs of municipal corporations; its legislation must be general. The borough law as it now stands, consists mainly of the acts of 1834, 1851, and several subsequent acts. No borough has been obliged to forfeit its old charter, but the acts of more recent date have caused many modifications to be made in them, for sake of conformity with the new law. While some few of the oldest boroughs differ in the details of their constitutions, the boroughs incorporated since 1851 are very uniform. Without mentioning in particular the separate borough acts, we proceed to describe the borough system as it at present exists. There is no required area or population that a village must include to be a borough. The boundary lines are drawn close to the built-up portions of the town, encroaching as little as possible upon the township from which it is generally entirely distinct, each being a separate division of the county to which they bear the same relations, and pay the same rate of tax. Occasionally a small borough

will not stand entirely alone, but will form the same election district, or the same school or road district with a township. When they form one road district, the township supervisor repairs the borough streets, and the inhabitants pay their road tax to the township.

A township is not likely to provide better improvements for a village than it does for itself, though they may be needed, nor will the township secure to the village as efficient a police as it should have. These are two principal causes why villages seek incorporation. A large per cent. of the present boroughs have been incorporated when their populations did not exceed three or four hundred, but occasionally a town has had quite a large population before instituting borough government. Phoenixville was not a borough till it numbered 3,337 inhabitants. This delay did not argue the efficiency of the township system in governing towns, for several attempts were made to incorporate the town before success was attained. Many nuisances were committed, and could not be readily punished when the proper municipal authority was lacking, and the county jail and courts fifteen miles away. The streets were unpaved and ungraded, the town was growing without any system, and education was poorly provided for. Such was the condition when a borough charter was procured from the legislature in 1849.¹ Some townships have now many large villages in them not incorporated. Hegel township in Luzerne County had over ten thousand inhabitants in 1880, and thirteen villages, three of them with over a thousand people each.²

When a town desires to be incorporated it must present to the county court of Quarter Sessions an application signed by a majority of the freeholders of the place. The petition is laid before the grand jury after due public notice has been

¹ See S. Pennypacker's *Annals of Phoenixville*.

² The largest unincorporated village in 1880 was Arnot in Tioga county; population 2,783 in the census estimate.

given. If the jury finds no valid objections to the petition the court decrees the town a borough, and it receives its charter, a simple affair, setting forth the corporate style and title (the borough of —), the boundaries, the time and place of holding the annual borough elections. The borough is now a corporation, and can have succession by its corporate name; it has a common seal; it can hold, purchase and convey property, sue and be sued. It has numerous other powers which it vests in the corporate officers named in the charter. A brief summary of the most important is as follows: Laying out and ordaining streets, prohibiting obstructions, regulating party walls, placing sinks and drains, regulating the markets, weights and measures, prohibiting offensive or dangerous manufactures, regulating burials, providing a supply of water, controlling the sanitary affairs, requiring owners to grade and pave in front of their properties, regulating and prohibiting plays and shows, appointing and removing officers, prescribing their duties and salaries, levying taxes, and borrowing money.

In boroughs not divided into wards the officers annually elected are the chief burgess, a council of six, a constable, an assessor, an auditor and if necessary two overseers of the poor. Boroughs with wards elect at least one and not more than three councilmen from each ward, and their terms of office are for two or three years. In the larger boroughs, if the number of members is divisible by three, they generally elect one-third each year, thus securing a constant majority of experienced men.¹ In boroughs with six councilmen, if the citizens prefer, the chief burgess may become a member of

¹ In York, a town of 13,940 (1880) the elected officers are a chief burgess and an assistant, treasurer, attorney, surveyor, two regulators, a supervisor, high constable, market master, lieutenant of police, president of the council, town clerk and eighteen councilmen. The chief burgess and the president of the council are at present the same. In Norristown, a borough of nearly the same size, the elected officers are a burgess and town council of eighteen. All other officers are elected by the town council.

the council, and preside at council meetings. Usually he is merely an executive officer. He is the chief magistrate and has the duty of enforcing the ordinances: he also exercises the powers of a justice of the peace, exercises jurisdiction in the disputes arising between citizens and the corporation, signs the ordinances and by-laws of the council, sees that the officers appointed do their duty, issues warrants for the collection of taxes, and in general is the right-hand man of the council.

The borough council is both a legislative and administrative body. It appoints all the officers not elected. For the better administration of the numerous duties that come before it, the council organizes a number of standing committees. In a borough of twelve hundred inhabitants we find the council organizing in this wise at the first regular meeting after the new election. The council of six elects its president, treasurer, secretary, street commissioner, collector of taxes and overseer of the poor, chief engineer of the fire department, assistant engineer, and attorney. Then it divides itself into four committees on public property, streets, ordinances and finance.¹ Stated meetings of the council must be held once a month, and all its ordinances must be published at least ten days before they take effect.

In the administration of justice there are no regular borough courts as in England. Cases are taken before the chief burgess or a justice of the peace² where a preliminary trial is held, and if the offense is very serious it is turned over to the county court. The borough has a lock up, and the prisoner is kept there temporarily, till he can be removed to the county jail. The lock up is also a convenient place to lodge drunken men and tramps over night. Most of the cases of disturbance that arise in the larger towns must be settled in the county courts at the county's expense. The business of these courts

¹ This is the organization in Newtown, Bucks Co., at present.

² Justices of the peace are elected in both townships and boroughs. Every borough has two, and larger ones more.

must greatly increase in the future, as our towns are increasing in size. In England boroughs may have courts of Quarter Sessions presided over by a judge called a recorder, who must be a barrister of five years' standing. He is appointed by the Crown on the recommendation of the Home Secretary, and holds office during good behavior. He often acts for two or more boroughs, thus avoiding a large number of judges in a county. This is not in all English boroughs, but in those that have entirely or in part the organization of counties.¹ The recorder has very restricted civil jurisdiction, but his criminal jurisdiction is the same as that of the county courts of Quarter Sessions. If such officers and courts were allowed in the Pennsylvania boroughs in the most populous counties, it would probably be an advantage in relieving the county courts of a great pressure of criminal business.² But this means will not be adopted, as the constitution provides the legislature with power to increase the number of judges in a county when the amount of business requires it.

The question of finance is one that comes home to nearly everybody. How much tax have I to pay, and what sort of use is made of it? are pertinent questions that the citizen may address to the officers whom he elects. A state that can boast of all her municipal bodies administering their finances well, has just cause for pride. Pennsylvania cannot say that *all* her cities and towns do well in this particular, for she has notable exceptions. The boroughs, however, have generally administered their finances well, and this is one strong evidence of their success in affording a good local government. The chief items of expense are generally for repairing and opening streets, providing water-works, if such exist, lighting the town, and supporting the public schools. In the older boroughs, before

¹Local Government, p. 80. English Citizen Series.

²In Schuylkill County there were twenty-four boroughs in 1880, nine of them having populations ranging along from three to thirteen thousand inhabitants each, the growth of sixty years.

the common-school system was introduced, the town levied no school tax. Frequently, when the citizens wished for a school, they obtained permission from the legislature to raise money by lottery for a school building. In the same way they raised the means for town improvements. This was but an inherited policy. It would not be tolerated now, though some would support it even yet, but it was in the days before tax-paying was an agreeable feature of citizenship in Pennsylvania. Some idea of how well the financial affairs of the boroughs are managed nowadays may be gained from the experience of two or three boroughs. In York, the largest borough of Pennsylvania, the tax for municipal purposes was four mills on the dollar in 1883 and two mills in 1884. The rate of school-tax is generally from three-and-a-half to four-and-a-half mills, making a total borough tax of not over eight-and-a-half mills on the dollar. Norristown, nearly as large as York, levied a tax of ten mills on the dollar last year—five-and-a-half being for municipal expenses and the rest for schools. Newtown, a fair type of a prosperous country town, levies a tax for the present year (1885) of four-and-a-half mills for municipal purposes and six mills on the dollar for schools.

These particular places were selected simply because two of them represented the largest class of boroughs, and the third one of the smallest towns. The state collects no statistics in regard to its boroughs, and these few facts were obtained from reliable citizens.

In this day of municipal indebtedness, the debts of large towns like York and Norristown cannot be considered large. York had a bonded debt of \$35,000, and a special loan of \$20,000 in 1884, and at the close of the same year Norristown had a bonded debt of \$66,000 and a temporary loan of \$8,000. From personal acquaintance with the borough of Newtown, and from the testimony of responsible citizens of both York and Norristown, we can say that they are well governed. So well satisfied are the people of Norristown

with their efficient police force, well-regulated streets, and careful administration of the finances, that they have three times voted down the project to become a city. It is the pride of York to claim that its taxes are lower than those of any other municipal organization of its size in the State, and that under this rigid economy is also secured a well-kept, neat, and orderly town. So much for the possibilities of the borough system in Pennsylvania. In the early boroughs the indebtedness was limited by the charters only, when limited at all. There was no disposition towards municipal indebtedness till recent years, and no general legislation on the subject. The present constitution of 1874 limits the borough debts to seven per cent. of the assessed value of all taxable property. The constitutions of a few boroughs place still further restrictions upon their indebtedness.¹ It is when boroughs become cities that they depart from the good old ways of sound economy and plunge into debt. In the city the mechanism of government becomes more complex, and, as the wheels of governmental machinery multiply, the quantity of lubricating oil must increase. As cities and boroughs are constituted in Pennsylvania, there is an important difference between them. In place of the chief burgess and one council of the borough, we find the mayor and two councils in the city, which is their most vital distinction. Two councils were not necessary to a city till the law of 1874. It was optional before then. In England the title of a city depends not upon the form of its municipal government, but upon the presence of the bishop and cathedral, and the distinction between borough and city in their local government is only one of name.² Wm. Penn and his companion Friends had not enough reverence for bishops and cathedrals to endeavor to make such a distinction in Pennsylvania. Originally, it

¹ Bristol is restricted to a debt of \$10,000, and York to two per cent. of the assessed valuation of its property.

² Local Government, English Citizen Series, p. 73.

was left entirely to the option of a town whether it became a city or a borough.¹ The law now requires a town to have ten thousand inhabitants before receiving the dignity of a city, which, under the present municipal system of requiring two councils in every city, is a wise provision. It is doubtful whether the bi-cameral system is of real advantage even to large cities, and it is much less necessary to small ones, where the simpler organization of the borough is all sufficient.

Viewing the Pennsylvania boroughs at this point in contrast with their English prototypes, we see that after two centuries, in which they have been growing and moulded into their present forms, they have left off much that was characteristic of English municipal life. We miss those peculiar institutions of the Middle Ages—the guilds. We do not meet even the aldermen and the host of officers that once formed the caudal appendages to the English towns—the bailiff of the brethren, the mace-bearer, the serjeants-at-mace, chamberlains, bellmen, beadles, peck-sealers, moormen and mossmen, the hedge-lookers, the flesh and fish-lookers, and the ale-tasters. What an array of officers, whose very names are unknown to Pennsylvania!² There is, further, no borough sending its own representative to the legislature, so we hear nothing of parliamentary or legislative boroughs. There is no central authority like the Local Government Board to which the boroughs must account for what they have spent, and from which they get ready permission to spend still more.³ With all the differences from and lack of anomalies of the boroughs of England, they are the English boroughs still, developed under different circumstances, changed to meet new necessities.

¹ Parker City, the smallest in the State, has its common and select councils and mayor. Population in 1880 was 1,835.

² All these were officers of Lancaster, Eng., 1819. Since the reform act most of them have disappeared from the reform boroughs.

³ For the authority exerted by the Local Government Board over the financial affairs of boroughs, see Wilson's National Budget.

We trust that we have now set before the reader a fair account of the historical borough in Pennsylvania, and its importance as a feature of local self-government. We have been accustomed for generations to hear the glorious tributes paid to the New England "town," and what it has done for the liberty and political education of the people, and it is time that we should know the institutions of other states that concern far greater populations. The Pennsylvania borough may not be such a good school for the development of political ideas as the New England "town"; but the separation of village¹ and township, and allowing to each its own government according to its own peculiar needs, is a more just and expedient way of governing town and country.

¹ Of late years many New England villages, or districts, have been organized by law for the sake of village improvements, side-walks, water-works, fire-department, night-watchmen, street-lamps, libraries, etc., for which "the ends of the town" refused to be taxed. The opposition of the farmer to the villager is a constant factor in New England local politics. In my native town, Amherst, Massachusetts, the villagers struggled for years in town-meeting to secure some system of sewerage for "the centre," but "the ends of the town" always voted "No." On one occasion, in order to allay suspicion of extravagance, a leading villager moved that, whatever system of sewerage be adopted, the surface-water and rain-fall be allowed to take their natural course down-hill in the ordinary gutters. The farmers sniffed danger in this wily proposition and voted an overwhelming "No." Accordingly, by the local law of Amherst, water had to run up-hill until the next town-meeting! Such is the power of Democracy.—ED.

V

AN INTRODUCTION TO THE STUDY

OF THE

CONSTITUTIONAL AND POLITICAL HISTORY

OF THE STATES

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

FOURTH SERIES

V

AN INTRODUCTION TO THE STUDY

OF THE

Constitutional and Political History of the States

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BALTIMORE

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AN INTRODUCTION TO THE STUDY
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Constitutional and Political History of the States.¹

I.

Three years ago, when I first visited the library of the Department of State at Washington, the Constitution of the United States was kept folded up in a little tin box in the lower part of a closet, while the Declaration of Independence, mounted with all elegance, was exposed to the view of all in the central room of the library. It was evident that the former document was an object of interest to very few of the visitors of Washington. But when I was last in the library, I learned that the Constitution also was being mounted in order to be similarly placed upon exhibition, because, as I understood it, there was a more general desire to see it. It seemed to me that this incident is typical of a considerable change which the last few years have seen in our way of looking at American history. The interest which during most of the years of the republic has been nearly confined, so far as

¹ These three papers were prepared at first without any thought of publication for the historical seminary of the Johns Hopkins University, before which they were read on January 9, 23 and 30, 1885; I have thought it as well that they should retain a form which to some extent shows their original purpose. The first of them was read before the American Historical Association at Saratoga, on September 10, 1885.

the popular mind is concerned, to the more dramatic episodes and portions of our history, and has made histories of discoveries, histories of settlements, and pictorial field-books of our various wars the most popular historical works, is now at last being extended to our constitutional and political history, which, with little picturesqueness, is yet capable of being, to a mature and thoughtful American mind, of all parts of history the most interesting. Certain states of politics are peculiarly favorable to the production of historical work of a high type. Our politics are now in such a state. Questions necessarily arousing violent partisan passions have no longer the foremost place. The questions which are most prominent, questions of administration and finance, are precisely those to the solution of which history is most directly useful. And not only the quality of the present interest in politics, but its quantity, is favorable to us. The last few years have witnessed, side by side with the incipient decline of the machine politics of the first twelve or fifteen years after the war, a great awakening of interest in politics proper among the more intelligent young men of the country. For instance, at the commencement of one of our largest colleges attended last year, the subjects of one-half of all the orations delivered by the young men were political; five years ago political orations by the students were almost unknown. The times are thus ripe for a more assiduous study of our constitutional and political history. In the present paper and one or two subsequent papers it is intended to point out the importance and urge the cultivation of a singularly neglected portion of that history.

The history of political institutions and events in the United States is divided into three parts,—national, state, and local. It cannot be asserted that there is not a great need of good work in the national and local fields, but something has been done in both. The most neglected field in American history is the field of state history,—the constitutional and political history of the individual states. Any bibliography will show

that there is an astonishing barrenness even in the case of the older states, whose history might be supposed to present most of interesting incident to the general reader of history. An examination of the books themselves will give rise to still further surprise. Not only are they usually below mediocrity in character, deficient in research, deficient in perspective, hopelessly myopic and parochial, but they do not even make an attempt to cover in point of chronology the whole ground. Almost invariably they are confined to the colonial period and the revolutionary war. For instance, a certain popular history of Virginia gives four hundred pages to the colonial and revolutionary period and the civil war, and about fifty to the period between 1789 and 1861; that is to say, the author considers one-ninth of his volume a fair proportion to devote to that period in which the influence of Virginia was greatest, and her history best worth considering. So it is with the state historians generally. They seem to belong to that singular class of historical writers who think it advisable to give no very full account of the recent history of any country, but wiser to stop the narration of English history at Waterloo, and that of France at the Revolution, which proclaims the utility of historical study on the ground that only the study of the past can enable us to understand the present, and then neglects all that part of the past which is most necessary to an understanding of the present, namely, the immediate past, thus reversing the laws of perspective by drawing the foreground on the smallest scale. It is to be hoped that this theory of the importance of all centuries but the nineteenth, if that can be called a theory which is apparently a feeling based on timidity and indolence in the presence of new and difficult tasks, will speedily become obsolete, and that the opposite view, supported by the, at least respectable, examples of Herodotus, Thucydides and Tacitus, Hooft, De Thou and Father Paul, will in time prevail. When that view is adopted, the relative importance, in the history of politics, of colonial history and state history will be appreciated.

It seems the merest commonplace to say that the preservation of due proportion between the parts in the constitutional history of any country depends upon a correct sense of the proportions between the various factors in its constitution. But obvious as this principle is, it is not always applied. Students know that the part played by the Church in the life of mediæval England was far greater than its present part; yet how many of them devote a proportionate amount of attention, in their studies of the history of England in the middle ages, to its ecclesiastical polity? A similar failure to make this application seems to be at the bottom of our astonishing neglect of state history. We fail to perceive that the peculiarity of our governmental institutions makes necessary a peculiar distribution of attention in treating of their history, as if, like Samuel's Israelites, we could not get used to the idea of not being governed like the nations around. We know, when we stop to think of it, that our constitutional life has been lived quite as much in the state as in the nation, in the branches as much as in the trunk, that the life of the average citizen has probably more points of contact with the life of the state government than with that of the central government, that indeed there have been times in our history when the latter bore to the former a relation not entirely different from that which the last Carolingians bore to the Dukes of France, Normandy and Lorraine. But when it comes to writing our constitutional history, we neglect all this, and proceed as if the United States were as centralized a unity as modern France. To illustrate this point, let us look a moment at the recent constitutional history of England. The most important constitutional measures of the last sixty years have been, we may say, the parliamentary reform acts of 1832, 1867 and 1884, the municipal corporations reform acts, the new poor law, the removal of Catholic disabilities, the abolition of church-rates, the commutation of tithes, the acts for the organization of elementary education, the reform of the universities, the succession of changes effected in the

tenure of land, the ballot act, and the disestablishment of the Irish Church. Now imagine all this legislation transferred to America. A moment's reflection will convince that, with the exception of some minor provisions (such, for instance, as those for redistribution), absolutely every one of these enactments would in this country have been made by state legislatures, or possibly state conventions, and not by the national legislature. And yet the history of the constitutional action of these legislatures and conventions, and the whole course of the constitutional development of all these states during the last hundred years, remains practically unknown to us. Even if the history of the general government were alone worthy of attention, the great influence of the states upon the life of the national constitution would cause them to deserve fuller investigation than they have ever yet received. But as it is, it is no exaggeration to say that the half has not been told us, and that the constitutional history of the United States never has been written, and never will be written until scholars, well-trained in historical learning and mature in political thought, take up the constitutional history of our commonwealths, one by one, and show the world the treasures of political instruction to be derived from them.

More has been said thus far of work in constitutional history than of work in political history, not because of a belief that there is more to be done in the former, but because it is more important to the practical and didactic purpose which has led to the writing and publishing of this paper, the purpose, namely, of urging upon the members of the historical seminary of the Johns Hopkins University, and then upon other young historical students, the undertaking of some work in this still unharvested field. To write a great constitutional history is no doubt as difficult as to write a great political history, but it is easier to find in the former department minor tasks which may be undertaken in the earlier years of our studies than in the latter, just as pieces of investigation suitable for younger men may perhaps more easily be found in

anatomy than in physiology. But the history of state politics must be written; perhaps indeed it is even more urgently needed than the history of state constitutions. For the distortion which its neglect has produced in the popular view of our history is equally great, and there is another reason which may not unreasonably be thought still more important, arising out of still another failure to adjust the composition of our histories to the facts of our government. We have not seen that, where the government is a government of the people, it is essential that the history be the history of the people, that, in fact, the history of a democracy ought not to be an Iliad. Our political histories have for the most part been Iliads; they are filled with the deeds of the chieftains "wise in council," "fertile in devices," "kings of men," or even, in a humbler sphere of usefulness, "good at shouting," *βοῆν ἀγαθοί*, while the rest of the well-greaved Achaians stand in their ranks unnoticed and unsung. There are signs of a change; McMaster's "History of the People of the United States," with all its faults, is such a sign; its general purpose is most commendable. But the true history of our nation will not be written until we can obtain a correct and exhaustive knowledge of the history of public opinion upon politics, the history of the political views and actions of the average voter. Now these views and actions for the most part appear in a local sphere, and can be exhibited best by the study advocated in this paper, the study of the history of state politics. For instance, suppose that we wish to understand the greatest event of our earlier political history, the gradual triumph of the republican party over the federalists. We shall never acquire a perfect knowledge of that great change, or even of the election of 1800–1801, by studying only those events and those characters which were great enough to occupy a conspicuous place in the wide theatre of national politics. We must go below the surface, and as soon as we go below the surface we find that there are many minor currents, the currents of state life, which have joined to form the great result-

ant movement. These minor currents, merely eddies sometimes, must be studied. If we are attempting to discover the causes which gave this or that issue to a recent presidential election even, we do not think of being satisfied with an explanation expressed, so to speak, in terms of national politics only; we ask ourselves: What influences worked upon the mind of the average voter in Ohio, leading him, with whom the decision rested, to decide thus? What combinations of circumstances so affected the political molecules in Massachusetts or in Virginia as to give a new complexion to the political tissue? How was New York carried, and how Pennsylvania? Just so if we are discussing the great political change of eighty years ago. The actions of the leaders are already well known; if the change in the opinion of the mass of voters is to be investigated, it can best be done by the study of local movements. What were the influences that gradually converted the rank and file in Massachusetts and Connecticut? Why did Delaware so long remain Federalist? The answers to such questions as these are not easily obtained. The future historians of our states must not only laboriously ransack the printed histories and annals of states and counties and towns, the archives of the former, and the newspapers of the latter; but if they would get down to the real facts of the political history of the people, they must examine the masses of county and town and court records, and what of private correspondence has been preserved, and leave no stone unturned in the effort to reproduce exhaustively the course of democracy in our country. But the enormous pains required will be well rewarded; for, as the result, we shall have at last the history of the people of the United States, written with some recognition of the fact that our national name is plural.

I shall perhaps be told that the history of the states is so closely bound up with the history of the federation itself, that the former if related apart from the latter is left incomplete and loses half its meaning. I reply that it is equally true that

the latter if related apart from the former is left incomplete and loses half its meaning. This is what we have been doing; let us try the effect of light polarized in another plane. Or perhaps it will be said that the states are vanishing quantities. Probably they are; but institutions of the past, even those that are obsolete, are necessary objects of historical investigation if they have been strongly influential in making the present what it is. Nor would it be unreasonable to desire that work upon state history should do something to direct attention more strongly to the importance and value of our state governments, now that the danger from extreme state-rights theories has been succeeded by a pronounced danger from the opposite quarter. Teachers of history will find an increasing number of pupils who intend to engage in politics. Is it not as well to direct their attention to the fields of usefulness which state politics present, a field wherein tangible results can more probably be reached than in the wider arena of national politics, where none but the heaviest cestus has much chance of making itself felt?

II.

It is the object of the present paper to present some illustrations of the subject already discussed, drawn from an examination of the constitutions of the states,—more especially those framed during the revolutionary period. One who carries his research little beyond the bare text of these fundamental laws gives, I am aware, but a narrow basis to his study of the constitutional history of our states; yet, if time fails him to exhaust all sources, as his ideals would exact, it may not be entirely unprofitable to him to study one source, provided he bears in mind how partial must be the views thus obtained. For the states have, no less than the general government, unwritten constitutions. The form of our government in 1885 is widely different from its form in 1789; the brief document called the constitution of the United

States remains the same. The executive departments have doubled in number. Their heads have decreased in power. The spoils system has risen and declined. The senate, from a small executive council of ambassadors debating with closed doors, has come to have fully the position of an upper house of the legislature. The standing committees of the House and Senate, unknown in the earlier years of the government, have now come to control it. The speaker of the House has become, next to the President, the principal officer of the republic. The electoral college has become an obsolete organ, which either avails nothing, or avails occasionally to disturb and pervert the function which it was originally designed to subserve, like that singular result of evolution, the *appendix vermiformis*, whose only present office is occasionally by obstruction to produce acute peritonitis. Yet of all these momentous changes, every one of which is an important alteration in our constitution, the few pages of print called by that name bear no trace. The same can be said of the real constitutions of the states. But it does not hold true to anything like the same extent. The state constitutions have been for the most part much more detailed, they have been subjected to much more amendment, and have from time to time been replaced by new constitutions. So it is not likely that in the constitutional history of the individual states we shall often find changes so great as those which have been mentioned occurring without leaving some trace in the fundamental document. When we see that of the older states, whose constitutions antedate the beginning of this century, nearly a half retained the same constitutions un-superseded from that time until after the civil war (three of them indeed until the present time), that the average duration of American state constitutions has been thirty years, while ten of them have lasted more than sixty years, we feel sure that, during the continuance of many of these, changes in the actual form of government, sometimes perhaps changes of importance, have occurred which are not to be found registered

in amendments, but must be sought in the statute books, in the law reports, or even traced by means of the newspapers, the daily records of state development. Yet we shall not in most cases go quite wrong if we take into account only the state constitutions and their amendments.

The *formal* aspects of our state constitutions present some points of interest. For instance, it is interesting to observe the evidence of growing stability afforded by the fact that their average duration has been increasing, and not diminishing, as perhaps most persons would suppose. But on the other hand there has been an ominous increase in length. The first of the state constitutions, the New Hampshire constitution of 1776, covers little more than a single page in Major Poore's edition; the constitution of 1875 for Missouri occupies rather more than thirty-three pages; printed in duodecimo it would make a sizable volume. Nor is this tremendous document at all unique; the last constitutions of Maryland, Texas and Arkansas are nearly as long. Indeed, the instruments of government framed since the war are about three times as long as those of the revolutionary period. This change seems due to a desire to include in the constitution a mention of everything, from the name of God, often dragged in in an inappropriate and even silly manner, down to barbed fence-wire, city alley-ways, and historical paintings in state-houses. It is interesting to observe, it would perhaps be not unprofitable to investigate, the growth of this tendency to comprehensiveness, a tendency which is one of the most striking facts in the history of American constitutions, and, one may well think, one of the most deplorable. For when we introduce minor details into such an instrument, we are introducing temporary elements, which will necessitate frequent amendments. And nothing can be more certain than that the practice of frequent amendment must in time impair the reverence with which constitutions ought to be regarded, lower their authority, and introduce into our governments a most undesirable instability.

So much for matters of *form* which admit of profitable study. As to the *substance* of American constitutions, two methods may be pursued. We may follow down the constitutional history of a given state, or we may make a comparative study of the state constitutions of a given period. Perhaps to follow the latter method may most easily serve the purpose of the present paper, which is not to present the results of a careful examination of any portion of history, but to suggest lines of inquiry to others. In the revolutionary period all the states except Connecticut and Rhode Island formed new constitutions. Here, accordingly, the opportunities for a comparative study are full. If I were urging a student to such study, either with a view of producing some contribution to historical science, or simply in order to enlarge his own knowledge, (and for the one purpose or the other, one ought certainly to recommend every student of our constitutional history to pay some attention to this subject), I should say to him, study first of all the declarations of rights which are prefixed to these constitutions, or, in some cases, included in them. For these, more than any other portions, exhibit the principles of the Revolution. We see in them how great was the influence of the Revolution of 1688; the very words of some parts of the Bill of Rights are again and again repeated. We see everywhere appearing the influence of the contemporary or recent political philosophy of France and England, of Montesquieu especially, and Locke and Rousseau. But besides these influences from England and France, we see the workings of colonial conditions of life; we see what were the grievances that seemed largest to the revolutionary party, the eagerness to provide for the liberty of the subject, the dislike of the military, the odium of general warrants; we see how strong had already become the tendency to democracy. Here, too, we find light thrown upon the progress toward religious equality, toward new relations between church and state.

The comparative study of the forms of government at that time adopted, in obedience to the suggestions of Congress,

will prove not less remunerative than that of the declarations of rights. From the year 1776 to the year 1780 an extraordinary amount of attention was given by the inhabitants of the colonies to the then new task of constitution-making; the results, the expedients adopted, now singularly wise, now singularly crude, furnish food for much investigation, thought and comparison. Into such a comparison, however, I shall not enter; for its details would be tedious if expressed with the condensation here necessary.

Again, the subject of the origin of each of these first constitutions is one of the greatest interest, and one which has received surprisingly little attention. Hegel, in criticising Schelling's system, said that in it the absolute was, as it were, shot out of a pistol. It is somewhat so with American state constitutions in most historical works. No considerable effort is made to deduce their origins; they spring full-armed from the heads of Olympian conventions. The investigation is indeed no easy one. The factors of the final result are in general four. First, the constitution of England, or what the fathers thought to be the constitution of England. Second, the political philosophy of the time, prevalent among the people, derived from both England and France. Third, the ideas as to the needed form of government which the leading statesmen really originated and then caused to be adopted. Fourth, the already existing constitutions of the colonies. I do not mean simply the meagre provisions of the charters; for these had undergone a great development, like willow stakes that have been set out, hard and smooth and geometrical, by the shore of the ocean, but have there sprouted and grown into living trees. These constitutions, with their written and unwritten elements, constitute, perhaps, the chief of the factors, certainly the least thoroughly known. At all events, these four are the factors to be considered; and the task is, to discover the proportions in which each is present in the constitution as it came finally from the hands of the state convention. Thus, in the case of Virginia, we know that

the preamble to the Declaration of Rights was taken from a draft sent on from Philadelphia by Jefferson, that the declaration itself was written by the admirable George Mason, and but slightly amended in the convention itself. We know that, some months before, Richard Henry Lee and George Wythe had at different times asked the advice of John Adams as to the form of government to be adopted, (as was also done by the patriots of North Carolina and New Jersey), and we have the brief note which he wrote to the one, and the letter afterward written to the other which was printed anonymously as a pamphlet. We have the reply to this contained in the anonymous Address to the Convention, by Carter Braxton, and Patrick Henry's letter, commenting upon the two. We have much interesting information upon the characters and lives of the members in Grigsby's Phi Beta Kappa Address, and we have the Journal of the Convention. With these materials and the manuscript treasures of Washington and Richmond, it ought to be possible for a ripe scholar, who understands well the Virginian character and the signs of those times, and is thoroughly learned in the workings of the institutions of Virginia in the times just previous to the revolution, to effect a satisfactory solution of the profoundly interesting question of the real derivative sources of the Virginia constitution of 1776, to analyze this new compound into its component parts. Such a solution we do not now possess in the case of any of the state constitutions, so far as I know. We have much personal description of the various conventions, much vociferous panegyric of their work. Personal details and vociferous panegyric have played far too large a part in American historiography; the time has come for something more solid. Shall we believe that the new forms of government were called into being by the creative fiat of statesmen (to judge from the language of some historical writers the class of statesmen must have been phenomenally large in 1776, embracing, one would estimate, about one-tenth of the adult male population of America), or shall we set ourselves

seriously to study the transition as a piece of sober constitutional history, rejecting, at whatever sacrifice of our feelings, the theory of direct verbal inspiration, and patiently investigating in order to discover exactly how great and of what sort the transition was?

Another matter of great interest and importance, and well deserving investigation, is the influence of the state constitutions upon the formation of the federal constitution. Let us for a moment banish from our minds the history of the last hundred years, and try to realize how new a thing the making of written constitutions then was. If we except the makers of the Instrument of Government and of the Humble Petition and Advice, no body of Englishmen in the mother country had ever done such a thing; no body of Englishmen on this side of the water had ever done quite such a thing, except, in the early days, for very small settlements, until eleven years before the Philadelphia Convention. When, therefore, that convention assembled, virtually the only experience on which the members could draw in prosecuting the work before them was that of the state conventions of the last dozen years. And in those conventions at least a third, very likely a half, of the members of the Philadelphia Convention had taken part. It would be very strange if we did not find many traces of the influence of the discussions and results of these conventions. And in fact these do appear again and again. The Virginia plan read by Governor Randolph, slight sketch as it is, shows the influence of the constitution of his state. The very name of the senate is derived from that constitution. Evidences of such influence naturally enough appear with especial frequency in the details of the provisions adopted or suggested. The Pennsylvanian opposition to a bicameral legislature is such an evidence. Hamilton's (supposed) design of having the senate elected by freeholders only was borrowed from the constitution of his own state. Gorham's suggestion that the appointment of judges by the President be subject to confirmation by the

senate was based on arguments from the constitutional history of Massachusetts. Mason and Ellsworth's advocacy of ratification by conventions was founded on recent experience. These instances, taken at random, will perhaps suffice; one could find many more. Indeed, I have even heard it maintained that all those parts of the work of the Convention of 1787 which have proved successful were borrowed from the constitutions of the states, and all those parts which were new have proved failures. As to the first ten amendments to the Federal Constitution, it is unnecessary to do more than allude to the manifest and well-known influence which the Virginia Declaration of Rights and the imitations of it in other states had upon them.

III.

In the first of these three papers allusion was made to the desirability of making more effort to get at the real political history of the masses of the American people. It will be generally felt that the principal difficulty in the way of such attempts is the paucity of reliable materials bearing upon the political history of the less articulate classes. The object of the present paper is to give some evidence in support of the opinion that one particular class of sources, perhaps not much regarded hitherto, would on thorough examination be found to yield materials of considerable value for historical work of just this sort. I refer to local records, more especially the town records of the North. The belief has been expressed in a previous paper that much of our national history must be sought in state sources; it is now urged that local sources may be made of great use to the history, in the revolutionary and post-revolutionary periods, of the individual state and thus of the nation. The average political unit of that day wrote few letters, and these said little of politics. The newspapers furnish but a very partial and imperfect reflection of public opinion upon politics. But in the town records we

get a genuine, and sometimes a tolerably full expression of the popular mind. Sometimes ill-written, sometimes not perfectly grammatical, they bear evidence upon the very first inspection that they have at least that value which springs from perfect authenticity; that they bring us close to the real thoughts of the people. Seldom indeed do we get so good a chance to see the non-literary classes thus unconsciously self-registered.

It may be thought that these records are full of nothing but parochial matters—the election of hog-reeves, the seats in the meeting-house, the school-house at the north end, the highway by Dea. Smith's house, the minister's salary and firewood. Certainly they do contain much that is trivial. But two things must be said on the other side. In the first place, by combining many such data, obtained from different towns, we get a solid basis not only for a description of society at any given time, but for a description of the constitution, or, at any rate, of those numerous departments of human life which are common to social history and to constitutional history. Thus, it is of no especial consequence how the quarrel between the Rev. Mr. Parsons and his parishioners at Amherst as to his salary turned out; but if we have data from a hundred different towns as to the dealings of ministers and parishioners with each other, we have some evidence which will help us to form an opinion as to the position and power of the ministers in society and in the state.

But, still further, the town records are by no means confined to casting these indirect and side lights upon the history of state and nation. They contain much that bears immediately upon politics of a wider scope—much direct action and expression of opinion. He who thinks this improbable should remember what the towns of New England were. No one who knows them can fail to see that each of them has had an individuality and a life of its own. Mr. Howells has admirably described Lexington, Mass., as a typical New England town; but let no one suppose that Woburn, on the one side,

and Arlington, on the other, are towns exactly similar. The very map of the Massachusetts towns, with their singular irregularities and varieties of outline, seems to betoken an individuality on their part which it is difficult to suppose existing in regular square subdivisions designated as township number seven, township number eight, Brandnew County. The old New England towns were not so much subdivisions as component parts of the state, each with a mind of its own; witness the singular theory of town autonomy developed during the Revolution in a part of New Hampshire, as exhibited by Mr. John L. Rice's article in the Magazine of American History for January, 1882. As component parts, with minds of their own, they took an interest in the politics of the state and the continent; and of this interest the town records bear traces in greater or less abundance.

Perhaps I may enforce what I have said upon the first of these two heads by illustrations suggested to me by the records of one New England town, which I examined with great care in the process of preparing a part of them for publication. It was plain enough, for instance, that the fathers of this town had a great reverence for rank and position; thus, titles are at first given carefully and very sparingly, though their number increases gradually, especially after the Revolution. It seemed to me that by putting together incidental touches, here and there occurring throughout these records, I got valuable indications of the original strength and extent of aristocratic influences in the town, and could trace with some degree of exactness the progress of their decline; and it seemed probable that if the records of all the other towns were equally accessible, one might, by combining their data, obtain a firm basis for general conclusions as to the history of the aristocratic factor in the social and political constitution of the whole commonwealth, in short, as to the progress of democracy. Again, it became clear to my mind that the Revolution was, so far as this town was concerned, distinctly a movement of the lower and middle classes. The men who have been

hitherto most prominent in the management of town affairs drop into the background. The squires fall under suspicion and disfavor. One is deprived of his arms, with the other the town is involved in litigation. The conduct of the parson is voted inimical to the interests of the United States. A new set of leaders comes forward, men who have hitherto been far from prominent in position, and, one feels sure, men of less education than those who preceded them, for the documents of the town, unconsciously bearing witness of their constructors, become at this time distinctly more illiterate. Of course these hints from one town can give us no valid conclusions. But if such an examination were sufficiently extended, it would, I feel sure, throw valuable light upon the character of the two parties to the great conflict. It would show us what sort of man became a Tory, what sort of man joined the party of revolution, and afford us no inconsiderable help in judging the merits of the two causes. Our conclusions might not at the end be entirely new, but they would be based on testimony for the most part unimpeachable, because unconscious; and this would be no slight advantage. Again, upon the state of society and the political situation a few years later, much light was thrown by the records of this town for the period of Shays' Rebellion, and I presume that other town records would give even more.

As to the second kind of help, that afforded by notices of direct action or expression of opinion upon matters of state or national politics, it is certainly not so often given. The voice of the town-meeting is seldom heard in these affairs, except at such crises as the Revolutionary period, Shays' Rebellion, the time of strained relations with the Directory, the period of the embargo. But when it does speak, it is always instructive, a truly original and primary expression of public opinion. It may not be useless to attempt to indicate with some particularity the sort of help which can come from this source to the student of state history by a single instance. The example which I shall choose is, the reception by the voters

of the proposed constitutions of Massachusetts. It will be necessary first to give a brief outline of the history of those constitutions. At first the province, acting under the advice of the Continental Congress, had governed itself according to the provisions of its old charter, with the substitution of an executive council for the governor and lieutenant-governor. This method of government proving inefficacious, a committee of the General Court was appointed in June, 1776, to prepare a new frame of government; but it did not carry the matter far. In September, and again in the next May, the House recommended their constituents to invest the deputies chosen to the next General Court with power to construct a form of government for the state. In a majority of cases this was done, and in the next session a committee of four members of the Council and eight members of the House was appointed to prepare a constitution. They prepared a draft, which, on being approved by the legislature, was submitted to the people in March, 1778, but was rejected by a vote of about ten thousand to two thousand. In 1779 the vote of the people was taken on two questions;—first, whether they would choose at this time to have a new government at all; second, whether they would empower the legislature to summon a special convention for this purpose. Assent was given, and a convention was called, which met at Cambridge on the first of September. The committee of thirty chosen by it delegated the duty of preparing a draft to a sub-committee of three, and these in turn confided the task to John Adams. The constitution finally prepared was much more largely his work than that of any other man. It was accepted in 1780, and has been in operation ever since, the most durable of all those American constitutions of which its chief author afterward wrote the defence.

Now, what illustrations of these events do the town-records supply? In the first place, we see such towns as Ipswich, Gloucester and Plymouth, already in 1775, urging the framing of a new government or the amendment of the old.

When, in October of the next year, the suggestion of the General Court that its members be empowered to frame a constitution is submitted to the town-meetings, the votes of the latter become, in some instances, highly instructive. The town of Norton gives, as its reasons for not consenting to this proposal: "1stly, that the present House and Council were not separately elected by the people for that special purpose, which we think it highly reasonable they should be in a matter of such importance; 2dly, the requisition of the Honorable House being so pregnant with power, we cannot think it will be conducive to the future good of the people to comply with their proposal;" a jealousy, it may be added, quite characteristic of the farmers of old Massachusetts. Andover town-meeting, in its instructions to its representative, alleges still other reasons, that "some of the ablest men, who have a peculiar right to a voice, are absent in the field or at Congress," and that it is no time when "foes are in the midst of us and an Army at our Doors to consider how the country shall be governed, but rather to provide for its defence." "We therefore conclude that to set about the forming a New Constitution of Government at this time is unnecessary, impolitic and dangerous; and it is accordingly our direction that you oppose it with those solid arguments of which the subject is so fruitful, and that you do it vigorously and perseveringly." Lexington expresses its opposition in an able document, which was probably written by the minister; but this will probably be thought too little the spontaneous expression of the popular mind to be here quoted. A vote against which this objection certainly cannot be made is that of the small inland community of Townshend; its very lack of a predicate is sufficient evidence that it is a genuine instance of the kind of expression we are seeking. After refusing the desired permission to the legislature, the town votes "That the act made by the late house respecting representation, by which the privilege of many towns is much enlarged, which we think gives the maritime towns a material

advantage over the country towns, as the court is held at that side of the state, by which we think the mercantile part of the state has a dangerous advantage over the land part; we therefore" wish the former mode of representation restored. We see also something of the political character of a "hill-town" in the suggestions which Warwick makes to its representative. They desire that the legislature shall consist of one chamber (one of the coast towns was about the same time instructing its member to make sure that there were two chambers), that each town shall have one member, towns of the largest class not more than four or five, the rest in proportion, that suffrage shall be universal, that a town shall have the right to recall its member at any time on evidence of misconduct, and that at no time shall less than eighty members constitute a house.

Though the quotations made come only from the towns opposed, it will be remembered that these were in a minority. When, however, the projected constitution of 1778 was submitted, its opponents were a majority; the principal objections made were, that it contained no declaration of rights, that it did not secure equality of representation, that it placed no limitation upon the reëligibility of the Supreme Magistrate and the members of the General Court, did not sufficiently ensure the mutual independence of the executive and legislative, nor provide for adequate amendment by the people. In short, it was thought to be too much what in those days was called "a high-toned government." It appears that the coast towns were almost unanimously opposed to it. Among the farming towns it seems, from the data which I have, to have found favor chiefly with towns of one particular class, namely, ancient and conservative towns which a few years later exhibited a decided disapproval of the plebeian and Adullamite insurrection under Daniel Shays, and after the formation of the national government are found adhering to the Federalist party. I may add that they were in part the same towns that are found gravitating to the Unitarian

side in the great theological division a generation later. With a fuller accumulation of facts, it would be interesting to work out the connection which I believe existed between these various predilections.

Both at this and at other times a great difference is noticeable in the degree of interest taken in political matters by different towns and sections of the state. In Hardwick and Rowley nearly all the voters must have been present at the town meeting, (at least in 1780), in the Cape towns but a small proportion. Foremost, perhaps, in interest in politics were the coast towns of Essex County, and here the constitution of 1778 was most decidedly rejected. At Newburyport the town voted that the selectmen should write circular letters to the several towns within the county, proposing a convention of delegates from these towns to consider the proposed constitution. A few refused to send. From the rest, some of the most prominent citizens assembled at Treadwell's tavern, in Ipswich, and instituted an elaborate examination of the intended constitution. A statement of their objections to it, drawn up by Theophilus Parsons, was printed at Newburyport in the form of a pamphlet, entitled, *The Result of the Ipswich Convention*, and had much influence upon the decisions of the towns. Such county conventions were somewhat frequent in the earlier years of the state, and were a valued means, long since disused, I believe, of collecting and formulating public opinion. A curious feature of the interim between the two attempts of 1778 and 1780, is the rise of a remarkable theory of town autonomy, developed especially in Berkshire county. Thus we find the citizens of Lee voting that they hold themselves "bound to support the Civil Authority of this State for the term of one year and Bound to obey the laws of this State." And a little earlier, Great Barrington votes No, on the question, "Whether, under the situation of this county, not having a new Constitution, and other reasons, the laws of the State ought to operate among us?"

The constitution of 1780, sent forth after longer and calmer deliberation, was received with even more interest and atten-

tion. There were few towns in which it was not discussed fully. In many the meetings, adjourning from day to day, examined it clause by clause, assigned parts of it to select committees for more minute examination, and debated at length the amendments which these reported. It gives an instructive idea of the political value of these small communities, to see the little town of Rowley, whose population cannot then have exceeded thirteen hundred, spending several days discussing the new declaration of rights and frame of government, sentence by sentence, in full town-meeting, and recording their opinions of its successive articles in seventy-five separate votes—votes, too, in which the widely-varying numbers pro and con indicate much independence of judgment; or, again, to observe the moderation and practical good sense with which they urge the adoption of the amendments which they have concluded to recommend; or, once more, to see the evidence of interest and information in politics afforded by such votes as that of Ward, an obscure little farming town of scarcely more than four hundred inhabitants, that “we could heartily wish that representation might be weighed by the number of polls, which would be similar to the proceedings of the Honorable Congress and some neighboring well-regulated States, that have been attended with very wholesome effects.” The extent to which the towns entered into the business of examining the new constitution may be inferred from the statement that, if my calculations are not incorrect, the number of amendments to it which they proposed must have amounted to something between six hundred and a thousand. Many of these, of course, duplicated each other; but the evidence of political activity throughout the state is none the less convincing.

Interesting deductions could very likely be made from a tabulation of these amendments in detail; I shall only say that, in general, we can perceive a heightening of confidence in government since 1778, and a consequent lessening of the unwillingness to entrust power to it. On the other hand, many of the amendments desired are identical with those for

which the insurrectionists of 1786 clamored, such as, for instance, the curious request made by several of the hill-towns, that there should be a probate judge, register of probate, and register of deeds in each town.

The article to which objection was most generally made was the third article of the Declaration of Rights, which invested the legislature with authority to require towns to support public worship by taxation. Perhaps it may not be uninteresting to quote at length, in conclusion, the resolution of one of the towns (Westford) upon the article, as a somewhat more extended specimen than has been given hitherto of the political thought of the masses throughout the state. That it is not more than the expression of the views of the average voter, its style seems to indicate clearly. It is as follows :

“ Voted, to object against the third article of the Declaration of Rights, and that for the following reasons, viz., that it is asserted and taken for granted in the premises of said article—‘that the Happiness of a people and the good order and preservation of civil government, essentially Depends upon Piety, Religion and morality; and these cannot be generally diffused through a Community but by the Institution of the Public Worship of God, and by publick Instruction in piety, Religion, &c.’—When both antient History and modern authentic Information concur to evince that Flourishing civil states have Existed and still exist without the Legislature’s Instituting the Public Worship or Publick Instruction in piety and the Christian Religion; but rather whenever such Institutions fully executed by the civil authority have taken place among a people, instead of promoting essentially their Happiness and the good order and Preservation of civil government, it has, we believe, invariably produced impiety, irreligion, Hypocrisy and many sore and oppressive evils.

“ We think the third article, if adopted, will be likely to form such a combination between the Court and Clergy that the libertys of the people will be endangered.

“[Nor are we] Intitled to such a Right as is attributed to the people of the Commonwealth in said article of Investing the Legislature with power to authorize or require the several Towns, Parishes, precincts or other bodies politic or Religious Societies to make suitable provision at their own expense for the institution of the public worship of God, and for the support of the public teachers of piety and religion ; because we fully believe that the great Head of the Church has in his gospel made suitable provision for the said Institution of his public worship and for the support of Christian teachers of piety and Religion, and that he has never invested any Commonwealth or Civil Legislature as such, by force and penalty, to carry these aforesaid Institutions into executions,—all attempts of which, we think, tend to encroach on the unalienable Rights of conscience, and to the marring of the true principles of civil government, which last ever ought, in our opinion, to be kept Distinct of Religious gospel institutions. Further, it appears to us that the general principles of civil government, as contained in the Constitution, without the said third article, properly attended to and acted upon, would much better secure and promote the Happiness of the people and the good order and preservation of civil government (which we would ever zealously promote) than retaining and adopting the said third article.”

It may be that the instance which I have chosen, the action of the towns on the state constitutions, is one unusually favorable to my argument because, before the erection of the federal government, the formation of constitutions for the states was a matter of prime importance. It may indeed be that the means of investigation which I have been suggesting are neither so novel nor so fruitful as I have believed. But I shall be satisfied if I succeed in drawing increased attention to the main subject of these papers, the careful and scientific study of the constitutional and political history of the individual states.

VI

A PURITAN COLONY

IN

MARYLAND



JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

FOURTH SERIES

VI

A PURITAN COLONY

IN

MARYLAND

By DANIEL R. RANDALL, A. B.

BALTIMORE

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A PURITAN COLONY IN MARYLAND.

While native and foreign historians have carefully narrated the history of the Puritans of New England, hardly any notice has been taken of another Puritan band that colonized the southern provinces, a band fewer indeed in numbers but no less zealous than their New England brethren. Sufferings and trials the northern colonists doubtless had, but to those of the southern brethren must be added religious persecution, unknown to the Puritans of New England. Popular ignorance of the story of the Southern Puritans may to a degree be explained by the impossibility to most minds of associating severe, stern, blue-law Puritanism, with the loose, high-living qualities ascribed to the average Virginian or Maryland settler. To this incongruity of temperament the historian gladly leaves much of the unexplained history of the Southern Puritans; yet in the very bosom of Virginia a Puritan colony existed and waxed strong, until its very strength necessitated expulsion. The great struggle of English non-conformists for purity in the church seemed, in the early years of James I., a failure. Though spurred on and encouraged by zealous workers like Milton, who could not fail to see the evil that was creeping into the church and society at large, they yearly found their mother-country becoming more oppressive. To them the newly-found land in the west seemed to open her arms and to invite the oppressed to a refuge for religious freedom.

PURITANS IN VIRGINIA, 1611.

A little band of extreme Dissenters fled from England and took refuge across the channel, while many Puritans, unnoticed, secretly took advantage of the many expeditions to the New World. Years before Pilgrims or Puritans came to the shores of Massachusetts, Puritanism was a living force in Virginia. Among the first comers there were Puritans who, for the time being, hushed religious convictions in their attempts to leave the mother-country unobserved. A small company holding the Puritan belief was undoubtedly settled in Virginia as early as 1611, when, with Sir Thomas Dale, Governor, came the so-called "Apostle," the Rev. Alexander Whittaker, under whose guidance sprang up the first Puritan Church in the New World. Whittaker dying¹ in 1616, was succeeded by the Rev. George Keith, also a non-conformist, and under these divines and the Rev. Hawte Wyatt, brother of the Governor, who came in 1621, the Puritan element was greatly strengthened, especially in Nansemond and other southern counties. In those early days of colonial enterprise, when the exertion of every settler was necessary to protect the colony from Indian marauders on the one hand and starvation on the other, little time was given to religious disputes. Orthodox and non-conformist were equally welcomed by Governor and Council. Doubtless reports from the brethren in Virginia, telling of their fortune in finding a secure retreat, where the English Archbishop's heavy hand could not be felt, came to the ears of the English separatists in Holland. When in 1620 the Pilgrim Fathers of New England turned their faces westward from the Old World to the New, their destination was Virginia, the land of peace and good-will.

¹ He married and baptized Pocahontas in 1614 and was drowned in the James River in 1616.

SIGNIFICANCE OF PURITAN EMIGRATION.

The Puritan emigration to America marks an important epoch in both religious and political history, securing for Englishmen and their posterity, through the daring of the first settlers, a central vantage-ground in the New World, the commanding position between the rival colonies of French and Spaniard, the Huguenot and the Jesuit. During the years 1618-21, twenty-five hundred persons came to Virginia alone, some enticed by Governor Wyatt's offers and others driven by persecution at home during the last years of Archbishop Bancroft; "and he seeing abundance more were ready to start the same voyage, obtained a proclamation, commanding them not to go without the king's license." It was this order that detained Milton and Pym, already embarked to join their brethren in Virginia, and saved England the loss of two of her noblest men. "The dissolution of the Parliament of 1629 marked the darkest hour of Puritanism, whether in England or the world at large. But it was in this their hour of despair that the Puritans won their noblest triumph. They turned toward the New World to redress the balance of the old" (Green, *Short Hist. of the English People*, chap. viii).

The Puritans of Virginia, with but few exceptions, sprang from the sturdy English yeomanry, from whose ranks were recruited statesmen of those days. Warrosquoyacke County, or Isle-of-Wight, finally called Norfolk County, lying on and south of the James river, was the centre of the Puritan district, and here upon broad plantations lived the future rulers of Maryland. A certain wealthy merchant of London, Edward Bennett, had obtained in 1621 a large grant of land on the Nansemond river, south of the James, and on his coming to Virginia, brought with him a considerable band of Puritan followers, who settled upon his lands and formed the nucleus of a Puritan congregation. A perfect system of local government developed under the sway of the patriarchal Bennett, while a relative, the Rev. William Bennett, was

leader in all spiritual matters. Edward's son was destined to play an important rôle in the history of Virginia and Maryland.

GROWTH OF PURITAN SETTLEMENT IN VIRGINIA.

The Puritan county grew so rapidly in population and influence that, in 1629, it was represented by two Burgesses in the Assembly. That same year Governor Harvey arrived in Virginia and immediately began to proclaim those rigorous laws, framed by Archbishop Bancroft against Dissenters, which, though standing upon the statute-books, had hitherto remained a dead letter with Virginia governors. Harvey's action was merely formal. His chief end was to secure the friendship of the all-powerful Bishop and the disenfranchisement of Roman Catholics. Indeed so popular was the Puritan element with the Governor, that about this time a Captain Basse, of that persuasion, was instructed by him to invite any Puritan settlers from Plymouth to come and settle on Delaware Bay, then within the limits of Virginia. This invitation was not accepted, nor have we any trace of permanent settlement among Puritans in Virginia by New England colonists, though many went from Virginia to Massachusetts. By an Act of February 24, 1631, the government of Virginia became for the first time openly intolerant. This Act prescribes: "that there be a uniformity throughout this colony both in substance and circumstances to the canons and constitution of the Church of England." To what extent religious intolerance was carried through this ordinance is unknown, but it doubtless caused the withdrawal, at least from public view, of the Puritan divines then officiating in Virginia. The elders of the churches continued to conduct services in private houses, yet the want of spiritual leaders was sorely felt, and a tendency appeared among the congregations to break up and scatter. At Nansemond, Bennett conducted services, and, though the church was there more compact,

yet it was clearly seen that outside aid was essential to its continued welfare.

PURITAN MINISTERS FROM MASSACHUSETTS.

Their only hope lay in their more fortunate brethren in Massachusetts, and, to seek aid from them, Mr. Philip Bennett, one of the Nansemond elders, was sent in May, 1641, bearing letters and a petition signed by seventy-one persons, to Governor Winthrop and the Church in Boston. Bennett arrived in Boston and on lecture day his letters were openly read. A day was set apart "to seek God in it and agree upon those who could be spared from the churches in New England"¹ to preach in such a distant quarter. Those churches which were blessed with two divines, with commendable zeal unhesitatingly offered the one who could be easiest spared to prosecute in Virginia the hallowed work. Of those who were suggested, Mr. Phillips of Watertown, Mr. Thompson of Braintree, and Mr. Miller of Rowley were elected by the assembled magistrates. Mr. Miller, however, declined because of bodily infirmity, and Mr. Phillips deemed it inadvisable that he should make such a change at his age. A Puritan elder and co-laborer with Mr. Phillips at Watertown, Mr. Knowles, took his place, and Mr. James of New Haven was chosen to succeed Mr. Miller. With blessings from the churches upon their labors in Virginia the party, under Bennett's guidance, embarked from Narragansett during the winter of 1642-3. The little vessel with its precious freight was caught in a storm and driven upon Hell Gate rocks and its passengers, though escaping with their lives, were rudely treated by the Dutch. Nothing daunted, the party procured a new ship and arrived in the James River eleven weeks after their original embarkation.

¹ Winthrop's Journal, Vol. II., pp. 93-4.

BEGINNING OF PERSECUTION IN VIRGINIA.

Meanwhile new hands held the reins of government in the Commonwealth of Virginia. Bigoted Gov. Berkeley and his more bigoted chaplain, Harrison, were zealous in their persecution of sectaries. "Here," says Winthrop, "they found very loving and liberal entertainment and friends, and were bestowed in several places, not by the Governor, but by some well-disposed persons who desired their company." Their letters of introduction from Winthrop to Berkeley, though duly presented, brought them no good, and into their fields of labor they went, glad to escape from Jamestown and the unfriendly Governor. Within six months after their arrival Messrs. James and Knowles were compelled to leave the country by an Act of Assembly passed that spring, but "Thompson, of tall and comely presence," remained longer. "Messrs. James and Knowles returned the following summer and were able to tell, and the letters confirmed it, that God had given abundant success and lustre to their ministry."¹ Though the medicinal properties of Virginia waters were then unknown, Thompson wrote back to the elders in Boston, "that being a very melancholic man and of crazy body, he found his health so repaired and his spirit so enlarged, as he had not been since his arrival in New England." His efforts were well rewarded and the growing numbers and importance of the Puritan element provoked two enactments of the Assembly this year against that sect. The Book of Common Prayer was insisted upon as the foundation of all religious services within the Province, and all non-conformists who taught other principles were to be expelled. But still Thompson labored on among his many converts. Of these, Daniel Godkin or Gookin, the wayward son of a good old Puritan of that name, was the most incorrigible. However, the Rev. Thompson's public teaching and private exhortation con-

¹ Records of Massachusetts, Vol. VII., (1642).

verted him so completely from his evil ways that the good people were a little skeptical of his sincerity, and Daniel left the home of his fathers, changed his name to Gookin, and went to Boston, there to signalize himself by his good works. Mather celebrated Thompson's work and particularly this wonderful conversion by writing thereon a poem, of which I quote a stanza :

“A constellation of great converts there
Shone round him, and his heavenly glory wear ;
Godkin was one of them ; by Thompson's pains
Christ and New England a dear Godkin gains.”

EFFECT OF THE INDIAN MASSACRE.

Indian barbarity is not often regarded in the light of public benefaction, yet the massacre on Good Friday, 1644, in which many Virginians were killed, was an epoch-making event, a red-letter day in the calendar of the Nansemond Puritans. The hitherto persecuting Rev. Thomas Harrison saw an omen in the calamity which befel the Established Church, and, leaving Jamestown and his office of chaplain to his Excellency the Governor, he went down into the wilds of Nansemond a zealous Puritan, to aid in building that church which he had before endeavored to wreck. Berkley tried moral persuasion upon him in hopes of bringing him back, but failing in this course, he swore at him vigorously. Harrison was as zealous now in preaching as before he had been in denouncing Puritan doctrines. His light was in no way hid under a bushel, but publicly in every quarter he preached and converted until his success became unbounded. The Governor was exasperated at the man's audacity and instigated the Assembly to pass another act of intolerance, November 3, 1647.—“Upon divers informations presented to this Assembly, against several ministers for their neglect and refractory refusing, after warning given them to read the Common Prayer . . . for future remedy thereof, be it

enacted by the Governor, Council and Burgesses of this grand Assembly that, ministers in their several cures, throughout the colony do duly upon every Sabbath day read such prayers as are appointed and prescribed unto them by the said Book of Common Prayer; and be it further enacted as a penalty to such as have neglected or shall continue to neglect their duty therein, that no parishioner shall be compelled either by distress or otherwise to pay any manner of tythes or duties to any unconformist as aforesaid." The Puritans were represented in this Assembly, and Richard Bennett until this year had been a member of the Council, but the passage of this Act and its necessary consequences widened the breach between the churches and we hear no more of their connection with the Virginia government, until Richard Bennett appears in 1652 as Governor of the Commonwealth.

CONTINUED PERSECUTION.

If the penalties prescribed in the Act of 1647 had been the only ones inflicted or attempted, the history of the Puritan colony would have been greatly modified, and perhaps rendered far less interesting, but the Act of 1643 was still in force and through its provisions Governor Berkley undertook severer modes of persecution. "First their Pastor was banished, next their other Teachers, many by their informations were clapt up in prison, then generally disarmed, though surrounded by hostile Indians and lastly put in a condition of banishment."¹ Harrison and Thompson were compelled to leave the colony and Mr. Durand and Richard Bennett, the elders of the Nansmond Church, soon followed. Harrison went to Boston and consulted the magistrates and his firm friend, Governor Winthrop, whether the Church thus persecuted should abandon its position, and, if so, whither it should go. Harrison is reported as saying, that many of the

¹ Hammond's "Virginia and Maryland," 1659.

Virginia Assembly were favorably disposed toward the introduction of Puritanism on equal terms with the Church of England and by conjecture that one thousand people were of like mind.

At this point the Puritan Church had undoubtedly reached its maximum in point of numbers, but its size has been greatly under-estimated by later writers. Not more than one third of the Church emigrated and they must have numbered at least three hundred. Harrison conceived it a good scheme to accept the invitation of Capt. Wm. Sayle, and, under his leadership, to found a Puritan colony in the Bahama islands, where religious toleration was enforced by an Act of Parliament; but the Virginia "Church was very orthodox and zealous for the truth," and would not act until advice had been received from Boston. Winthrop dissuaded him from this change, saying, "as long as they could live in Virginia, even on tolerable terms, they had better be not hasty in moving, especially as there was prospect of a large harvest."¹ Thwarted in his endeavors to move the Puritans and unable to return to Virginia, Harrison returned to England and entered as chaplain the service of Richard Cromwell. His little flock did not forget their leader and resolutely petitioned the Council of State in England that he be allowed to return, complaining that Governor Berkeley's act was unlawful and harsh in the extreme. In October, 1649, the answer came, but too late to be of effectual service. The Governor was instructed, inasmuch as Mr. Harrison was reported a man of unblamable conversation and had been banished simply for non-conformance, to allow him to return. Berkeley could not have been ignorant that the use of the Book of Common Prayer was then prohibited by an Act of Parliament. We can picture the old Governor laughing in his sleeve when he received these orders. His commission had been granted by Charles I., of sainted memory, and confirmed by his son,

¹ Winthrop, I., p. 334; Hubbard, pp. 522-4; Johnson, III., c. 11.

Charles II., when in exile at Breda, upon condition of loyalty to the Stuart cause. We may safely say that Parliament's orders would have been disregarded by the Governor even if the Puritans had been still in Virginia; but their emigration made unnecessary any further consideration of the matter.

Mr. Thompson returned to Boston and there performed other miracles, recorded by the New England annalists, equaling that of Gookin's conversion. His woful tale of the hardships and oppression of his congregations in Virginia convinced their brethren in Massachusetts that the church in Virginia was as a thing of the past, gone and to be forgotten; and Hubbard in fact states that the congregations had dissolved and that their members were either dead or dispersed. In this view, however, New England people were far from correct. Durand and Bennett with their families fled to Maryland and settled at Newtown Hundred, near St. Mary's city. In this unhappy condition, without leaders, disarmed and persecuted, not knowing whether to stay on poor terms in Virginia or seek other homes, we leave for a moment the Puritan Church and review briefly the condition of Maryland, their future home, and its history up to this period.

EARLY SETTLEMENTS UPON KENT ISLAND.

Upon that great tract of country belonging to the original grant of Virginia, from which Maryland was carved by the grant of 1632 to George Calvert, there was at first but one settlement. This was upon Kent Island in the Chesapeake Bay, a settlement planted by Protestants from Virginia, in 1631, under William Claybourne, for the purpose of trade with Indians.¹ On the arrival of Lord Baltimore's colony

¹I have omitted referring to or discussing the question whether Claybourne was a Puritan, as many claim, or whether his colonists were of the Virginia Puritans. Certain it is, that there always existed close relations between Kent Isle and Providence.

in 1634 to settle the land which the charter alleged to be "uncultivated and unplanted, and inhabited by barbarous tribes of heathens," contention immediately arose over the possession of and right to the Isle of Kent. Claybourne claimed it as given to him by royal grant and as a part of Virginia, having representatives in that Assembly the year before Calvert even applied for his charter. In spite of secret aid from the Virginia Council, Claybourne lost¹ his case. His authority "without interruption to trade and traffique in all seas, coastes, rivers &c in or nere or about those parts of America," of course fell, with his trading posts and good-will, to Baltimore, and Claybourne fled, branded as a traitor and pirate.

TWO CLASSES OF SETTLERS IN MARYLAND.

Begun in strife over an unimportant portion of country, Baltimore's colony was in no way prosperous. The colonists were divided into two classes—one, the friends of the Proprietor, feudal lords, owning large manors; the other, a dependent class, often of good stock, yet economically enslaved to the landlords for terms of years. Discontent was rife between the two classes within the colony. Without, Virginia, though commanded to respect Lord Baltimore's rights, had little inclination to do so, grieved at the loss of "two-thirds" of her territory. In England, the Maryland colony was complained of by Parliament to Charles I., because he had allowed another colony to be founded "contrary in interest and affection to the Established Church." Baltimore's situation was truly perplexing. His ideal colony was complained of at home and abroad and was yielding no return for his immense outlay in founding it. In some way new life must

¹ He was supported throughout by the King and by the Virginia Council who were so ordered, and who were so exasperated with Calvert that they forbade traffic or aid to the colonists of Maryland.

be introduced and inducements must be offered to thrifty settlers, so as to bring Maryland into repute and relieve the proprietary from a position of financial dependence upon his father-in-law, Earl Arundel.¹

LORD BALTIMORE'S COLONIAL POLICY.

In the hardy and prosperous settlements of New England he thought he saw the coveted element that would build up his plantations and his threatened fortune, men who would gladly leave the bleak and barren north for his milder climate and more fertile country. For this purpose in 1643 he wrote to Captain Gibbons, then in Boston, though once a Marylander,² offering him, and any one who would accompany him and settle in Terra Mariæ, not only religious toleration but also broad acres of land. "But," says Winthrop, "our captain had no mind to further his desire therein nor had any one of our people temptation therein." Failing in this quarter, Baltimore issued almost yearly more inviting Conditions of Plantation to English or Irish settlers, whereby adventurers would receive large tracts of land for themselves and a per caput allowance for all persons induced by them to settle.

These attractive offers were accepted in a few cases by Virginians who wished to be free from the exactions of Governor Berkley, but this immigration was soon cut short by an Act of the Virginia Assembly of 1645, forbidding any colonist to leave that province for Maryland without permission. Some emigrants came from the mother country, but, with Proprietor, Governor and Council of Roman Catholic faith, Protestant colonization could hardly be expected upon a large

¹ His poverty may be judged by the fact, that Wm. Arundel, Esq., petitions Parliament for a writ of *ne exeat* against Baltimore, who was about to go to Maryland. Lord's Journal, IV., 671.

² Moved to Boston about 1641, and became Major Gen. of N. E.; afterward, Jan. 1651, commissioned by Lord Baltimore as a Councillor and as Admiral of Maryland.

scale. On the other hand, Baltimore's expulsion of the Jesuits somewhat angered the Romish Church against him and his schemes. A civil war between the two original claimants to Kent Island, commonly known as Claybourne's and Ingle's rebellion, together with Leonard Calvert's death, and the necessity of a successor in the Governor's chair, convinced the Proprietor of the advisability of a change in the administration of the province.¹ William Stone, a Protestant of Northampton County, Virginia, who had, however, for two years been living in Maryland, was commissioned Governor, because, as his commission states, "our trusty and well-beloved Wm. Stone now or late of Northampton County in Virginia, esquire, hath undertaken in some short time to procure five hundred people of British or Irish descent to come from other places and plant and reside within our said Province of Maryland for the advancement of our colony there." In August, 1648, Stone took his oath of office with the special clause "not to molest in particular any Roman Catholic." He immediately proceeded to collect his required quota of settlers, but with little success that year, as the Records show him to have applied for land for only six persons.

PURITANS OF VIRGINIA INVITED TO MARYLAND.

This year, 1648, witnessed, as before stated, the flight of the Puritan elders Bennett and Durand from Virginia into Maryland, and doubtless they suggested to Stone, perhaps before his appointment, the probability of an immigration of the whole Nansemond Church, if kindly invited. They numbered perhaps three hundred persons and many others of like

¹ The Lords of Plantation, in a report, Dec. 1645, advised the appointment of a Protestant Governor, and upon their advice and certain petitions of London merchants and a complaint of widow Mary Ford, the House of Lords passed a bill nullifying Baltimore's charter. It never passed the Commons. Md. Archives, III.

faith would doubtless follow them to Maryland. Here was an extraordinary chance for the Governor to fulfil his economic obligations at a small cost and Stone was not slow in his overtures. Personally, or through their elders in Maryland, Stone invited the oppressed Church in Virginia to emigrate, guaranteeing them free exercise of their religion, local government, and grants of land under his lordship's Conditions of Plantation.

It is not surprising that Governor Stone, in his excitement and pleasure at the idea of bringing in and establishing such a large body of colonists, should have made offers and promised liberties hardly reconcilable with the Proprietor's feudal ideas. It is even less a surprise that he should have denied many of these liberties a few years later, when the prize was now in his hands and the Lord Proprietor showed unwillingness to allow such privileges. The Governor's offers were not immediately accepted; for the Puritans remembered the advice of their Boston friends in regard to removal. Change would be expensive and the newly offered refuge might prove more beset with danger under Roman Catholic rule, than their old home in Virginia under Berkley, unless the freedom and liberty of English subjects, offered by Governor Stone, were duly confirmed by the "Absolute Lord and Proprietor" of Terra Mariae. Stone assured them that in Maryland they would find a land of liberty and toleration, and pointed as a precedent to Lord Baltimore's gracious invitation to their New England brethren in 1643. Not yet thoroughly convinced, the Puritans of Virginia addressed a letter to his Lordship in England asking for a confirmation of Governor Stone's propositions. The answer either never arrived or was delayed until they had firmly established themselves in their new homes.

The passage of an Act by the Virginia Assembly denouncing the execution of Charles I., proclaiming his son rightful king and making it treason to think or utter anything against the house of Stuart or in favor of a Puritan Parliament, was the

final straw that decided the fate of the Puritans in Virginia. They determined to depart for Maryland and settle upon those lands lying north of the Patuxent river, already granted to Governor Stone for his five hundred colonists, trusting to the Proprietor's probable sanction of Stone's promises. This section of Maryland had not been visited by settlers, though perhaps by traders. It was at this time the hunting grounds of the Susquehannock Indians.

BEGINNING OF PURITAN MIGRATION.

The emigration from the Nansemond began during the spring or early summer of 1649. "With great cost, labor and danger did we remove ourselves, bringing ourselves and estates," they said, in a later petition. Their immigration continued throughout the year. Out from the James river and up the broad Chesapeake the Virginia Puritans sailed, viewing the wild country on either hand, until they arrived at or near the mouth of the beautiful river now known as the Severn. Here the first contingent landed and hither afterward the majority of the Puritans came. Local associations with mother England, whence some of the settlers had so recently come, inspired them to call this river the Severn. Thankful for preservation and happy at finding a home, peaceful and secure, they named the whole section of country, "Providence." Nowhere in the settlement of Virginia Puritans do we find local names derived from their old homes in Virginia. No Nansemond, Jamestown, nor Norfolk was revived in Maryland. This colony was a new Canaan and the memories of Virginia, sad indeed to many, were to be forgotten. A small band from Bennett's plantation at Nansemond, numbering perhaps ten families, were the first Puritans to arrive at their new home. Under the leadership of Richard Bennett, they settled on what is now known as "Greenberry's Point," at the mouth of the Severn. Strangers in a strange land, ignorant of the treatment they might receive from white men

or Indians, they determined, for the present, to form a close community for mutual protection. A tract of two hundred and fifty acres was surveyed into lots of fifteen acres, each settler taking one and Bennett all that were left. Finding their security in no way endangered, the scattering settlers soon transferred these lots, one by one, to Bennett, and within five years he owned the original tract as a single plantation. The original owners of the "town-lands at Seaverne" moved away to rural plantations such as later and more adventurous comers had already secured. The original existence of "town-lands" upon the Severn should not be regarded as decisive evidence that there was anything more than the germ of a town planted upon Greenberry's Point. Whatever the character of the original community, settled there for a brief period and for mutual protection, it soon dispersed and left no town behind. Greenberry's Point was not the municipal beginning of Annapolis. That community was a subsequent concentration of Puritan life derived from other sources than the original plantation. As the Puritans came up from Virginia, they took unoccupied lands lying on the Bay or its tributaries and soon the settlement of "Providence" included a line of plantations extending from Herring Bay to the Magothy River. Trees were felled and log huts built, small indeed in size and rude, yet sufficient for a defense against the winter's cold soon to follow. They had no ready-built Indian village nor cleared lands such as the first planters of Maryland enjoyed through friendship with the natives. Puritan labor was strictly that of pioneers, and through such beginnings they were better prepared to build a state than were their predecessors at St. Mary's.

PURITAN MEETING-HOUSE.

The Puritan system of church government, always a powerful means of union, was transplanted to Maryland. Durand and Bennett again occupied their accustomed places

as elders in the Church and as leaders in civil affairs. These men secured large grants of land for themselves, and, the disorder accompanying the removal from Virginia having subsided, the leaders looked about for a central site whereon to build their meeting-house, the Acropolis of every Puritan settlement. By joint contribution of work and materials the first meeting-house was erected near the Magothy river upon land adjoining that of Elder Durand. Mr. Philip Thomas, then a strict Puritan but later a leader of the Friends, lived on the premises and guarded the sanctuary.

Within a year after its arrival, the Puritan colony of Providence had perfected its administration to a greater extent than was allowed in Virginia even in the best days. "They sat down joyfully, followed their vocations cheerfully, trade increased in their province and divers others were by this encouraged and invited over from Virginia." Additions were continually made to their numbers from brethren left in Virginia and, in 1650, Robert Brooke, a Puritan of means and influence in England, was granted a tract of 2,000 acres lying on the Patuxent river. Here he settled with a family of ten and about forty dependents, possibly all Puritans, but not all of the orthodox stamp, men whom he had brought out with him from England. By his charter Brooke was made commander of Charles County, that year erected, and given absolute feudal supremacy over his colony.

Thus, with borders adjoining, there grew up two distinct Puritan settlements, having few things in common and indeed often opposed to one another in times of civil discord. The system of church government which was so prominent among the settlers of Providence was entirely wanting among the settlers of Charles county. In its place a system of feudal laws and of manorial courts was instituted. Consequently the settlement in Charles county lost in a few years the distinct characteristics of a Puritan colony, because the more orthodox party among them seem to have soon removed into "Providence" and the remainder, perhaps the larger body,

intermingled with the older colonists of St. Mary's whose borders touched theirs upon the other side.

During the year 1650 the Puritans of Providence addressed a letter to their old friends the Council of State, in England, a letter which was presented in October of that year to the Council by Henry Wallis, Esq. Its object would seem to have been to learn from those in authority in England the true course to be pursued toward Lord Baltimore and his government in Maryland.¹ To all appearances, Governor Stone was pleased with his colony and made frequent visits to it during the transition period of settlement. When the colony was fully established, during the winter of 1649-50, he invited it to send burgesses to the Assembly soon to meet. Up to this time the Puritans had not come in contact with the older settlers of Maryland. Moved by their natural religious conservatism and by ideas already fixed in regard to their proper position in the Province, they declined the Governor's offer. The idea which prompted their reply was this: the Puritans had determined, upon their migration to Maryland, to found an independent community with its own local government, free from the trials and conflicts attendant upon participation in the general government of the Province. Their intention was to erect, upon the banks of the Chesapeake, a province established by the aid of God and bearing the reverential name of "Providence." This idea we shall find cropping out continually, although never realized.

¹ "The Council having received the petitions and papers presented by Mr. Henry Wallis on behalf of divers well affected persons of the Isle of Providence in Marieland think fitt to declare that as the parliament have already expressed themselves sensible of the conditions of the plantations abroad depending upon this common-wealth . . . will proceed to care for the welfare of those plantations and of such there as reteine their Integrity and good affection to the Parliament and present government, &c." Oct. 3, 1650, Vol. 38, p. 78, P. R. O. (printed in Md. Archives, Vol. III.)

PURITANS IN POLITICS.

Upon the urgent request made in person by Governor Stone the Puritans at last yielded, and in his presence the freemen unanimously chose George Puddington and William Cox, two of their brethren, to represent them and sent them down in a boat to the seat of government at St. Mary's. The Assembly met April 5, but adjourned because the Puritans had not come. On their arrival the next day, one of the two, Mr. Cox, was chosen speaker of the Lower House. The Protestant element in the Assembly, hitherto in the minority, looked upon the arrival of the Puritans as a happy event, foreshadowing their future strength if not supremacy in the rule of the Province. Hence at this Assembly they were particularly energetic in declaring their perfect happiness and peace in religious matters and voted extra revenues for the benefit of their Lord Proprietor. In both of these measures the Roman Catholics stood aloof. "Providence" was erected into a county and named, in grateful recognition, Ann Arundel, after the wife of Lord Baltimore, lately deceased. The erection of a county had hitherto been considered the prerogative of the Proprietor, and indeed was afterward so deemed. Yet, in this instance, many circumstances tended toward this seemingly unwarrantable act. Governor Stone had seen the indisposition of the Puritans to a too close alliance with the administration of the Province, and as no outward sign of recognition had as yet come from the Proprietor, he determined to act upon his own authority and make Providence a county in the administrative system of Maryland. Baltimore must have tacitly approved of Stone's action, for he nowhere speaks of the matter.

The Puritans thus became citizens of Maryland and responsible for any breach of the law of the province. Their original plan of a *civitas in civitate* was merged in a Maryland county and Governor Stone could rest assured that the entire colony, Catholic and Protestant, would henceforth have some

degree of permanency. Lord Baltimore's oath of allegiance, which all persons receiving lands had doubtless taken, was objected to by some of the leading Puritans, because of the expression "Absolute Lord," deemed by them too omnipotent in tone for a man who was himself the subject of a Puritan government in England. The form of the oath was consequently modified by the Assembly and the offensive term omitted, apparently without much discussion, but it was at a later period the cause of much trouble. Fifty pounds of tobacco per diem was the salary fixed for the Burgesses. The sheriff's account reads as follows :

"Charges to be collected from Annrundell County.

To Mr. Puddington	} for 37 days apiece at 50 ^{lb} per day	3700
" Mr. Cox		
Boats, hands and wages		600
		4300"

PURITAN INDEPENDENCE.

The Puritans acquitted themselves so well in public life that Governor Stone visited them in "Providence," now called Ann Arundel County, the following July and perfected the county government. He appointed Mr. Lloyd the commander, and under him seven justices, who served but for one year. With any three of them he could hold court. Their jurisdiction extended over all cases, but an appeal could be had to the Provincial Court in cases involving £20 or its equivalent, 2,000 pounds of tobacco. The commander was also empowered to grant lands to settlers within his county under the Conditions of Plantation. Unfortunately no records of this early county-court have as yet come to light, but we have some insight into its mode of working from cases appealed thence to the higher court. The Puritans, though well treated at the Assembly, were apparently satisfied with the taste they had had of political life. They had now their own sufficient system of local government and they perceived that

the only results produced by participation in the political life of the Province were increased taxation and civic intercourse with those for whom they had no sympathies. Moreover reports from England confirmed the triumph of Cromwell, and with him of Puritanism wherever it existed. The revolt in Ireland, its suppression and the execution of its leaders convinced them that a Roman Catholic peer, a friend of the late king, would hardly retain his "absolute lordship" with a Puritan Parliament, and that Lord Baltimore's charter was endangered. However foolish this theory appeared to Baltimore, it was based upon fact and was subsequently confirmed by the action of the home government.

The Puritans were summoned by the Governor to send Burgesses to an Assembly to meet in March, 1651. A letter of declination was drawn up by Mr. Lloyd, signed by the Puritan freemen and sent to Stone, assigning as their reason for not sending delegates the danger that would ensue to them upon the expected revocation of the Charter of Maryland. No action was taken in the matter by the government in Maryland, but Lord Baltimore was fully informed of the same and he sent a letter of twelve pages of unpunctuated manuscript relating to the Puritans' audacious action of asserting local independence. The fears and surmises of the men of Ann Arundel, runs the message, are totally unfounded; their action is rebellious in character and the consequences of such rebellion against their true Lord and Proprietor will be severe if they persist therein. When we consider, in addition to the fact of Puritan rule in England, that by commission of Charles II., then an exile in Breda, Lord Baltimore had been removed and his successor appointed as Proprietor of Maryland, we shall perceive that the fears and political motives of the Puritans had some foundation. Charles had been moved to the revocation of Calvert's rights by news from his constant ally in Virginia, Governor Berkley, who informed him of the refuge given by Maryland to "all kinds of sectaries and schismatics and ill-affected persons, adherents to the rebels in England who for this cause had been driven from Virginia."

REVOLUTION IN VIRGINIA AND MARYLAND.

An open display of friendship to the Stuart cause soon lost for Virginia her independence. News of loyal proclamations there and also in Maryland came to the ears of Parliament and means were immediately taken to suppress royalistic feeling by reducing both Provinces to the authority of Parliament. Claybourne, the life-long enemy of Baltimore, was then held in high esteem in Virginia. He and Bennett, a member of both colonies, but an enemy of Berkley, with two others, Stagge and Dennis, were appointed Commissioners to effect the reduction.¹ The first two would necessarily be diligent officers in their respective provinces. Early in the year 1652, Governor Berkley and the province of Virginia, after some show of resistance to the Commissioners of Parliament, were compelled to acknowledge the Commonwealth, and the officers of Parliament then proceeded in a small boat to Maryland to carry out the same design. During March, 1652, they reached St. Mary's and, at an interview with Governor Stone and his Council, proposed that the then existing administration "should continue conforming themselves to the laws of the Commonwealth in point of government only, not infringing the Lord Baltimore's just rights." This proposition the Governor refused as inconsistent with the charter of the province. The Commissioners then proceeded to form a provisional government of six councilmen with Robert Brooke, the Puritan of Patuxent, as President.² The Puritans of Providence were not represented, nor is there found any

¹Their instructions are dated Sept. 26, 1651. Capt. Edward Curtis succeeded Dennis.

²In November, 1652, the Commissioners made their proclamation, viz.: (1) Writs are to be issued in the name of the Keepers of England and signed by one or more of the Council; (2) Both Council and colonists must subscribe to the Engagement; (3) The Council are to govern the Province. Of these, two were of the old and four newly-appointed members of the Council.

evidence to show that they took sides in the matter or were at all influential in bringing about this first Puritan revolution of Maryland. The Secretary of the Province, Mr. Hatton, who held the only remunerative office, was allowed to appoint a successor and two of Stone's Council were retained in the new body. Three months later we find that Stone and his Council had conveniently banished their troublesome consciences and were again in power, in entire conformity with the Commonwealth of England and the laws proclaimed by it.¹ Maryland was now Puritan in theory and administration, if not in officers.

INDIAN POLICY.

Desire for peace and friendly relations with the Indians, in whose very midst the Puritans had settled, pointed them out as the most fitting persons to conclude a treaty with their savage neighbors and settle definitely the boundaries of the Indian hunting ground. The isolation of the scattered plantations of "Providence" and their want of ammunition, their supply of which before their migration Governor Berkley had appropriated, made their settlements open to attack; indeed one of their number had been murdered by Indians the year before. On the 5th of July, 1652, the five leaders of the Providence colony, designated as the committee on Indian negotiations, met the Indian chiefs, as tradition tells, under the branches of a poplar, still standing, grand and majestic, upon the College Green at Annapolis. There the treaty was

¹In the Commissions to Claybourne, Bennett, Dennis, and Stagge, by an order of Parliament, September 26th, 1651, sent them, are these orders:—"you shall cause and see all the several acts of Parliament against kingship and the house of lords to be received and published; as also all the acts for establishing the Book of Common Prayer and for subscribing to the engagement . . . you (or any two of you) to administer an oath to the inhabitants or planters there, to be true and faithful to the Commonwealth of England as it is now established without a king and house of lords." Thurloe's State Papers.

drawn up and signed, the chiefs meanwhile enjoying the hospitality of their Puritan friends.¹ Hardly had negotiations closed with the Indians of the Western Shore, when a petition was received by the Governor from across the Bay, requesting an immediate hostile advance upon the Indians of the Eastern shore. Governor Stone readily consented and appointed as commander-in-chief of the expedition, William Fuller, one of the Puritan peace-commissioners who had just concluded the treaty upon the river Severn. Preparations on a very large scale were now upon the point of completion and numerous proclamations (some cruel in the extreme), were already issued touching the treatment of captives and the division of spoil, when Capt. Fuller notified the Governor of the natural unwillingness of the Puritans to engage in such an expedition. Not only because of the prospect of cold and hunger likely to be endured in a winter's campaign, but chiefly because of the treaty lately concluded and the knowledge of the Western Shore Indians of the intended attack did the Puritans make their protest. Fuller proposed in conclusion that he resume again his more peaceful garb and be allowed to cross the bay and settle the matter alone in a more friendly way. Governor Stone, confessing the many dangers that would attend such an undertaking, postponed the attack and disbanded the troops which had begun to assemble. He ascribed the action of the Puritans to disaffection and virtual rebellion against the government. A week after Fuller's reply, Mr. Lloyd, the Commander of Providence, was removed from office on unfounded and trivial charges, and then began a series of petty prosecutions against

¹ "These several articles were solemnly and mutually debated and concluded at the River of Severne in the Province of Maryland by Richard Bennett, Edward Lloyd, Wm. Fuller, Thos. Marsh and Leonard Strong and were fully ratified, done and confirmed by several presents, gifts and tokens of friendship mutually given, received and accepted on both sides." Council Records.

the Puritan colony resulting two years later in Stone's overthrow.

Doubtless he had been instigated to his course by the orders of the Proprietor who chafed under the curb which Parliament had put upon his absolute authority over Maryland. The commissioners had retired to Virginia and an opportunity was thus given to Stone to weaken the Puritan power by removing them from office. Moreover, as the Assemblies had been made triennial, and the Provincial Court adjourned from month to month on the plea that no orders had been received from England touching the welfare of the Province, no opportunity was given for bringing the two factions together to effect a reconciliation. Robert Brooke was the next to feel the Governor's animosity, and in accordance with the Proprietor's instructions he was removed from the Council. During December, 1653, Governor Stone, instigated by a letter from the Proprietor, and in direct violation of his agreement with the Puritans at their coming, proclaimed that all persons should take the first oath of fidelity to his Lordship within three months or forfeit their lands.

A general meeting of the freemen of the Providence community was called at their meeting-house, presided over by Mr. Lloyd. A petition was addressed to Lord Baltimore and another to the Council of State; neither of these was answered. Without friends in England, and with their representatives in the provincial government removed, the Puritans had now but one resort. At least the commissioners, then in Virginia, would aid them, and to Bennett and Claybourne they sent an eloquent appeal for justice. They complained of the actions of Stone and his Council. The petition was signed "Ed. Lloyd and 77 persons of the house-keepers and freemen, Inhabitants," and was dated, Severn River, Jan. 3, 1653/4. "Nor can we be persuaded in our consciences," they write, after narrating their grievances, "by any light of God or engagement upon us to take such an oath, nor do we see by what lawful authority such an oath with such extreme penal-

ties can by his Lordship be exacted of us, who are free subjects of the Commonwealth of England and have taken the engagement to them." The petition concludes with the request for advice in this their hour of need. Advice was given them in the reply from Virginia. The commissioners promised neither aid nor hopes of aid. They said, "Simply obey the laws of the Commonwealth of England as true and loyal English citizens and that is all that can be desired or expected."

PURITAN CONQUEST OF MARYLAND.

This reply was evidently reported to the Governor, who, in return, called the Puritans "factious and seditious fellows" and prophesied trouble for them in the future.¹ A petition similar to that of the Providence Puritans had been addressed, March 1, 1654, by the inhabitants of Patuxent and was subscribed by Richard Preston and sixty others. The commissioners' answer, March 12, was to both of these parties with advice to both. Quickly following this, and again in violation of the agreement by which he had acquired his power,² Stone sent notices to all officers to issue writs and warrants no longer in the name of the Commonwealth, but in that of the Lord Proprietor, and this action quickly brought up the commissioners from Virginia. All peaceful measures or agreements were now rejected by Stone and open violence was threatened against the persons of the commissioners. The Puritans prepared for war. A small force from the neighborhood and the Severn gathered at the Patuxent and, under Bennett's leadership, proceeded without bloodshed to St. Mary's, and

¹ "In the year 1654, from instructions received from England, Stone and Hatton with the Popish Councillors rose up against the Reducement and placed the old Popish council in power who published proclamations full of scathing terms against the people of Providence and the Commissioners and this was read at Providence in the church meeting." *Babylon's Fall*, by L. Strong.

² Note to page 26.

the second conquest of Maryland was completed in July, 1654. Puritan supremacy was again everywhere acknowledged. Stone resigned his office, as he states, "solely to avoid the effusion of blood and the ruin of the Province," and a new government was formed, consisting of a board or council of ten men, an exact counterpart of the Council of State in England.¹ It was a Puritan victory, and in consequence the administrative power of the colony fell largely into the hands of Puritans. Of the council, four were the leaders of the Providence community, three from Patuxent and three from St. Mary's.

Orders were now given by the Commissioners to summon an Assembly for the following October, but no Roman Catholic was to have the right of franchise, nor any one who had borne arms against the Parliament in war.² The responsibility for this order by the Commissioners has been charged to the Providence colony, and by those historians who deign to mention the Puritans is pronounced the only blot on our colonial records. In the present enlightened age such an order would indeed be unpardonable, but we must remember that it was but the echo of an Act of the English Parliament of one year previous,³ and was in express accordance with the commands of Parliament to her Commissioners in Maryland and Virginia.⁴ Let us bear in mind too that, apart from any personal wish of the Proprietor and apart from the Act of 1649 establishing toleration, proceeding as that had done from the will of the people, religious freedom, up to this

¹ Seven more men were added to the Council in 1655.

² A Proclamation of the Commissioners was issued by Bennett and Claybourne July 22, 1654. It assigns as the reasons for the overthrow of the existing government; (1) The issue of writs in the name of the Proprietor; (2) Displacement of members of the Council; (3) Imposition of oaths upon the inhabitants, contrary and inconsistent with their original engagements.

³ Act of December 16, 1653.

⁴ See note, page 27.

time, was a political and economic necessity in Maryland. If, in the early days of the colony, the Roman Catholics were superior in numbers—still a debated question—their charter forbade intolerance, and Protestant Virginia would have been a standing menace to any attempt at intolerance.

As years wore on, the rival parties became more and more unequal and the influx, from 1649 to 1654, of perhaps a thousand colonists of Protestant persuasion, threw the balance of power largely in their favor. The loyalty of Cecilius Calvert and of his friends in Maryland to the Stuart cause was now a stumbling-block in the way of their progress, for the home government was Puritan throughout. After the year 1650, the Roman Catholic power in the Province grew steadily less. Maryland became largely Protestant in population. Its government, as a colony of Great Britain, remained Protestant. Following the Puritan revolution we hear of no bloodshed or acts of injustice by the victorious party.

PURITAN LEGISLATION.

In October, 1654, "a full and lawful Assembly" was held at Patuxent. It comprised the ten Councillors and six Burgesses from St. Mary's and the neighborhood. This Assembly bore a close resemblance to the English Council of State. It sat as one house and acted as one legislative body. One of the first acts of this session was to change the name of the Puritan County from Ann Arundel back to Providence, "by which it was first called by those settling there" and such the name remained until 1676, when that name disappeared as did most of the vestiges of a Puritan settlement.¹ The order of the Commissioners declaring the disenfranchisement

¹This action is very significant in the fact that the Puritans conceived that now they were in a position to carry out their original design and found the colony of "Providence" as a unit in itself. They had thrown off the Proprietor's yoke and a new Province was to be the result.

of Roman Catholics and the impossibility of their being protected within the Province was made a law. Happily this act was never rigidly enforced. Though for a time the Roman Catholics may have been disenfranchised, they were always protected. A bill was passed later in the session which shows the honorable nature of the Puritans. They declared all preëxisting debts to be valid. The Court and other records are, moreover, full of instances showing that when Roman Catholics came boldly into Court, confessing and upholding their creed, they were always protected in their civic rights.

STONE'S CAMPAIGN AGAINST THE PURITANS.

Governor Stone, as may be supposed, did not remain idle. He forwarded to Calvert a full account of the recent changes, and the Proprietor in turn presented a petition to Cromwell charging Bennett, now Governor of Virginia, with instigating a rebellion within his Province. Mr. Eltonhead, the envoy of Stone, returned late in the autumn of 1654, with letters from Calvert to the Governor and his late Council. Recognizing them as the true government, he reproved them for their cowardice in allowing a handful of men to dispossess them of their own and the Proprietor's just rights without a blow in defense. Stone was ordered immediately to regain authority by any means within his power, and if he should be afraid to do so, Captain Barber was named as his successor. Stone was no coward, especially where there was everything to gain and nothing to lose. A party of twenty armed men was sent to the house of Richard Preston, one of the leaders of the Puritans at Patuxent, where the records of the colony had been placed for safe keeping. These they obtained without difficulty, and with them a living index to the colonial history in the person of a young man, an unfortunate investigator of original sources, who alone perhaps was able to interpret the colonial hieroglyphics. Preston, by Stone's

order, was to have been brought in triumph, with the records, to St. Mary's; but he preferred to absent himself from this spectacle. The captors, laden with their spoil, returned to the old capital.

The Puritan Council, then at the Severn, sent messengers forthwith to St. Mary's to ask plainly by what authority Stone had thus acted, "which if he would show they would be satisfied." They continued, "for our own parts we affect no preëminence, but had rather be governed by the laws of God and lawful authority by him set over us, than that we ourselves should be placed in an employment, the nature of which in these times is above our abilities." To the messengers Stone made threatening answers. He declined to show his authority to them, but to others (as they afterward confessed), he declared that it came directly from Cromwell. The Governor now prepared for an attack upon the Puritan settlements and by force of arms to wrest his authority from them. All the country around St. Mary's was astir with excitement and with the preparation for war. Boats, men, arms, and provisions were seized and pressed into service. The party from St. Mary's started early in March and came up the Chesapeake. The boats cruised close to the shore and received supplies from a land contingent, which harried the country as it advanced. Farm houses were pillaged for food and ammunition; servants and negroes were impressed or enticed by promises of liberty. So slowly did the land force move, enjoying as they went the fat of the land, that they arrived upon the battle-field too late for useful service.

From every section the Puritans fled to the Severn, to the protection of the Council, and helped to swell the little army which prepared to defend their homes and "the liberties of Maryland." Some hid themselves until the hostile army had passed, but others were captured. Exaggerated reports of Stone's strength reached the Puritans, and they determined to send another message to him, when about half-way up the Bay, offering to surrender the government if guaranteed cer-

tain rights. These were to be: (1) the liberty of English subjects; (2) indemnification for the late trouble; and (3) liberty to leave the Province. If these rights were not granted, "we are resolved to commit ourselves into the hands of God, and rather die like men than be made slaves." This declaration was carried to Stone by six messengers, who came in a wherry belonging to the "Golden Lyon," a British bark then lying in the Severn. The men were seized and detained, and a messenger was despatched to the Severn, who read, by consent of the Council, a proclamation from Stone; but he was afterwards sent off, under surveillance, toward St. Mary's, as it was thought that his chief object was to spy out the land.

THE BATTLE UPON SEVERN.

A battle was now imminent, and the Puritans determined upon a vigorous defense. They seized, in due form, the English bark then lying in the river, demanding of the Captain, in the name of Cromwell and the Commonwealth of England, protection in his vessel "for the poor trembling women and children." A small New England fishing-smack was also seized in the same manner, and the Puritans collected from all quarters on the plantations of Fuller and Durand, where the meeting-house stood. During the afternoon of Saturday, March 24, Stone's forces, amounting to about 250 men, sailed in twelve boats into the Harbor, or the broad mouth of Severn River. The little fleet was led by a pinnace, Stone's own boat, over which floated the yellow and black flag of the Baltimore family. The English bark, before her arrival in the Severn, had stopped at St. Mary's, and while there had witnessed the great preparations for the local war. Stone was relying upon the English Captain's assistance in the struggle which was to come. Accordingly, when the boats entered the harbor, they made confidently toward the "Golden Lion," but a warning growl came from that monster

in the shape of a howitzer ball. Stone's party fled across the Harbor, where they landed, "their cursings and reveilings being heard for above a mile." Here the little army encamped and, having drawn their boats up the creek, unwittingly allowed themselves to be there blockaded by the energetic little fishing vessel, armed with a small six-pounder. According to their chroniclers, the Puritans that night gave themselves up to watching and prayer; but before dawn, Sabbath morning, they proceeded up the river and crossed, unobserved by their enemy, to a point six miles above Stone's encampment. Thence they marched down the peninsula and fell upon the St. Mary's troops, smiting them hip and thigh. Stone, finding himself cut off from retreat, his boats entrapped, and the "Golden Lion" menacing his rear, threw up earthworks and prepared for the worst.

The two historic forces of Maryland here stood opposed. Upon the fate of the coming battle Maryland history depended. In these two miniature armies we see but a colonial reproduction of the two forces which met ten years before at Marston Moor. The questions here involved were not merely of a religious nature, as so many hold; the great principles of self-government, individual liberty, and civic equality were causes for which the Puritans fought and died, both in England and in the small colony of Maryland. The fate of the battle of Severn was to determine whether the colonists of Maryland should endure or throw off the absolute authority of their Proprietor and his chosen Council; whether the "liberties of English citizens" were really to be granted to the colony or trampled under foot.

Stone's party was two hundred and fifty strong; drums were beating and flags were flying. The Puritans under Fuller numbered about one hundred. They had no drum, but the flag of the Commonwealth of England, borrowed from the English merchantman, floated from a staff above them. "In the name of God, fall on!" was the Puritan charge to battle. That of the St. Mary's men was "Hey for St. Mary's and

wives for us all!" The Puritan standard-bearer was the first to fall. As if stimulated by this loss to do their utmost, his Puritan comrades fell upon Stone's troops with great fury and valor, driving them from their intrenchments and carrying everything before them.¹ The Puritans' loss was six killed; that of St. Mary's, fifty killed and wounded; but all the rest save five or six were captured, together with much plunder. The victorious Puritans, with prisoners, boats, and booty, recrossed the Severn to Fuller's plantation, where the captives were confined in a stockaded fort, preparatory to a court-martial appointed for the next day. The court, composed of the council and perhaps others, condemned many of their prisoners to death, but only three were actually executed. The rest were saved by the intercessions of the women and by the refusal of the appointed executioner to carry out the sentence.² Captain Lewis, Mr. Eltonhead, and John Leggot were shot. Others were imprisoned or kept under guard for a month or more, and still others were fined and dismissed to their homes.

PURITAN SUPREMACY RE-ESTABLISHED.

Puritan supremacy in Maryland was thus again established. The story of the forfeiture of property on the part of Stone's adherents is almost without foundation. A careful study of court records convinces us that the punishments of the invaders were remarkably light for that age of conflict and retaliation. We should remember that the Puritans, if they had been the losing party, would have been exterminated and

¹The field of battle is generally supposed to be the point opposite Annapolis, known as Horn Point. More probably it was the Peninsula upon which the city now stands. It was named by the Puritans "Papists' Pound," from the number of beads, crosses and other symbols claimed to have been picked up there.

²These last facts are taken from a report to Lord Baltimore by one of his adherents, Hammond, and hence are to be judged for what they are worth.

their wives and daughters would have fallen prey to Lord Baltimore's reckless followers. The estates of the defeated party were indeed seized for the time and put under the control of officers who were instructed to keep the same in perfect order until a fuller inquiry could be made into the losses occasioned by the devastating expedition from St. Mary's to the Severn. Many also who had joined Stone, believing his statement that he had authority from Cromwell,¹ were pardoned, also those who by threats were forced to join his party. Many petitions are recorded for indemnification for loss of boats "borrowed," for cattle and sheep stolen, and servants enticed away by Stone's men. The fines imposed by the Council were nominally to cover such losses.² Courts of justice were held regularly in all the counties. Sheriffs were appointed, in several instances from men who had but lately been in arms against the Puritan Council. Stone's influence with Lord Baltimore and his power in Maryland vanished simultaneously, and in his place the Proprietor commissioned, July, 1656, Josias Fendall, one of Stone's allies, as Lieutenant Governor, and five of his old adherents as a Council.

A. PROPRIETARY GOVERNOR AND A PURITAN GOVERNMENT.

The little province of Maryland now appears in history with two governments, Baltimore's Governor and Council and

¹ It appears that the year before, the commissioners had placed certain trusty men in charge of the fort at St. Mary's. These had surrendered the same to Stone and joined his army, believing that he had authority from Cromwell.

² A recorded list of all who were ordered to pay fines numbers thirty-seven; of these ten had their fines reduced, generally one-half; six were pardoned outright, and the rest probably paid. In almost every case of fine there is prefixed the expression, "to cover loss made by the late march." The fines were levied in tobacco, worth about \$30 per 1,000 lbs.; but sometimes the order was to return stolen things, or build ducking-stools, pillories, &c., for their respective counties.

the Puritan Council, which in point of fact wielded the whole power. Three months after his appointment, Fendall was arrested by order of the Puritans, but was dismissed upon taking an oath of obedience and good behaviour. His futile attempts at regaining Baltimore's "just right and title" by the circulation of pamphlets, stirring up the religious sects against one another, and by intriguing with Indians against the whites, affords a good picture of the underhanded way in which his Lordship was trying to regain his province, while openly conducting peaceful negotiations in England with Bennett and Matthews, the Puritan commissioners. Providence, Kent, and Patuxent, as well as part of St. Mary's counties, were now in perfect sympathy with the Puritans and their form of government. Fendall's authority was so limited at this time that no public acts of his are even recorded. His spirits were kept up by frequent grants of land to himself and friends. The Proprietor did not forget the wives of those that had fallen in the battle on Severn.

COMPROMISE WITH LORD BALTIMORE.

Meanwhile in England negotiations for a happy settlement between the two parties were in progress. Calvert, at the outset, had complained to Cromwell, and he referred the matter in dispute to his Lords Commissioners. In May, 1656, they made a report upon the question. This report was referred to the Board of Trade. After much delay these officers reported, as the only possible means of settling the dispute, a surrender of the Province to its Proprietor, upon certain concessions to the present holders, the Puritans. Bennett and Matthews, on the part of the men of Providence and the Puritan Council, drew up the articles, or conditions upon which the Puritans would surrender the government of the Province. In substance, these were very similar to those conditions proposed to Stone by the Puritan Council previous to the battle of Severn. These were signed by Lord Baltimore,

November 30, 1657. The Agreement was sent over to Maryland, where it was read by Fendall to his Council, February 27, 1658. Messengers were sent to Providence and Patuxent requesting the Puritan Council to meet Fendall and his council at a conference at St. Leonard's, March 22, 1658.

For the first time since they stood opposed in battle under their respective standards, the two contending parties met. In a large hall the rival governments sat and listened to the Articles of Agreement and Surrender which their friends in England had thought honorable enough in terms. "After the reading of Instructions, Capt. William Fuller and the rest of the commissioners propounded diverse other articles tending as they conceived to the quiet and welfare of the province, which admitted of some debate."¹ These articles were simply amendments, three in number, to certain phrases implying that surrender was necessary on the part of the Puritans, and that they were at fault in the whole matter. Two of these amendments were adopted and the document was then signed by all present. Perfect liberty and equality was all the Puritans desired. These points gained, they readily yielded up to Baltimore his province. Puritan connection, as such, with the government of Maryland from this time forever ceased. For eight years the reins of state had been in the hands of the Puritans. The necessary co-operation among all members of that body to maintain their position tended as well toward the preservation of their religious ideas. When in 1658 they yielded up their authority in temporal affairs, seeds of disunion in religious matters were sown.

ADVENT OF THE QUAKERS.

The peaceful times which follow seemed to be most fitting for the advent of the Friends into Maryland and into its history. Driven from Virginia as the other Nonconformists

¹ Council Records.

had been, several of the Quakers came up into Maryland and, though not tolerated by Lord Baltimore's officers at St. Mary's, established themselves among the Puritans of Providence and were there not only harbored but welcomed. Slowly and quietly they ingratiated themselves into favor with the Puritans, from whom they received sympathy and support. But the first measures of the restored government of Lord Baltimore were to organize the militia of the Province and to compel all persons to subscribe to the Agreement. In both of these orders the government found itself opposed by the Quaker element now rapidly increasing.

Philip Thomas, who had long dwelt among the Puritans, Thomas Thurston, and Josias Cole, all three Quakers from Virginia, and others who had petitioned the council to allow the Friends exemption from military duties and the privilege of affirmation for an oath, were put under arrest for addressing such a "presumptuous letter" to the government. Thurston was easily found, but the sheriff returned "that Cole was at Annarundell seducing the people and dissuading them from taking the oath of Agreement." Justices, whom Fendall appointed for Ann Arundel County, declined to take the oath prescribed, "saying, in no case was it lawful to swear," and substitutes were appointed. The Provincial Court banished, imprisoned, fined, and whipped, but all to no purpose. Month after month the sheriff of Ann Arundel would notify the court "of certain vagabonds and seditious persons" in his county who refused to sit on juries, take the oath, or serve in the militia.¹ In the very centre of the Puritan colony of Providence, at West River, was built a house for the yearly meetings of the Friends, and in 1672, twenty-four years after

¹ In 1660, one John Everett, who had been pressed to go and fight Indians, refused and was arraigned on the charge "of contempt for running from his Collors." He pleaded for conscience sake that he could not bear arms. He was ordered to be tried, "in the meane tyme the said Everett to be kept in chaynes and heate his-own Bread."

their arrival in Maryland, we find George Fox lecturing to large assemblages in that very meeting-house which the Puritans in their original fervor had built, but which was now in the possession of another sect. Those who, ten years before, were the staunchest of Puritans, had now become zealous Quakers. This change of doctrine, although necessarily of slow growth, seems to have been wide-spread and to have affected the most prominent members of the Providence colony.

FENDALL'S CONSPIRACY.

Gov. Fendall took the opportunity when affairs in England, preceding the Restoration, were in an unsettled condition to attempt the overthrow of Baltimore's power in Maryland and establish himself as Proprietor. In this he was joined by many of Baltimore's trusted friends, who were either fascinated with the offers which Fendall made of lands and money, or who deemed themselves unjustly treated by the Proprietor and desired a change of masters. Fendall's plan was to resign the government into the hands of certain members of the Council and Assembly, who were in turn to invest him with power and form themselves into a Commonwealth of Maryland.

The second Commonwealth of Maryland failed to find that support in the new king Charles II. that the first had found in Cromwell. Orders were received from England to pardon those who had been led astray, but from this general amnesty Fendall and one or two of the Puritans were excluded; Calvert's revenge upon the latter had yet to be satisfied. He wrote, "yea, if there be need you may proceed against them by Court Martial Law and upon no terms pardon Fendall, so much as for life. No, if you can do it without hazarding the Province to pardon so much as for life any of those that sat in the Council of War at Ann Arundel and concurred to the sentence of death against Mr. Eltonhead or other of my honest friends murdered then and there, and who are engaged

in this second rebellion.”¹ Fendall was pardoned; but Fuller was outlawed, proclaimed an incendiary and violent person, and compelled to live in seclusion until the storm had passed over.

BEGINNINGS OF ANNAPOLIS.

The plantations of Providence, though increasing and concentrating, were still scattered and unprotected. A letter from Mr. Lloyd, dated June 28, 1662, gives us some idea of the precarious conditions of the Puritans' homes by reason of Indian marauders. He said, “nightly whooping and shooting is heard and cattle coming freighted [frightened] home.” Along the banks and at the mouth of the Severn River the farms were more numerous than elsewhere and gradually there, around their meeting-house, little homes began to spring up, the nucleus of the town of Ann Arundel or Severn—the Annapolis that was to be. The interest of these former rulers of Maryland in her welfare was unabated. Yearly the men of Severn petition that “the Laws of the Province may be inscribed in a neat, fair hand and sent to Severn.” They made a strong endeavor to have the capital of the Province moved to Severn as a more central position and active neighborhood. Indeed, several offers were made by private persons from the county to build at their own expense a capitol and Governor's mansion, to be paid for when the people chose. These offers were declined, but they portray the growing importance of the Puritan settlement and prepared the people of St. Mary's for the change which would sooner or later follow.

Acts of the Assembly to encourage the building of towns caused several to spring up within the bounds of Ann Arundel, but all had lingering, short, feeble lives, and have left few traces of their existence. In 1689 Ann Arundel

¹ Council Records.

County was reported "as being the richest and most populous" of the whole Province, and the county seat upon the banks of the Severn began to assume some importance. Under the administration of Governor Nicholson in 1694, Severn received the name of "Annapolis." The irregular clusters of small houses gave way to regular streets and to government buildings. The quondam religious centre of the Province now became the political head. St. Mary's, shorn of its glory as a colonial capital, was slowly overrun by tobacco fields, and, in a few years, the town was dead. By the close of the century, fifty years from its settlement, the county of Providence stood at the head of Maryland affairs, but it was no longer Puritan. Its history now blends with that of the Province at large. Puritan characteristics become yearly less capable of recognition and the history of Puritan founders fades away from the consciousness of Puritan descendants.

IMPORTANCE OF THE PURITAN FACTOR IN MARYLAND HISTORY.

Let us consider the importance of the Puritan foundation to the later history of Maryland. Those early but often effectual strivings for liberty in worship, in speech, and in government, which fill the Puritan annals of Maryland, were but local expressions of a great popular movement which was and is stirring the civilized world. This little band of Puritan exiles represented in Virginia and in Maryland what the Puritan masses represented in England in 1648; what the third estate represented in France in 1789; and what the revolutionary classes of all nations represent in their various uprisings, whether religious, political or economic. The desire of those who possess neither wealth, title, nor privilege, is to participate in some way in their own government and to resist oppression by a ruling class. That system of titled nobility, of manorial custom, of a landed proprietor over and

above all—a virtual king within his realm of Maryland—that system which Lord Baltimore had endeavored to establish here, the Puritans, with their democratic ideas and self-governing institutions, crushed to powder. Lord Baltimore had conceived of a great realm in Maryland, based upon feudal principles. He was to be its feudal lord. His dependents and favorites, with their vast tracts of land sub-let on feudal terms or worked by servant labor, were to form his feudal courts, enforce tithes and servile obedience. The Puritans of Maryland, like their brethren in England, resisted. When no regard was paid to their petitions, when rulers forgot their promises, they set their strength against royal, aristocratic, and oppressive institutions and overthrew them altogether. They built up a government for Maryland upon more thoroughly democratic principles. As Parliament resisted the tyranny of James I. and Charles I., so in the Assembly of Maryland we see Puritan antagonism to oppressive acts of the Proprietary and of his Privy Council.

DRIFT TOWARD DEMOCRACY.

Perhaps at no time in its history did the Lower House of the Province of Maryland make such a desperate attempt to control the administration as in 1660. That branch then conceived that not only the law-making but also the judicial power belonged to the people and by their will was vested in the House of Delegates. This principle was upheld by Fendall, then Governor. The Council, much against their will, was compelled to sit with the Burgesses. This triumph was of course short-lived. The day of retribution for democratic audacity eventually came. Many times the Burgesses complained against the arrogance of the Council and against their own exclusion from the administration of the Province. Again, in 1661, the Puritan members of the Council resisted the establishment of a mint by the Proprietor, claiming that the prerogative of coining money belonged to royalty and did

not appertain to the powers of Lord Baltimore. But the act passed over their votes.¹ While the Puritans were in power they adopted a purely democratic system for legislation. The two Houses sat as one. Quaker principles increased this democratic spirit. Every man was to be a brother and an equal of every other. Those practices and theories, radical though they may have been, served an historical end; they curbed the growing tendency to concentrate the functions of state in an hereditary ruler and in his Privy Council,—the Proprietor and his appointees. Maryland always was democratic in law and to a great extent in fact; but the offices of Governor, Council, Provincial Court, Minor Court justices, sheriffs, bailiffs, secretaries, surveyors, and inn-keepers, were all within the appointing power of the Proprietor. Among the men of Severn, democratic principles had full sway. Thence they went forth conquering and to conquer the whole Province.

POLITICAL PARTIES.

The growth of political parties within the colony was not peculiar to Maryland. Virginia and New England each passed through the same phases and each fostered the growth of political opinion. The animating impulse of the seventeenth century was toward reform in church and state, toward religious and political freedom. Together Protestantism and popular rights struggled with Catholicism and absolute monarchy. The American colonies, the children of a common English parentage, imitated the mother state in all her phases of party strife. Party spirit did more for civil liberty among the North Atlantic colonies during the reign of the Stuarts and the Commonwealth than during the suc-

¹For coining Maryland money Lord Baltimore was arrested by Act of the Council in England. His dies, stamps, &c., were confiscated in October 1659; but two years later he began anew coinage for Maryland and was not hindered by the English authorities under Charles II.

ceeding century. The old Anglo-Saxon spirit dominated in the new world as it did in England. The political ideas of Buchanan, Sidney, Milton, and that great favorite with American thinkers—John Locke—sprang up anew across the sea and developed new party life like that in the mother-land.

AN HISTORICAL PARALLEL.

The parallel between the history of Providence Plantations in Rhode Island and in Maryland is most striking. As Roger Williams was driven from the mother commonwealth of Massachusetts for holding heretical doctrine, so Durand, the Puritan elder, was expelled from the mother colony of Virginia to seek a new home for religious toleration. Both leaders came to lands unoccupied save by Indians and invited their brethren to follow. Both called the land to which they came through Divine guidance, "Providence."

VII-VIII-IX

HISTORY OF THE LAND QUESTION IN THE
UNITED STATES

"Latifundia perdidere Italiam et provincias."—PLINY.

"The agrarian history of antiquity shows us that all ancient lawgivers endeavored to secure to every one a certain inheritance, and to make every family participate in the benefits of landed property. Everywhere, however, the proprietors were too independent, and succeeded in centralizing and monopolizing the possession of the soil, and thus the ancient world was ruined."—*Bruno Hildebrand.*

"The allodial tenure, which is believed to have been originally the tenure of freemen, became in the Middle Ages the tenure of serfs. The feudal tenure, which was certainly at first the tenure of servants who, but for the dignity of their master, might have been called slaves, became in the Middle Ages the tenure of noblemen. It was by an exception, and a remarkable one, that in our country the land law of the nobles became the land law of the people."—*Sir Henry Maine.*

"The public lands are a fund for the use of all the people of the United States; and while I wish that this fund should be administered in a spirit of the utmost kindness to the actual settlers and the people of the new States, I shall consent to no trifling with it, no wasting of it, no cession of it; no diversion of it in any manner from that general public use for which it was created."—*Daniel Webster.*

"The homestead act is now the approved and preferred method of acquiring title to the public lands. It protects the Government, it fills the States with homes, it builds up communities, and lessens the chances of social and civil disorder by giving ownership of the soil, in small tracts, to the occupants thereof. It was originally and distinctly American, and remains a monument to its originators."—*Public Land Commission.*

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

FOURTH SERIES

VII-VIII-IX

HISTORY OF THE LAND QUESTION IN THE
UNITED STATES

BY SHOSUKE SATO, PH. D.

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Johns Hopkins University*

BALTIMORE

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PREFACE.

This work was undertaken in pursuance of special instructions from the Japanese Government to investigate certain questions of agrarian and economic interest in the United States. In presenting one part of my work to the public, I desire to express my special gratitude to Dr. H. B. Adams, of the Johns Hopkins University, to whose constant encouragement and kind guidance I greatly owe the completion of the present monograph.

Since the author began to write this paper in the autumn of 1884, the Land Question has steadily advanced to a foremost place among the reform measures of the national administration. Especially within the past year has it attracted marked attention. Politicians and the public press are both interested in the land question. For several years the Labor press has been agitating it.* The *North American Review* took up the subject of Landholding in the United States, in a series of articles beginning in January, 1886. The *New York Herald* recently attacked many current abuses in land entries, and informed the American public of the methods by which unscrupulous land-grabbers steal the public lands. Works of high merit on the subject of the land question have been published. The Report of Commissioner Sparks for 1885 is most valuable. The Commissioner treats the land question with an ardent spirit of reform. He is fully aware of the importance of his subject. Mr. Phillips, in his "Labor, Land, and Law" (Scribners, 1886), is also a valuable contributor to the literature of the land question. That even the common people in America are now conscious of the grave abuses in the agrarian administration of the United States and demand a

* It is a highly significant fact that the Homestead laws and recent agitation of the Land Question are the outgrowth of the American labor movement, beginning about the year 1825 with the formation of the Workingmen's Party. The chief agrarian demands of that party subsequently became laws of the land. The agrarian problems of the American people have historical parallels not only in the agrarian history of republican Rome, but in the economic history of Germany, England, and Ireland. The land question in Germany, left unsettled by the Reformation and the Peasant Wars, found its final solution in the reforms of Baron vom Stein and his successors. In England the land question is still unsolved, notwithstanding the Irish Land Acts, which are the most radical agrarian laws of modern times.—ED.

reform, is shown by the action recently taken by the Knights of Labor in their convention at Cleveland, Ohio. In their platform the Knights adopted resolutions touching land reform, and, as a sign of the times, I here insert the text :

“(1) We demand that the public lands be reserved for actual settlers only. (2) We demand that all lands owned by individuals or corporations in excess of 160 acres not under cultivation shall be taxed to their full value, the same as cultivated lands. (3) We demand the immediate forfeiture of all lands where the conditions of the grants have not been complied with. (4) We demand that patents be at once issued for all lands where the conditions have been complied with, and that taxes be assessed on these lands as if under cultivation. (5) We demand the immediate removal of all fences from the public lands. (6) We demand that after 1890 the Government obtain possession by purchase of all lands now held by aliens at appraised valuations. (7) We demand that after 1886 aliens be prohibited from obtaining land titles.”

These demands seem to me neither extreme nor radical. On the contrary, they are simply an echo of popular sentiment. Some of the demands by the Knights were already under the consideration of Congress. The Senate passed bills on the 1st and 3d of June, 1886, providing for the restriction of alien ownership of land and taxing railroad land grants. On the 2d of June the Secretary of the Interior ordered the suspension of entries under “pre-emption, timber culture and desert land” till the 1st of August, 1886. This order was in view of the consideration in Congress of the removal of these useless and much abused land laws from the statutes of the United States. “The question of land reform like the world does move,” says a *Herald* correspondent. It will “move” until the Homestead Act becomes the only settlement law of the country, and the public lands are restored to the Government for the use of actual settlers.

BALTIMORE, MD., *June 14, 1886.*

CONTENTS.

INTRODUCTION.	PAGE.
1. ORIGIN AND IMPORTANCE OF THE PUBLIC DOMAIN.....	5
2. FUTURE OF THE PUBLIC DOMAIN.....	7
3. PUBLIC-LAND POLICY OF THE UNITED STATES	9
4. AGRARIAN LAWS OF ROME AND THE UNITED STATES	10
5. GERMAN, ENGLISH, AND AMERICAN FOLK LAND	12
6. FEUDAL LAND LAWS OF ENGLAND.....	14
7. LAND TENURE IN COLONIAL TIMES.....	15
8. LAND TENURE AFTER THE REVOLUTION.....	17
9. RELATIONS OF THE PUBLIC DOMAIN TO NATIONAL LIFE.....	19
I. FORMATION OF THE PUBLIC DOMAIN.	
<i>a.</i> CESSIONS BY THE STATES.	
1. CLAIMANTS TO THE "CROWN LANDS".....	22
2. WESTERN TERRITORY BEFORE THE REVOLUTION.....	24
3. REVOLUTION AND THE LAND CONTROVERSY.....	25
4. CONSTITUTION OF VIRGINIA AND PROTEST OF MARYLAND.....	26
5. RESOLUTION OF CONGRESS AND MARYLAND'S OPPOSITION.....	27
6. GROUND OF MARYLAND'S OPPOSITION TO VIRGINIA.....	29
7. VIRGINIA AND HER DISPOSITION OF WESTERN LANDS.....	31
8. SETTLEMENT OF THE LAND CONTROVERSY.....	33
9. CESSIONS OF THE SOUTHEASTERN TERRITORY.....	38
<i>b.</i> THE PURCHASE OF LOUISIANA.	
1. HISTORY OF SETTLEMENT IN LOUISIANA.....	42
2. PECULIARITIES IN THE INSTITUTIONS OF LOUISIANA.....	43
3. AMERICAN DIPLOMACY IN THE PURCHASE OF LOUISIANA.....	45
4. UNCONSTITUTIONALITY OF THE LOUISIANA PURCHASE.....	50
5. SPANISH PROTEST AGAINST THE CESSION OF LOUISIANA.....	51
<i>c.</i> PURCHASE OF THE FLORIDAS.	
1. GROUNDS OF AMERICAN AND SPANISH DISPUTES.....	54
2. SITUATION OF SPANISH COLONIES AFTER THE LOUISIANA PUR- CHASE.....	55
3. FORMAL NEGOTIATIONS FOR FLORIDA.....	58

d.	TEXAS ANNEXATION AND TEXAS CESSION.	
1.	TEXAS AFTER THE MEXICAN INDEPENDENCE.....	61
2.	FINAL ANNEXATION OF TEXAS.....	63
3.	FINANCIAL CONDITION OF TEXAS.....	65
e.	THE MEXICAN CESSIONS.	
1.	POLICY OF THE POLK ADMINISTRATION.....	67
2.	GADSDEN PURCHASE.....	69
f.	THE PURCHASE OF ALASKA.	
1.	HISTORY OF THE DISCOVERY OF ALASKA.....	70
2.	NEGOTIATIONS FOR THE PURCHASE OF ALASKA.....	72
3.	SUMNER ON THE PURCHASE OF ALASKA.....	74
4.	CONCLUDING REMARKS ON THE PUBLIC DOMAIN.....	75
II.	ADMINISTRATION OF THE PUBLIC DOMAIN.	
a.	ORDINANCE OF 1787.	
1.	PROVISIONS OF JEFFERSON'S ORDINANCES.....	80
2.	WASHINGTON ON TERRITORIAL GOVERNMENT.....	86
3.	PRELIMINARY STEPS TOWARD THE ORDINANCE OF 1787.....	88
4.	PROVISION OF THE ORDINANCE OF 1787.....	93
5.	EULOGIES ON THE ORDINANCE OF 1787.....	98
6.	CONSTITUTIONALITY OF THE ORDINANCE.....	102
7.	AUTHORSHIP OF THE ORDINANCE.....	104
8.	OPERATION OF THE ORDINANCE.....	117
b.	GENERAL LAND OFFICE.	
1.	HAMILTON'S PLAN FOR A LAND OFFICE.....	121
2.	ESTABLISHMENT OF THE GENERAL LAND OFFICE.....	123
3.	RESPONSIBILITIES OF THE COMMISSIONER.....	124
III.	LAND SYSTEM OF THE UNITED STATES.	
1.	EFFECT OF TERRITORIAL GROWTH.....	128
2.	CHANGES IN PUBLIC SENTIMENT.....	129
3.	MILITARY BOUNTIES.....	131
4.	GENESIS OF THE LAND SYSTEM.....	133
5.	RECTANGULAR SYSTEM OF SURVEY.....	134
6.	METHOD OF SALE.....	135
7.	EARLY ATTEMPTS AT SETTLEMENT.....	138
8.	OHIO COMPANY AND SYMMES' ASSOCIATES.....	139
9.	HAMILTON'S PLAN FOR THE PUBLIC LANDS.....	141
10.	IMPORTANT FEATURES OF THE LAND SYSTEM.....	142
11.	THE CREDIT FEATURE IN THE LAND SYSTEM.....	144
12.	MOVEMENT OF POPULATION WESTWARD.....	145
13.	ABOLITION OF THE CREDIT SYSTEM.....	148
14.	CRAWFORD'S SYSTEM OF RELIEF.....	150

Contents.

v

15. POLITICS IN THE LAND QUESTION.....	151
16. APPEALS OF THE "LAND STATES".....	153
17. CLAY'S DISTRIBUTION BILL.....	157
18. PRE-EMPTION ACT.....	159
19. HISTORY OF THE PRE-EMPTION LAW.....	159
20. CALHOUN'S OPPOSITION TO PRE-EMPTION.....	164
21. PRESENT LAW OF PRE-EMPTION.....	165
22. PRE-EMPTION NO LONGER NEEDED.....	167
23. VARIOUS LAND GRANTS FROM 1841 TO 1862.....	168
24. DONATION, SWAMP AND GRADUATION ACTS.....	169
25. EARLY MOVEMENT FOR HOMESTEADS.....	170
26. AGITATION BY "FREE-SOILERS".....	170
27. HOMESTEAD BILLS IN CONGRESS.....	172
28. PRESIDENT BUCHANAN'S VETO.....	174
29. FINAL PASSAGE OF THE HOMESTEAD ACT.....	175
30. EULOGIES OF THE HOMESTEAD LAW.....	177
31. THE EDUCATIONAL LAND GRANTS.....	178
32. TIMBER AND DESERT LAND ACTS.....	179
33. CONCLUSION.....	179

HISTORY OF THE LAND QUESTION IN THE UNITED STATES.

INTRODUCTION.

ORIGIN AND IMPORTANCE OF THE PUBLIC DOMAIN.

The War of Independence severed political connections between the English colonies and their mother country. The colonies became States, and the States assumed a sovereign power. The thirteen colonies which were planted in the region along the Atlantic border formed the American Union; and its territory, as recognized in the treaty of 1783, extended from the Atlantic on the east to the Mississippi in the west, and from the Great Lakes in the north to the Gulf of Mexico in the south. This constituted the national domain of the United States, and embraced an area of about 830,000 square miles. That portion of the national domain lying immediately west of the Alleghany mountains and northwest of the Ohio river was claimed by several States, but was ceded by them to the National Government after a long-protracted controversy. Likewise the region southeast of the Ohio was ceded to the Government by the then three southernmost States. These lands formed a nucleus of the public domain of the United States, and contained an area of about 404,000 square miles. Out of this public domain arose several republican commonwealths, which added much to the strength and wealth of the Union.

The creation of the public domain forms an important epoch in the history of American Politics. Its subsequent

expansion; the mode of its administration; legislation for its government; its relation to constitutional questions; the diplomacy and politics involved in its acquisition; its international boundary questions; the enactment of settlement laws; the attraction of immigrants and growth of population; internal improvements and increased facilities of transportation; the discovery of precious metals, and other similar topics of interest might be cited here in connection with the public domain. They afford to the student of politics and economics an ample field of study and investigation, and show in a measure what important relations the public domain has had with the affairs of the nation and what vital questions have been involved in it.

Perhaps slavery and the public domain are the two most important factors in the politico-economic history of the United States. In this country slavery has had a beginning and an end. Its beginning may be traced back to colonial times—to the introduction of negroes into Virginia in 1619. This peculiar institution, after an existence of nearly two centuries and a half, has finally met with its fate. The reconstruction of society upon a true economic basis is the chief work of to-day in the sections of the country where slavery once prevailed. Slavery may well be forgotten by the younger generation. It already belongs to the province of “past politics.” But the public domain has its actual life in present history. Bills have been pending in the National Legislature which aim to repeal certain out-lived settlement laws. The question of a forfeiture of a Railroad Land Grant has just been decided against a railroad corporation for its non-fulfilment of conditions. The Senate has two standing committees on the Public Lands, and the House of Representatives one committee on the same, while the General Land Office is one of the most important branches in the civil service of the Government. The concentration of landed property into the hands of foreign capitalists, which means the introduction of British Absenteeism, has been drawing attention from the

public and the press. Fraudulent entries and adventurous trespass on the public lands called forth sharp words from Mr. Cleveland in his inaugural address, to the effect that "care for the property of the nation and for the needs of future settlers requires that the public domain should be protected from purloining schemes and unlawful occupation." Again, justice demands the protection of the Indians in their right of occupancy from the lawlessness of so-called "boomers." In this and all other questions, the public interest is deeply concerned with the administration and disposition of the public domain. Notwithstanding the rapid disposition of public lands, there yet remain scattered all over the southern, the western, and the Pacific regions, vast tracts of unoccupied lands, the aggregate area of which is almost twice as great as that of the national domain in 1783. Tides of immigration still flow from across the ocean. Millions of homes can be created. An immense wealth and vast resources can be developed. Towns will multiply; counties will grow; free institutions will spring into life. This material advance and prosperity will be due to the public domain and its judicious disposition. Homestead laws will continue to build up the Great West in the future as they have done in the past. The importance of the public domain, however, seems to have been rarely and but recently emphasized by the student of American history.

FUTURE OF THE PUBLIC DOMAIN.

The public domain will continue to exist till all the unoccupied lands are disposed of. That time, however, is remote. This generation will not see the public domain fully exhausted. Texas may not be the last annexation, and Alaska may not be the last purchase. The drift of political affairs may yet cause the union of two kindred nationalities in a republican bond under a federal government. Free social and commercial intercourse may anglicize Latin neighbors on the main-land of America as well as on adjacent islands, and precipitate a treaty

of purchase or annexation. During the period of ninety years the national domain has grown almost five times as great as its original extent. Its future expansion may not be altogether a matter of political imagination.

The growth of territory has been accompanied by the growth of population and the rise of commonwealths. The public domain makes a home for the poor and the oppressed of overpopulated European countries. The first immigration census, taken in 1820, shows the insignificant number of 8,385. In 1883 the census shows an influx of foreign population amounting to nearly six hundred thousand people. In sixty-three years Europe contributed to the population of the United States more than twelve millions of people. The West is a paradise for the settler. Public land is free of cost to every one who comes in good faith. Broad acres await labor and industry, cultivation and improvement. Mother Nature is lavish in her gifts. The virgin soil yields profitable returns. The thrifty yeomanry, inspired with the spirit of free institutions, build up local and municipal governments. Every naturalized citizen enjoys political rights, and feels perfectly at home, though in a strange land. Democratic-republican principles permeate local, municipal, and State institutions.

These self-governing institutions and republican commonwealths are really a monument to the memory of early legislators and statesmen, who brought that complicated question of land-cessions to a successful issue, who framed a republican constitution for the government of the Western Territory, and achieved the profitable purchase of a vast empire beyond the Mississippi, thus laying foundations for a nation's wealth and prosperity. The growth and development of the United States in size, wealth, resources, and population not only show the progressive power of modern civilization, but also testify to an historical truth, that the movement of Indo-European population has been in a westerly direction ever since its first historical emigration from the heart of Asia. The acquisition of a great national domain in the West has attracted to the

United States the people of various Indo-European stocks. To vast primeval forests and broad plains have come Germanic, Latin, and Scandinavian nationalities, who are fast being assimilated with an Anglo-American nationality in a new world. However widely local institutions and customs may vary, however much birth and nationality may differ, there yet prevails a unique *American* nationality, which is ever augmenting and ever increasing in wealth and prosperity. The statesmen who first made laws regulating the public domain could no more have foreseen the rise of such a great republic than the early planters of Virginia or hardy Puritan settlers of Massachusetts could have foreseen the independence of their children's children.

PUBLIC LAND POLICY OF THE UNITED STATES.

The territorial expansion of the United States has by no means always been the result of an aggressive policy. The country maintains a traditional peace policy in all its foreign relations. Circumstances have led the nation to acquire territories which, both geographically and politically, were best fitted to become members of the American Union. The imperial ambition of Napoleon to rule Europe caused him to part with the French province of Louisiana in America. The down-trodden powers in the Old World finally regained their freedom and recovered their territories after years of bloody struggle; but, on this side of the Atlantic, the foresight of Mr. Jefferson and the diplomacy of his colleagues secured to the United States its most important possession beyond the Mississippi, one year before the Corsican general assumed the crown of Charlemagne. The purchase of Florida from Spain in 1819 forever settled a boundary dispute in West Florida, and consolidated a national interest in the development of resources by the United States in their south-eastern territories. The two rival powers of old colonial times, Spain and France, thus lost a permanent hold of their colonies in America, and

this country was no longer to be considered as subject to colonization by any European power. Time had changed the affairs of nations, and the "Monroe Doctrine" succeeded the right of discovery and exploration in the New World. Unoccupied lands were no longer spoils of grasping adventurers under a foreign flag, but became an American domain, subject to the settlement laws of a free and independent republic.

AGRARIAN LAWS OF ROME AND THE UNITED STATES.

History tells us of the evolution of landed property from communal to private ownership, and from equal to unequal divisions. "The Roman idea of a right of absolute property," says Laveleye,¹ "was always foreign to Greece. The territory of the State was regarded as belonging to it alone." The distribution of public land taxed the wisdom of Greek lawgivers, and its concentration into the hands of a few was often a cause of political revolution. It is in the famous Licinian laws of the Roman Republic that we find a germ of modern public-land laws. First of all, the *Lex Licinia*² required the *ager publicus* to be defined. Then, if there was any encroachment, it had to be surrendered to the State. Such survey of public lands and such prevention of unlawful occupation have been among the first requisites in the administration of the public domain in modern times. Secondly, by the Licinian law, every estate in the public lands, which was required to be of a lawful size, with peaceful occupation, was declared by the State to be good against third parties. This was virtually the same as the modern right of pre-emption, which is secured to every honest settler. Thirdly, every Roman citizen had a right to occupy public lands in conformity to the laws. To the Romans, citizenship was a necessary qualification to the enjoyment of privileges in the public lands.

¹ Laveleye's *Primitive Property*, 158.

² Niebuhr, *Römische Geschichte*, Vol. III, 14-17.

So it is to-day in the United States. Pre-emption right and homestead-entry are allowed to aliens only on the condition that they will become citizens of the United States. Fourthly, the Licinian law forbade any person to possess more than 500 jugera, or about 350 acres of public land, and to pasture more than a hundred head of large cattle or five hundred head of small cattle on the same. The spirit of settlement laws in the United States seems to be inclining toward parcelling out public lands into small holdings. One hundred and sixty acres of land is a maximum quantity allowed to a homesteader, although any settler can obtain 1,120 acres of public land under the existing settlement laws.¹

Laboulaye² says that "The law of the five hundred jugera is always quoted by them [referring to Varro, Pliny and Columella] with admiration, as being the first which recognized the evil, and sought to remedy it by retarding the formation of those vast domains or *latifundia* which depopulated Italy, and after Italy, the whole empire." The Homestead Act, which is spoken of as the outgrowth of "the concentrated wisdom of legislation for settlement of the public lands,"³ would undoubtedly increase the number of free proprietors and build up local communities in the United States, as the law of five hundred jugera would have done for the ancient republic. The just and equal distribution of public lands is the spirit of both laws. As to the limitation of the number of head of cattle to be pastured on public lands we have a similar fact in the local agrarian history of New England towns. At Salem⁴ the pasturage on every ten acres of common fields was limited to 6 cows, 4 oxen, 3 horses, or 12 yearlings or 24 calves. Whether it is in small local communities or in extensive terri-

¹ The Public Domain, 1159.

² Quoted by Laveleye in *Primitive Property*, 167.

³ The Public Domain, 350.

⁴ H. B. Adams. "Village Communities of Cape Ann and Salem." Johns Hopkins Univ. Studies in Historical and Political Science. First Series, IX-X.

tories, agrarian interests are the same, and men are everywhere inclined to demand an equal share in agrarian benefits. As to the rest of the Licinian law, Niebuhr states that the occupants of public lands were required to offer to the State a certain part of the produce of the soil, and that the State defrayed the expense of the army with the income thus derived.

GERMAN, ENGLISH, AND AMERICAN FOLK LAND.

The Germanic common mark and the Anglo-Saxon focland¹ correspond to the Roman ager publicus, and the present public domain of the United States is held upon essentially the same principles as the mark, focland, and ager publicus. Just as the arable mark, or the mark of the township, was parcelled out to individuals from the common mark among the ancient Germans, or as bocland was registered focland among the Anglo-Saxons, so the homestead is granted to the American settler out of the public domain. The homestead so granted is allodial and held in fee-simple. Allodial ownership and fee-simple tenure were essential features of ancient Teutonic institutions, and here we find the wholesome influence and effect of a free agrarian system of Germanic origin upon the focland of the American people.

We have already seen in the old Licinian laws some parallel with the American settlement laws, either in spirit or in principle. This comparative study has also led us to recognize the fact that the Germanic allodial land system has been reproduced in the method of parcelling out free, independent homesteads from the public domain. But we must bear in mind the true historical connection between American and Germanic agrarian institutions. American settlers first introduced mild forms of English feudal tenure, but these were transformed in course of time into allodial tenure. In fact, the American agrarian system has no direct connection with

¹ *Systems of Land Tenure.* Cobden Club Edition, 286.

the old Germanic customs in the "Gemeinde," any more than it has with the customs of the Russian *Mir* or Swiss *Allmends*.

The English common law is to-day the law of all the States of the American Union with the exception of one State, viz. Louisiana. English feudal land laws were the direct source and origin of early American land tenure, and even to-day they still govern more or less the transfer of landed property in some of the older States.

After the Revolution, most States abolished all feudal incidents connected with landed property. For instance, "By the statute of February 20, 1787, New York abolished all military tenures, transferring them into free and common socage, and making all State grants entirely allodial. The revised statutes, going into effect in 1830, abolished the last shadow of feudal tenure, and made allodial proprietorship the sole title to private land, and this property liable to forfeiture only by escheat."¹ In spite of the simplified method of bargain and sale, the conveyance of real estate, however, seems to retain some feudal incidents which are complained of as cumbersome and as involving needless expenses.

A leading New York journal² commented on this subject in its editorial columns as follows: "By the Constitution of the State of New York, 'all feudal tenures of every description, with all their incidents, are declared to be abolished,' but as a matter of fact the incidents of feudal tenure are not all abolished. This very cumbrousness and complexity of the transfer of land is one of them, and the right of dower is distinctly another. The common law of England upon the subject of real property is a survival from feudal times, and it has nowhere in this country been completely remodeled in conformity with the needs and usages of an industrial community. There is, by law, a special sanctity attached to ownership of

¹ Quoted in Public Domain, 159, from Mr. Wilson's Report of the General Land Office.

² New York Times, December 30, 1884.

land as compared with that of other property, and the alienation of it is purposely made difficult. In England, this treatment of land still corresponds to a real public sentiment. The owner of land is an object of much more social consideration than the owner of an equal value in personal property. Inasmuch as the 'landed interest' still governs Great Britain, it is to be expected that British laws should make as troublesome as possible the acquisition of 'estates' by new men who have enriched themselves and who aspire to 'found families.' We have abolished primogeniture and entail, which are the chief legal supports of the landed aristocracy. But we have by no means got rid in our laws of the feudal habit of regarding property in land as more important to the State than other property, and it is from this habit that the practice of making land less easily alienable than other property proceeds."

FEUDAL LAND LAWS OF ENGLAND.

The landed interests are everywhere decidedly conservative, and land laws are made to suit the conservative elements of the nation. The interest of a landed aristocracy is nowhere better protected than in England by a complicated land system. The land system of England is feudal, and its structure very complex and heterogeneous. "The main body of the technical expressions of the law, and of the technical habit of thought," says Mr. Pollock in his *Land Laws*, "is derived from feudalism. . . . So great is the technical complication and difficulty of our laws on the subject, that within the special studies of the legal profession the study of them is a specialty of itself."¹

Feudalism was in full operation in England when Jamestown was planted by the Virginia Company in 1607. Feudal land tenures and customs were then still practically binding on landed property. Estates were fettered by entail and inherit-

¹ *The Land Laws*, by Frederick Pollock, 2-3.

ance, limited to primogeniture or ultimogeniture. Tenures were still in knight service. The abolition of military tenures in England took place half a century later than the settlement in Jamestown. It was done by the 12th, Charles II., cap. 24, in 1660.¹ By this act, "all freehold tenures were reduced to the one type of free and common socage, with an important twofold result. First, all the vexatious incidents of military tenure disappeared with the tenure itself; only ancient money rents might remain payable by the tenant, which had already become, by the changes in the value of money since they were fixed, almost or altogether nominal. Next, inasmuch as the statute of 1540 had enabled tenants in fee-simple to dispose by will of the whole of their socage lands, and socage was now made the only freehold tenure, the whole of the fee-simple land in the kingdom became disposable by will. Feudal tenancy was converted for all practical purposes into full ownership."

For fully six centuries military tenures shaped the history of land laws in England. As the Norman Conquest and Domesday Book made a transition from the Anglo-Saxon allodial land system into the feudal land system, so the abolition of military tenures by Charles II. was a transition from the feudal land system to a more liberal land system of a testamental succession and free alienation, but not by any means a return to the ancient Anglo-Saxon land laws in theory or in practice. The English land laws may be called Reformed Feudal Land Laws. They retain the essential feature of feudalism, and that is the reason why they are so complex and so confusing.

LAND TENURE IN COLONIAL TIMES.

Notwithstanding the prevailing feudal land laws in England during the seventeenth century, the English colonists in

¹ Landholding in England, by Joseph Fisher, Humboldt Library, 36; or Pollock's Land Laws, 125.

America were fortunate enough to secure a milder form of land tenure from the British Crown. The charter granted to Sir Walter Raleigh in 1584 specified that lands were to be held in fee-simple. All the rest of royal charters, beginning with the charter to the Virginia Company in 1606 and ending with that granted to the Trustees of Georgia in 1732, granted lands in free and common socage, that is, in free tenure without military service. The source of all land titles was in the Crown. The King was the Lord Paramount of all the lands held by the colonists. By virtue of discovery, conquest, colonization, and the acknowledged principle of feudalism, the British Crown was the only legal source of ownership of landed property by the English colonists. Sometimes a recognition of fealty was required; sometimes quit-rent was exacted by the Crown. Feudal incidents were unavoidably brought to the colonies. Proprietorship in the middle colonies, and aristocracy in the southern colonies, showed that mediæval institutions were planted in some measure upon the virgin soil of America. Within the colony of New Netherlands, afterwards New York, a small feudal principality, with almost an independent sovereign power, was erected by Patroon Rensselaer. The essential features of this great proprietary survived long after the Revolution.¹

In theory, titles derived from the Crown were complete and unconditioned so far as the colonists themselves were concerned; but in practice they were far from being so. The right of the aborigines was to be respected by the settlers. Indians were allowed right of occupancy. The Crown had the titular right, but the Indians a possessory right. The grant of lands by the Crown was of no use unless the savages turned them over to settlers. There were two ways opened to the settlers, either of which would secure to them full ownership of lands. The one was by the use of force; the

¹ Mrs. Martha J. Lamb, "The Van Rensselaer Manor," in *Magazine of American History*, January, 1884.

other by purchase. Humane and Christian principles alike forbade the use of force, although the colonists often violated both. The colonies secured the right of pre-emption in most cases. Negotiation with and purchase from the original possessors finally made the colonists realize the full possession of lands which their titular lord so lavishly granted them. Not only did royal grants conflict with the Indian rights, but they conflicted with themselves. Overlapping grants occasioned many legal disputes about boundaries, *e. g.* in the case of Maryland and Pennsylvania.¹ In the case of Virginia and Maryland such disputes actually resulted in colonial war. Again, the international territorial conflicts of the principal colonizing powers were among the chief events in the colonial history of America. The Treaty of Paris in 1763 made England the dominant power in the regions along the Atlantic border and east of the Mississippi river. Twenty years afterwards, however, England had to sign another treaty, Versailles, 1783, and acknowledge the independence of the United States. The Crown lands created by the royal proclamation of 1763 were destined to become the public domain of a great republic.

LAND TENURE AFTER THE REVOLUTION.

The revolution for political freedom brought a revolution in the agrarian laws of the country. The United States became, within limits, a successor to the British Crown, and a source of land titles. The public domain created after the Revolution became the public property of a new nation instead of a titular sovereign. It was now held in trust by the national government of the United States, to dispose of in the best interest of the whole people. Feudal incidents were now abolished. By the Ordinance of 1787, absolute ownership of

¹ Cf. W. B. Scaife on the Boundary Disputes between Pennsylvania and Maryland, in the *Pennsylvania Magazine of History and Biography*, October, 1885.

land was guaranteed. There was to be no more primogeniture nor entail on the public domain. Certainly land, the most essential element in the production of economic goods, everywhere deserves the most enlightened and liberal policy which statesmen can conceive. It should subserve the cause of the greatest production and the best interests of the whole people. The liberal land policy devised by the government of the United States has been followed by other nations. France, in the Revolution of 1789; Prussia, in the legislation of 1811; Russia, in the Emancipation Act of 1861, and, finally, Japan in the abolition of feudalism in 1871,—all these nations took a great step forward. They removed slavish and cumbrous restrictions which had rested upon landed property. Free alienation, testamentary disposition, and just inheritance should characterize liberal agrarian laws. These were secured not only for the public domain of the United States, but also for the older individual States themselves.

Speaking of the ownership of the land in America, Mr. Cunningham, an English writer,¹ some years ago, in his "Social Well-Being," says: "In the United States there are no land laws established by which the soil is made to fall gradually into the hands of a few great families, as in Great Britain. There are generally no restrictions upon its sale, its inheritance, or its application. The system of occupation is generally that of small proprietors.² The idea which pervades the whole American people is that of the advisability of universal proprietorship, and the feeling against anything approaching to landlordism is pronounced." More recent investigators say that the tenant farms are increasing in an alarming ratio in the United States, especially in the Northwestern States. A fear is also expressed that the growth of American *latifundia* will bring ominous effects upon the na-

¹ Conditions of Social Well-Being, 173.

² For the controversy on the size of farms in the United States between General Walker and Mr. George, see Henry George's Social Problems, pp. 333-356.

tional economy of the American people. Whether these views are substantiated by facts or not, is now an open question.¹

It was the Revolution that created the public domain of the United States, and it was the public domain that made necessary a liberal agrarian system. Not only did the public domain call forth land laws that were subversive of feudal incidents, but it became instrumental in establishing the Union upon the basis of a common economic interest. In the possession of public lands the old States found a common tie which bound them permanently together. However widely political ideas might differ, however much economic interests might antagonize sections, however greatly social institutions and customs might vary, there remained, back of the Alleghany mountains, a vast tract of foeland, in the settlement and disposition of which all the States found a common interest. That interest bound together the sovereign States into a territorial commonwealth.² The public lands were the backbone of the United States. The history of their constitutional development cannot be understood without a study of the land question.

Congress under the Articles of Confederation was an impotent organ. It never discharged the purpose for which it was created. That body, however, did one thing of great merit. It legislated on the government of the Northwestern Territory. It passed the Ordinance of 1787. This was a masterly work of genuine statesmanship. It was the Bill of Rights for the future settler of the Public Domain. It was the American Magna Charta. Under this ordinance territories prospered and commonwealths arose.

RELATIONS OF THE PUBLIC DOMAIN TO NATIONAL LIFE.

We have seen that the institution of the public domain gave a fatal stroke to feudal land tenures; it bound the Union

¹ See a series of articles in the *North American Review*, January, 1886, and succeeding numbers.

² See H. B. Adams. *University Studies*. Third Series, I.

together by an economic bond, and called forth the Ordinance of 1787. We shall now briefly consider what important ends the public domain has served in the politico-economic history of the United States.

1. Public lands were used as bounties to veteran soldiers and sailors, from the time of the Revolution down to the late Civil War.

2. Public lands were once an important source of public revenue, and formed a basis for national finance.

3. Public lands and diplomacy have often been related in the affairs of the nation. The purchase of territories from the foreign powers and the negotiation about boundary disputes called forth the diplomacy of Livingston, Pinckney, Monroe, and other statesmen.

4. The survey and administration of public lands were initiated by the two most eminent statesmen, Jefferson and Hamilton. Mr. Jefferson, as chairman of a committee in the Congress of 1784, furnished the basis of the present system of survey known as the "rectangular system," and Hamilton, as Secretary of Treasury, furnished the basis of the present method of administration in 1790.

5. Public lands have been the means of effecting internal improvements. Canals, highways, and levees have been constructed under the stimulus of public land grants.

6. The promotion of education in the United States is closely connected with public lands. The Ordinance of 1787 recognized the importance of education. Public land grants for mechanical and agricultural institutions, as well as for State universities and public schools, have aided in their foundation and maintenance.

7. Public lands have had great influence upon the problem of transportation. If it were not for public lands, the railroads which now form the great highways of the nation—for example, the Central Pacific and Union Pacific—could not have been built so soon. Grave abuses there may have been, but the benefits resulting from the facility of transportation cannot be gainsaid.

8. The mineral resources of the public lands form an important part of America's national wealth. The discovery of gold in California marks an epoch in the world's economy. Mining laws are, therefore, of a great consequence to the nation.

9. Foreign landlordism, private claims, and land litigations are all connected more or less with the public lands.

10. Lastly, the relation of public lands to immigration suggests an important economic problem. "No State without people" should be the political maxim of statesmen in encouraging foreign immigration. Free homes and free institutions, free labor and free soil, are the best capital for the development of the resources of the Great West.

Such is the scope of the land question in the general economy of the United States. The origin of the public domain, its subsequent expansion, the history of its administration, the various land grants, and the chief features of settlement laws, will be the subjects of special investigation in the following chapters.

I.

FORMATION OF THE PUBLIC DOMAIN.

The public domain of the United States was acquired through cession, purchase, and conquest. Its acquisition had been precipitated by a combination of varied political and economical considerations. The desire of firm union and the safety of the whole confederacy peacefully terminated the disputed claims of the larger States to the western lands. The prospect of fishery and the development of natural resources must have prompted the action of President Johnson's administration in the purchase of Alaska. The first acquisition of public land took place on March 1, 1781, and the last acquisition on March 30, 1867. Between these two periods there were several acquisitions of territory, whose history will be treated in its proper place. The first subject that should engage our attention is the

CESSIONS BY THE STATES.¹

From a territorial point of view, the State cessions may be divided into two classes: the first embraces the territory northwest of the Ohio river, and the second covers the territory southeast of the Ohio. Twenty-one years intervened between the first and last State cession. New York was the first State that surrendered her claim to the northwestern territory, while Georgia was the last one that parted with her claim, by which the State cessions were made complete.

CLAIMANTS TO THE "CROWN LANDS."

It was the northwestern territory, or the "Crown Lands," that occasioned the greatest discussion in Congress. The territory was claimed by several States. The claimants were Massachusetts, Virginia, Connecticut, and New York.

Massachusetts based her claims upon the charter granted to her by William and Mary in 1691.² She claimed that portion of the northwestern territory which was bounded on the west by the Mississippi river, on the south by about forty-two degrees of north latitude, and on the north and east by Lakes Superior and Huron, respectively. The territory now lies in the States of Wisconsin and Michigan, partly in the eastern part of Minnesota, and partly in the northern part of Illinois. It embraces an area of 54,000 square miles. This territory was also disputed and claimed by Virginia.

The claim of Virginia was a most extended one. Under the charter granted by James I. in 1609,³ she claimed the entire territory west of Pennsylvania, and northwest of the

¹ See for the State cessions, Dr. H. B. Adams' *Maryland's Influence upon Land Cessions to the United States*, in *J. H. U. Studies*, 3d Series, No. 1.

² *Laws of the United States* (Duane Edition), Vol. I, 462.

³ *Laws of the United States* (Duane Edition), Vol. I, 465. *Hening's Statutes*, Vol. IX, 118.

Ohio river, and below the forty-first parallel of north latitude. She also claimed the territory lying south of the Ohio river, and north of her southern boundary, a territory now in the State of Kentucky. Another claim which Virginia set forth by reason of conquest and occupancy, was to the territory extending northward from the forty-first degree of north latitude, toward the Lakes, which claim was disputed both by Massachusetts and Connecticut. The claim of Virginia, excluding Kentucky, embraced an area of 265,562 square miles.

The claim of Connecticut, like that of Massachusetts, was an extension of her northern and southern boundary lines, under the charter granted by the British Crown. They began with the western boundaries of New York and Pennsylvania, and extended as far west as the Mississippi.¹ The territory now lies in the south of the State of Michigan, and in the north of the States of Ohio, Indiana, and Illinois. Its area was estimated at 40,000 square miles.

New York based her claim to the western lands chiefly upon various treaties which she made with the Six Nations and their tributaries, by which she acquired jurisdiction over their entire western territory.² The territory of the Indian nations which New York claimed was indefinite in area, but was situated west of Pennsylvania and north of the Ohio river.

Such were the conflicting claims of the four principal States of the Union over the western lands north of the Ohio river. South of it, the Carolinas and Georgia had their respective claims to an extension of their western boundaries. The rest of the Union, New Hampshire, Rhode Island, New Jersey, Delaware, Pennsylvania, and Maryland, had definite boundary lines by the time the Revolutionary war broke out. Pennsylvania had a controversy with Connecticut, which was

¹ Laws of the United States (Duane Edition), Vol. I, 464.

² Journals of Congress, Vol. IV, 21.

known as the "Wyoming Controversy." It related to the jurisdiction over certain lands lying in the northern part of Pennsylvania, but this controversy was decided in 1782 in favor of Pennsylvania by a Federal Court, to which the question was referred according to the provision in the ninth article of the Confederation.¹

WESTERN TERRITORY BEFORE THE REVOLUTION.

Claims to western territory by the several large States began with the Revolution. Prior to the Revolution, the colonies had no legal claim to jurisdiction over the western lands, which were set apart from the colonial territories as the "Crown Lands," by the royal proclamation of 1763.² The British Crown divided the territory which it acquired from France and Spain by the treaty of Paris in 1763, into four provinces: Quebec, East Florida, West Florida, and Grenada. All the lands which were not included within these provinces, nor within the grant to the Hudson Bay Company, were reserved for the use of the Indians. The colonies were forbidden to make purchase or settlement of any of these reserved lands without first obtaining royal permission. These lands were the so-called "Crown Lands."

The fertility and resources of these western lands seemed, from early times, to have attracted adventurous settlers. In 1748 the Ohio Company was formed, and in the following year secured 600,000 acres of land on the Ohio river.³ The royal grant stipulated that the company should be free from quit-rent for ten years, provided in seven years there were one hundred families, and they had built a fort sufficient to protect the settlement. On June 12, 1749, the Loyal Company was organized and obtained the grant for 800,000 acres of

¹ Journals of Congress, IV, 129.

² Laws of the United States (Duane Edition), Vol. I, 443.

³ Holmes' Annals of America, Vol. II, 39.

land.¹ On October 29, 1757, another land company, known as Greenbriar Company, was started and obtained the grant for 100,000 acres of land.²

After the treaty of Paris, by which the British Crown became the sole owner of the western territory, several land companies were organized with the view of making settlements back of the original colonies. In 1766 the Walpole Company was proposed. In 1769 the company petitioned for a grant of two and a half millions of the western lands, between 38° and 42° north latitude and east of the Scioto river. On August 14, 1772, the petition was finally granted by the Crown.³ In 1769 the Mississippi Company⁴ was started by some of the prominent Virginians as a rival to the Walpole Company. In North Carolina the Transylvania Company was organized in 1775.⁵

Both before and after the treaty of Paris these land companies petitioned directly to the British Crown for the grant of lands, and not to any colonial government. The Crown assumed the jurisdiction over the western lands, and the provincial governors had the power to issue land warrants to such persons only as were awarded lands by the Crown for services in the French and Indian war.

REVOLUTION AND THE LAND CONTROVERSY.

When the Revolutionary War broke out and the Articles of the Confederation were submitted for ratification to the Legislatures of the States, the question of the western lands became a momentous problem in the politics of the Confederacy. Virginia, Massachusetts, Connecticut, New York, the Carolinas, and Georgia treated the royal proclamation of 1763 as a nullity, and claimed an extension of their western boundary lines under their old charters; while the rest of the members of the Union protested against the claims of the

¹ Perkins' *Western Annals*, 50.

² *Ibid.*

³ Perkins' *Western Annals*, 106.

⁴ *Ibid.* 108.

⁵ *Ibid.* 135.

larger "land States" on the ground that the United States should become a successor to the Crown in title to and jurisdiction over the western lands, the possession of which had been secured through the united forces of the whole Confederacy. Let us briefly treat of this controversy and see how it was settled.

CONSTITUTION OF VIRGINIA AND PROTEST OF MARYLAND.

In June, 1776, Virginia declared in her constitution that "The western and northern extent of Virginia shall in all other respects stand as fixed by the charter of King James the First, in the year one thousand six hundred and nine, and by the public treaty of peace between the courts of Great Britain and France in the year one thousand seven hundred and sixty-three, unless by an act of legislature one or more territories shall hereafter be laid off and governments established west of the Alleghany mountains."¹ This declaration was not well received by the Maryland Convention which met at Annapolis on August 14, 1776, to form a Constitution and Bill of Rights. On October 30, 1776, the Maryland Convention passed the following resolution :

*"Resolved, unanimously, That it is the opinion of this Convention that the very extensive claim of the State of Virginia to the back lands hath no foundation in justice, and that if the same or any like claim is admitted, the freedom of the smaller States and the liberties of America may be thereby greatly endangered; this Convention being firmly persuaded that if the dominion over these lands should be established by the blood and treasure of the United States, such lands ought to be considered as a common stock, to be parcelled out at proper times into convenient, free and independent governments."*² This resolution was afterwards laid before Congress by the delegates of Maryland.

¹ Hening's Statutes, Vol. IX, 118.

² Conventions of Maryland, 293.

During the whole controversy over the western lands, Virginia was the strongest claimant, while Maryland was the stoutest opponent. The controversy was virtually Maryland *vs.* Virginia, and the contest fairly began in the position assumed by the Maryland Convention in regard to the Constitution of the Old Dominion.

RESOLUTION OF CONGRESS AND MARYLAND'S OPPOSITION.

The Virginia Constitution was not the only cause that prompted the action of Maryland at the dawn of the Revolution. The resolution of Congress, passed September 16, 1776, must have greatly influenced Maryland in passing her resolution of October 30, 1776.

This resolution of Congress promised both commissioned and non-commissioned officers, who would enlist and serve in the cause of the Revolution, certain bounty lands; to the former, according to rank, from 150 to 500 acres, and to the latter 100 acres, together with a bounty of \$20.¹ This policy was by no means agreeable to Maryland. On October 9, 1776, the Maryland Convention resolved "That this State ought not to comply with the proposed terms of granting lands to the officers and soldiers, because there are no lands belonging solely and exclusively to this State; the purchase of lands might eventually involve this State in an expense exceeding its abilities, and an engagement by this State to defray the expense of purchasing land according to its number of souls would be unequal and unjust."²

Although Maryland thus differed from Congress in her opinion about the land bounty, and, moreover, complained of the quota of men to be raised according to the whole number of population, including both whites and blacks, yet she was patriotic enough to comply with the wishes of Congress in

¹ Journals of Congress, I, 476.

² Conventions of Maryland, 272.

regard to the raising of soldiers. But she proposed to give a bounty of ten dollars to every non-commissioned officer and soldier in place of the 100 acres of land promised by Congress. The latter protested against the position Maryland was about to assume in the matter of bounty lands, and assured her that it was the intention of Congress to make good the land bounty at the expense of the United States, and not at the expense of any individual State.

On the 9th of November, 1776, the Maryland Convention passed resolutions in which that body expressed the desire to know the locations of land which Congress would specify as bounty land before any enlistment should be made, and argued again that, from the point of reason, justice, and policy, Congress should consider "the back lands" as a common stock, as being purchased by the joint blood and treasure of the Confederacy. The Convention also expressed its fear that, if the western lands were not made a common property of the nation, and the United States should be obliged to purchase these lands from the larger landed States, these States would fix their own price on the lands, and thus pay off their quota of the public debt, and establish extensive colonies with their own soldiers, much to the detriment of the smaller States.¹ These resolutions were laid before Congress, November 13, 1776.

Thus, the resolution of Congress had greatly influenced Maryland in her attitude toward the "Crown Lands." Out of the eighty-eight battalions of soldiers which Congress aimed to raise, Maryland had its quota of eight battalions. Congress pledged the faith of the United States to soldiers for bounty lands, but it had at that time no lands actually belonging to the Confederacy. Should Congress fail to grant lands, Maryland felt responsible to the pledge, so far as her own men were concerned, but she also had no land of her own. If Congress had been obliged to purchase lands from the

¹ Conventions of Maryland, 370-2.

larger landed States, the policy would have resulted in putting a certain portion of Maryland's tax into the treasuries of the landed States, or in reducing their quota of contribution to the common treasury. On the other hand, if Maryland should become responsible for the promise of Congress, in her individual capacity, to the men who should compose eight battalions, she would find herself at the mercy of the larger States in purchasing lands. This would not only directly enrich the treasury of the larger States, but also supply soldier-emigrants to the western lands, both of which economic losses Maryland could not afford. Therefore she proceeded to substitute a bounty of ten dollars for a bounty of 100 acres of land; but Congress remonstrated against this action as "extremely detrimental" to the States, and Maryland had to raise soldiers according to the continental plan of land bounties. She obeyed the order of Congress, and on December 1, 1776, 2,280 men of Maryland enlisted in the army on the good faith of the United States.¹

GROUND OF MARYLAND'S OPPOSITION TO VIRGINIA.

The only proper way left for Maryland to protect her own interest, as well as to make good the Federal promise of land bounty, was to persuade Congress to treat the Western lands as common property of the whole nation, to be disposed of by the Federal Government for the benefit of the United States. It is impossible to say whether or not Maryland, at this early hour of the Revolution, had foreseen, from a purely political standpoint, the necessity of committing the jurisdiction over the Western lands to Congress and of erecting territorial governments under its authority, thus cementing the Union more closely and establishing a fundamental constitution, a "charter of compact," between the original States and Territories. This national idea, however,

¹ Scharf's History of Maryland, 290.

seems not to have been the chief ground of Maryland's opposition to Virginia's land claims. The existing economic situation seems to have led Maryland to assume that position which she so boldly maintained during the whole period of the controversy.

Maryland's opposition to the claim of Virginia was for her indeed a necessity. It was necessary for self-preservation. Her interest required that the Western lands should belong to the United States rather than to Virginia. Should they belong to Virginia, Maryland thought that her freedom would be endangered. She feared that her independence would be placed at the mercy of her powerful neighbor. Maryland's persistent opposition was, therefore, a decidedly prudential and politic measure. Its true nature was defensive, but not offensive. In the defensive measure originated that "pioneer thought"¹ of expanding republican institutions over the Western territory.

On April 18, 1777, the Maryland Legislature instructed their delegates in Congress "to move for a stricter union and confederacy of the thirteen United States."² On October 2, 1777, the Articles of Confederation were taken up and debated till November 15, when they were finally adopted. It was during this debate that a Maryland delegate moved "that the United States in Congress assembled shall have the sole and exclusive right and power to ascertain and fix the Western boundary of such States as claim to the Mississippi or South Sea, and lay out the land beyond the boundary so ascertained into separate and independent States, from time to time, as the numbers and circumstances of the people may require."³ The motion was lost. Not only was it lost, but it resulted in a counter measure; for a provision was added to the Ninth Article of the Confederation that "no State shall be deprived of territory for the benefit of the

¹ H. B. Adams. *Maryland's Influence upon Land Cessions*, 23.

² Scharf's *History of Maryland*, 467.

³ *Journals of Congress*, II, 290.

United States.”¹ Thus, by the Constitution, territories were to be given up to the States that claimed them. It was a discouraging case for Maryland.

Within the two succeeding years all the States except Maryland ratified the Articles, and Maryland knew that she was at odds, but stood her ground unflinchingly. When Maryland laid before Congress her resolutions of October 30, 1776, she was protesting against the aggressive policy of Virginia alone, but now she found herself in a situation of fighting the battle against the whole Confederacy. She was certainly in a worse situation than before.

On May 21, 1779, the delegates from Maryland laid before Congress the famous “Instructions” of December 15, 1778. The document instructed the delegates not to agree to the Confederation unless they had secured an article or articles that should guarantee land-cessions.²

On the same day the Instructions were issued, the Legislature of Maryland adopted a “Declaration,” which was sent, together with the Instructions, to the delegates.³ On January 6, 1779, the Declaration was laid before Congress.⁴ The Declaration was a compendium of various resolutions passed by Maryland since the Western lands became a problem in 1776. These instruments had great influence upon Congress in favor of Maryland’s cause. They were a pivot upon which the question of the land-cession finally turned toward an amicable solution.

VIRGINIA AND HER DISPOSITION OF WESTERN LANDS.

Meanwhile Virginia passed various land laws, and was about to establish a Land Office.⁵ This act of the Virginia

¹ Journals of Congress, II, 304.

² The text of the Instructions can be found in Journals of Congress, III, 281; also in Public Domain, 61-62.

³ Hening’s Statutes, X, 549.

⁴ H. B. Adams. *Maryland’s Influence on Land Cessions*, 27.

⁵ Hening’s Statutes, X, 50-65.

Legislature must have prompted the action of the Maryland delegates in Congress to lay before that body their Instructions, as well as to introduce the resolution of October 30, 1779. The resolution was passed by a vote of eight States to three, and read as follows :

“*Whereas*, The appropriation of vacant lands by the several States during the continuance of the war will, in the opinion of Congress, be attended with great mischiefs. Therefore

“*Resolved*, That it be earnestly recommended to the State of Virginia to reconsider their late Act of Assembly for opening their Land Office ; and that it be recommended to the said State, and all other States similarly circumstanced, to forbear settling or issuing warrants for unappropriated lands, or granting the same during the continuance of the present war.”¹

But the Virginia Land Court was already opened in Kentucky, and had adjusted about 3,000 claims during its short session. The Virginia Land Laws were very elaborate.² They did not recognize the claims of the great land companies, which were then making appeals to Congress for the adjustment of their claims. They encouraged settlement through favorable land grants.

Against the resolution of Congress, which was passed on October 30, 1779, and against the declaration and the instructions of Maryland, Virginia sent her remonstrance.³ In this remonstrance, Virginia protested against jurisdiction and the right of adjudication which Congress had assumed over the Western lands with regard to the claims of the Vandalia and Indiana Companies. It also affirmed that the royal charter was the only rule to determine the boundaries of each State, and that the United States held no territory save through the right of some one individual State in the Union. It further stated that the Articles of the Con-

¹ Journals of Congress, III, 384.

² Perkins' Western Annals, 219.

³ Hening's Statutes, 557-59.

federation reserved to her the right of sovereignty and jurisdiction within her borders, and that she did not entertain any idea of expanding her territory, but of holding her own as defined in the new Constitution. But the remonstrance took a somewhat compromising attitude, and expressed that Virginia would listen to any just and reasonable propositions for removing the *ostensible* causes of delay to the complete ratification of the Confederation, although she should protest against actions of Congress that were unwarranted by the Articles of Confederation and infringed upon the sovereignty of the State.

SETTLEMENT OF THE LAND CONTROVERSY.

Notwithstanding the remonstrance of Virginia, Maryland's influence began to be felt among the members of the Union. On February 19, 1780, the New York Legislature passed an act "to facilitate the completion of the Articles of Confederation and perpetual Union among the United States of America," and authorized the delegates from that State to limit her Western boundaries, and cede the vacant lands to the United States. On March 7, 1780, the above act was laid before Congress by the delegates of New York.¹

On September 6, 1780, Congress took into consideration the report of the committee to which had been referred the Instructions and Declaration of Maryland, the Remonstrance of Virginia, and the Act of New York, and passed the following resolution: "*Resolved*, That copies of the several papers referred to the committee be transmitted, with a copy of the report, to the legislatures of the several States, and that it be earnestly recommended to those States which have claims to the Western country, to pass such laws and give their delegates in Congress such powers as may effectually remove the only obstacle to a final ratification of the

¹ Public Domain, 63.

Articles of Confederation; and that the Legislature of Maryland be earnestly requested to authorize the delegates in Congress to subscribe the said articles.”¹

Mr. Madison wrote to Edmund Pendleton under the date of September 12, 1780, as follows: “Congress have at length entered seriously on a plan for finally ratifying the Confederation. Convinced of the necessity of such a measure, . . . they have recommended, in the most pressing terms, to the States claiming unappropriated back lands, to cede a liberal portion of them for the general benefit. As these exclusive claims formed the only obstacle with Maryland, there is no doubt that a compliance with this recommendation will bring her into the Confederation.”² Maryland, however, did not at once comply with the resolution, but waited for the compliance of the landed States.

On October 10, 1780, Connecticut tendered a cession of her claims, with certain restrictions as to jurisdiction which were rejected by Congress. On the same day, Congress resolved “that the unappropriated lands that may be ceded or relinquished to the United States by any particular State, pursuant to the recommendation of Congress of the sixth day of September last, shall be disposed of for the common benefit of the United States, and be settled and formed into distinct Republican States, which shall become members of the Federal Union and have the same rights of sovereignty, freedom and independence as the other States; that each State which shall be so formed shall contain a suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit. . . . That the said lands shall be granted or settled at such times and under such regulations as shall hereafter be agreed on by the United States in Congress assembled, or any one or more of them.”³

¹ Journals of Congress, III, 516.

² Madison Papers, I, 50.

³ Journals of Congress, III, 535.

These resolutions were a precursor of the Ordinance of 1784. They defined the ultimate object of disposition which Congress should make of territories to be ceded. On January 2, 1781, the Legislature of Virginia passed an act and offered to cede to the Confederation the long-disputed Western lands on certain conditions which were not satisfactory to Congress.¹ The object of the cession was to complete the ratification of the Articles of the Confederation, and, in case any State yet remained without making the ratification, the cession was to be void.

The three important questions in the early constitutional history of the United States are: 1. The proper mode of voting in Congress, whether by States or according to population or wealth, or *ratio of representation*; 2. The rule by which the expenses of the Union should be appropriated among the States, or *finance*; and 3. The distribution of the vacant and unpatented Western lands, or the *public domain*. That the latter became an important constitutional question was mainly through Maryland's persistent efforts.

But as Congress now urgently requested Maryland to ratify the Articles, and New York and Virginia, as well as Connecticut, offered to cede the Western lands, and, furthermore, Maryland's attitude gave some hope to Great Britain that the Confederation might fail through domestic dissensions of the States, Maryland could no longer withhold the ratification, although no one of the proposed cessions was acceptable to her. Consequently, on January 29, 1781, the Maryland Legislature passed an act to empower her delegates in Congress to subscribe and ratify the Articles of the Confederation, which was read in Congress on February 12, 1781, and on March 1, 1781, the delegates of Maryland signed the Articles.

Maryland's ratification seems to have occasioned great rejoicing throughout the States. Mr. Duane wrote to Wash-

¹ Public Domain, 67.

ington to this effect: "Let us devote this day to joy and congratulation, since by the accomplishment of a Federal Union we are become a nation. In a political view, it is of more real importance than a victory over all our enemies."¹ The very day Maryland joined the Confederation the delegates of New York made in Congress a formal offer of her Western lands. It took, however, another year for Congress to determine to accept any of the offers of Western lands, for politics and party feelings, especially with regard to the admission of Vermont, largely entered into the long-vexed question.

On May 1, 1782, a committee to whom the cessions of New York, Virginia, and Connecticut and the petitions of the several land companies had been referred, made a report favorable to the acceptance of the cession offered by New York. Among the reasons assigned by the committee, it was said "that, by Congress accepting this cession, the jurisdiction of the whole Western territory belonging to the Six Nations and their tributaries will be vested in the United States, greatly to the advantage of the Union."² The committee also reported that Congress should recommend Massachusetts and Connecticut to cede their claims without any conditions or restrictions whatsoever. Regarding the cession proposed by Virginia, the committee reported that the conditions annexed to the cession were incompatible with the honor, interests, and peace of the United States, and that Congress should neither accept the cession nor guarantee the tract of country claimed by Virginia.

On October 29, 1782, the delegates of Maryland moved that Congress should accept all the right, title, interest, jurisdiction, and claim of New York as ceded by the agents of that State on March 1, 1781. Virginia and Massachusetts voted in the negative, and the Carolinas were divided,

¹ Bancroft. *Constitutional History of United States*, I, 17.

² *Journals of Congress*, IV, 22.

while Georgia was not represented. All the rest of the Union voted in the affirmative. So the cession of New York was finally accepted by Congress. This was just six years after Maryland issued her first protest against Virginia's land claims. The land question did not then promise to become an important national problem, but now the whole Union beheld the creation of a public domain out of the ceded lands in which common economic interests were permanently to abide.

On September 13, 1783, a committee to whom the cession of Virginia and the report thereon were referred reported that Virginia's claim to the guaranty of its southeastern boundary and to the annulling of the claims of all other titles to the northwestern territory was unreasonable, and that Virginia should waive all these obnoxious conditions, when the cession would be acceptable by Congress.¹ Virginia modified the conditions of her cession, but still claimed all her chartered rights. On October 20, 1783, Virginia empowered her delegates in Congress to make the cession, which was consummated by the deed of transfer signed by Jefferson, Monroe, and others on March 1, 1784.²

Massachusetts and Connecticut soon followed Virginia. The Massachusetts cession took place on April 19, 1785, and that of Connecticut on September 14, 1786. Connecticut, in her deed of cession, reserved a tract of lands lying in the northeastern portion of the State of Ohio known as the "Western Reserve of Connecticut in Ohio," which, together with the "Fire Lands" now lying in the counties of Erie, Huron, and Ottawa, in Ohio, contained about 3,800,000 acres. On May 30, 1800, Connecticut ceded to Congress the entire jurisdiction over her "Western Reserve."

¹ Journals of Congress, IV, 263.

² *Ibid.* 342.

CESSIONS OF THE SOUTHEASTERN TERRITORY.

We have thus far noticed the cessions of the territory northwest of the Ohio River, as they are important not only in the history of the Public Domain, but also in the history of American constitutional development. The subject of land-cessions by the States, however, will not have been completely treated without some notice of the cession of territory southeast of the Ohio. But there is nothing particularly interesting in the cessions made by the three Southern States. The facts can be stated in a few words.

On March 8, 1787, South Carolina offered to Congress to cede her Western claim, and Congress accepted the cession on August 9, 1787. The territory ceded by South Carolina is a narrow strip of land which extends from the northwestern boundary of South Carolina to the Mississippi, and which now forms the extreme northern portion of the States of Georgia, Alabama, and Mississippi. It contains an area of 4,900 square miles.¹

The next Southern State that ceded her territory was North Carolina. Her cession was accepted by Congress on April 2, 1790. The cession constituted the present State of Tennessee. In accepting the cession offered by North Carolina, Congress made a poor bargain. In the deed of cession North Carolina stated certain conditions by which Congress had to satisfy a number of claims before it should make any disposition of the ceded lands. It proved afterward that Congress could hardly make any disposition whatever of the acquired land, for the claims were even in excess of lands whose Indian title had been extinguished by that State. Being thus covered by reservations, the cession made by North Carolina was only nominal, and no public lands were created out of the ceded territory.

The last State that made cession of her Western lands was Georgia. This State made her first movement toward cession

¹ Public Domain, 76.

on February 5, 1788, but her cession was not accepted by Congress. Here, for the first time in the history of the Land Cession, we meet with conflicting claims on the part of the National and of the State Government. The cession as proposed by Georgia in 1788 included the territory lying between 31° and $32^{\circ} 30'$ north latitude. The eastern boundary-line began with the western extremity of Georgia, and the western limit was the Mississippi River, as in the case of other State claims. This territory was in the province of British West Florida, which was ceded by Great Britain to the United States in 1783. Consequently, the United States claimed the right of jurisdiction over this territory.

In the meantime the Legislature of Georgia sold 13,500,000 acres of lands in the Mississippi Territory to certain Yazoo Companies. The lands thus sold were not within the limits of the State of Georgia, but in the territory whose title belonged to the United States according to the treaty of 1783. The Yazoo Companies sold out their claims to the lands, and various new companies were organized under such sales. In February, 1796, the Legislature of Georgia passed an act and annulled the sale of the Yazoo Companies to several land companies for the lands west of the river Chattahoochee. Thus arose the litigation for lands in Georgia.

On April 7, 1798, Congress passed an act authorizing the President to appoint three commissioners to settle the conflicting claims of the United States, and to receive the cession of Georgia. The United States Commissioners and the Commissioners of Georgia came finally to an agreement, and on April 24, 1802, Georgia ceded her entire Western claims. The ceded territory was estimated at 88,578 square miles. The Georgian cession cost the United States in all about \$6,200,000, as it was encumbered with various land claims.

The following table shows the dates and area of cessions by the States :

TABLE I.

States.	Date.	Square Miles.	Acres.
Massachusetts, } Connecticut, } Cessions disputed....	April 19, 1785 Sept. 13, 1786	54,000 40,000	34,560,000 25,600,000
New York—Actual.....	March 1, 1781	315.91	202,187
Virginia—Exclusive of Ky...	March 1, 1784	265,562.00	169,959,680
South Carolina.....	August 9, 1787	4,900.00	3,136,000
North Carolina.....	Feb. 25, 1790	45,000.00	29,184,000
Georgia.....	April 24, 1802	88,578.00	56,689,920
Total Cession.....		404,955.91	259,171,787

Table II. shows where the ceded lands are now located :

TABLE II.

Ceding States.	States.	Areas.
New York.....	Erie, Penn.	351.91
Virginia.....	Ohio.	39,964.00
Virginia, Massachusetts and Connecticut.....	Indiana.	33,809.00
	Illinois.	35,414.00
	Michigan.	56,451.00
	Wisconsin.	53,924.00
	Minnesota.	26,000.00
South Carolina.....	Georgia.	1,500.00
North Carolina.....	Alabama.	1,700.00
	Mississippi.	1,700.00
	Tennessee.	45,600.00
	Alabama.	46,722.00
	Mississippi.	41,856.00
Georgia.....		
Total Area.....		404,955.91

We have now come to the second great acquisition of territory by the United States—viz. :

THE PURCHASE OF LOUISIANA.

We have seen that the public lands were created by cessions from the States, but we must keep in mind that the creation of the public lands was not accompanied by an increase of area in national domain, for the cessions were

within the national domain and of definite extent and character. The transaction was within one household, and the transfer of ownership was from members of the same household to a representative head of all. The purchase of Louisiana was an international transaction. It was a dealing with foreign soil belonging to a foreign sovereign. It was an acquisition that was accompanied by a vast increase of area in national as well as in public domain. The whole acquisition became public lands, out of which eleven commonwealths and six territories have already sprung.¹ The new territory was no less than eleven hundred and eighty thousand square miles, being five times greater than the area of France.

Indeed, the purchase of Louisiana was the most important acquisition the United States has ever made. The possession of a vast empire west of the Mississippi, and the advantages of free, untrammelled river navigation, have made the United States a truly great power in the world. Supposing France or Spain had control of the great central valleys of the Mississippi and Missouri Rivers. In the southeast lies New Orleans, a key to the great water-course to which the United States could not have had access. Far up along the Pacific Coast lie now the Territory of Washington and the State of Oregon, whose land once belonged to the province of Louisiana. A little lower down the coast there is the State of California, with its rich gold-mines and its capacious harbor. Supposing a great Latin empire had arisen in this province of Louisiana. California, with its gold-mines; Nevada and Colorado, with their silver; New Mexico and Texas with their agricultural resources, would not now belong to the United States. The great West, with all its natural wealth and resources, would now be subject to European powers. The territory back of the Alleghanies and east of the Mississippi, which was the first curtailment of French claims, might, in the chances of war and politics, have undergone a retroces-

¹ Public Domain, 105.

sion to France or a total loss to Spain, and the United States have remained pent up, confined along Atlantic borders. The United States, of such a character, would have been entirely different from the United States of to-day. Good policy, prudential measures, and the final purchase of Louisiana, made the United States the master of the best portions of the New World. Let us now briefly review the history of the purchase of Louisiana by the United States.

HISTORY OF SETTLEMENT IN LOUISIANA.

The name Louisiana was originally applied to a vast region of an unknown extent back of the Alleghany Mountains, and along the Mississippi River and its tributaries. Of indefinite and ambiguous character, French Louisiana was much like the English Virginia, and, like the latter, it had to undergo several curtailments, until it assumed a definite historical character.

In 1683, La Salle christened the country in honor of Louis XIV. The French cavalier performed a baptismal duty similar to that discharged by the English courtier, Sir Walter Raleigh, when he christened Virginia in honor of the virgin queen Elizabeth. Both adventurers failed, however, in their colonial enterprise. La Salle met with scarcely a better fate than the luckless Raleigh, for he was shot by one of his own men on a relief expedition to Canada. The task of first organizing Louisiana for economic purposes fell upon *Sieur Antoine Crozat*; and Louis XIV. granted a charter for commercial privileges in Louisiana.¹ The charter was surrendered by Crozat in 1717, and in the same year it was granted to the "Company of the West."²

The French domination in Louisiana lasted till November 3, 1762, when it was ceded to Spain. On February 10, 1763, France and Spain ceded all their possessions in North

¹ Historical Collections of Louisiana, III, 38.

² *Ibid.* 49.

America east of the Mississippi River, except New Orleans¹ and the island on which it stands. The Mississippi River was fixed as an international boundary between the Spanish Louisiana and the English colonies. On October 1, 1800, Spain, by the secret treaty of San Ildefonso, transferred the Province of Louisiana back to France. Spain ceded Louisiana to France in consideration of the Grand Duchy of Tuscany, then granted to the Duke of Parma, the son-in-law of the King of Spain, and dreamed little of the sale of Louisiana by Bonaparte to the United States. The Spanish domination in Louisiana lasted for thirty-eight years. But a third power was to replace both France and Spain in that interesting historical Province of Louisiana.

PECULIARITIES IN THE INSTITUTIONS OF LOUISIANA.

Before proceeding farther in the history of the acquisition of Louisiana by the United States, let us notice some of the peculiarities which that province presented to the world in point of institutions, laws, and population. At the outbreak of the French and Indian war, France possessed the territorial basis of a splendid empire in the new world. Her possessions embraced, on the south, the mouth of the Mississippi, on the north, that of the St. Lawrence. Her territory stretched through the heart of the continent and covered the great central valley of the Mississippi and the Northern Lakes. The peace of Paris in 1763, as we have seen, curtailed this grand possession. A vast Western empire was divided by the Mississippi into English and Spanish dominions.

Although Louisiana was thus successively an imperial province of the French and Spanish monarchies, it is said that feudalism never prevailed there. "Louisiana never knew anything like a right of primogeniture and a privileged

¹ New Orleans was named in honor of Philip, Duke of Orleans, Regent from 1715 to 1723, during the minority of Louis XV.

class. No part of feudality was ever known here, neither in equality in the distribution of estates nor fiefs nor seignories nor mayoralties. The grants of land were all allodial, and under no other condition than that of cultivation and improvement within limited periods; in fact, essentially in fee-simple."¹

Though Louisiana did not inherit feudalism, it inherited French law and custom. They were introduced through the charter granted to Crozat. The charter says that "our edicts, ordinances and customs, and the usages of the mayoralty and shrievalty of Paris shall be observed for laws and customs in the said country of Louisiana."² The matrimonial community of gains, the inalienability of dower, the strict guards by which the property-rights of the wife were secured against the extravagance of spendthrift husbands, were all introduced into Louisiana, and reveal the French inheritance of Roman law. The writ of *habeas corpus* and trial by jury were unknown in the Louisiana of French and Spanish domination. The introduction of the Spanish law in 1769 did not materially change the French laws and customs.

During the thirty-eight years of Spanish rule, Louisiana greatly increased in population. It was "the favored part of Spain." In sixteen years from 1769 the population of Louisiana is said to have doubled,³ but the population represented different nationalities. "Like the rich soil upon our great rivers," says Dr. Billard, "the population may be said to be alluvial, composed of distinctly colored strata, not yet perfectly amalgamated, left by successive waves of emigration. Here we trace the gay, light-hearted, brave chivalry of France; the more impassionate and devoted Spaniard; the untiring industry and perseverance of the German, and the bluff sturdiness of the British race. Here

¹ Historical Collections of Louisiana, I, 15.

² Public Domain, 90.

³ Historical Collections of Louisiana, 15.

were thrown the wreck of Acadie, and the descendants of these unhappy fugitives still exist in various parts of the country. . . . The traces of the Canadian hunter and boatman are not yet entirely erased.”¹

AMERICAN DIPLOMACY IN THE PURCHASE OF LOUISIANA.

In a territory where there were such laws and customs, and such a cosmopolitan population, Napoleon aimed to establish the new *régime* of France in the nineteenth century. This was “viewed with great alarm in the United States.” No sooner was Mr. Jefferson inaugurated than he began to look into the matter of the secret cession of Spain. On March 29, 1801, Mr. King, then the American Minister in London, informed the Government of the cession of Louisiana.² Thereby, Mr. Pinckney, at Madrid, and Mr. Livingstone, at Paris, were instructed with regard to the alleged transfer. On November 20, 1801, Mr. King sent from London a copy of a treaty signed at Madrid, by which the Prince of Parma was established in Tuscany. This was the confirmation of the secret treaty of San Ildefonso, and the secrecy of the transfer of Louisiana became an open and acknowledged fact.

Regarding seriously this transfer of Louisiana to France, Mr. Jefferson, under the date of April 18, 1802, wrote to Mr. Livingstone as follows: “The cession of Louisiana and the Floridas by Spain to France works most sorely on the United States. . . . It completely reverses all the political relations of the United States, and will form a new epoch in our political course. . . . There is on the globe one single spot the possessor of which is our natural and habitual enemy. It is New Orleans, through which the produce of three-eighths of our territory must pass to market, and from

¹ Historical Collections of Louisiana, I, 4.

² American State Papers, II, 509.

its fertility it will ere long yield more than half of our whole produce, and contain more than half of our inhabitants. France, placing herself in that door, assumes to us the attitude of defiance. The day that France takes possession of New Orleans fixes the sentence which is to restrain her for ever within her low-water mark. From that moment we must marry ourselves to the British fleet and nation." Mr. Jefferson further instructed Livingstone to persuade the French Government to part with New Orleans in order that peace and friendship might continue between the two nations.¹ Accordingly, Mr. Livingstone made efforts to convince the French Government that its true interest demanded the selling of French possessions in America,² but, at first, Bonaparte would not listen to this idea.

On October 16, 1802, Don Morales, Spanish intendant of Louisiana, prohibited the further use by the United States of the city of New Orleans as a place of deposit for merchandise, as guaranteed by the treaty of 1795. The twenty-second article of the same treaty stipulated that, in case Spain should withdraw the right of use by the United States of New Orleans, she was to assign another place, on another part of the banks of the Mississippi, in lieu of New Orleans. The Spanish intendant failed to do so, and, throughout the United States, great excitement followed his act.

It seems to have been the policy of Spain that foreign commerce should be excluded from the Mississippi River. In the treaty of 1783, it was agreed between Great Britain and the United States that the navigation of the Mississippi should be free to both nations.³ But Spain was in possession of the territory west of the river, as well as of New Orleans and the island on which it stands. The southern boundary of the United States was fixed at the thirty-first parallel of north latitude. Spain refused to make a treaty with the

¹ Jefferson's Works, IV, 432-34.

² American State Papers, II, 520-25.

³ Laws of U. S. (Duane edition), I, 205.

United States in 1780–82, for Jay demanded the free navigation of the Mississippi.

On October 27, 1795, Pinckney succeeded in concluding a treaty by which the southern boundary of the United States was recognized as 31° north latitude, and the free navigation of the Mississippi and the right of deposit in New Orleans were assured to the United States by Spain. With regard to the place of deposit, however, the United States was at Spain's mercy. New Orleans was guaranteed for three years only, and whether or not the port might be used afterward depended upon the pleasure of the King of Spain. The Spanish intendant closed New Orleans to the citizens of the United States, and their interests were thus imperilled. If France should come into possession of New Orleans, the interests of the United States would be even more endangered.

Mr. Jefferson therefore determined to get hold of New Orleans and the Floridas by peaceful negotiations, in spite of the opposition of the war-party in Congress. On January 10, 1803, Mr. Monroe was appointed as Minister Plenipotentiary and Envoy Extraordinary to France, and \$2,000,000 were appropriated for the purposes of his mission. Joining with the American Ministers at Paris and Madrid, Mr. Monroe had to open negotiations anew for the acquisition of New Orleans and the Floridas.

The acquisition of the province of Louisiana west of the Mississippi was not yet thought of by Mr. Jefferson and his Cabinet. Under the date of January 13, 1803, Mr. Jefferson wrote to Mr. Monroe on his nomination and the policy of the Government regarding the subject of purchasing New Orleans as follows: "The agitation of the public mind on occasion of the late suspension of our right of deposit at New Orleans is extreme. In the Western country it is natural, and grounded on honest motives. In the seaports it proceeds from a desire for war, which increases the mercantile lottery; in the Federalists generally, and especially those of Congress, the

object is to force us into war, if possible, in order to derange our finances, or, if this cannot be done, to attach the Western country to them as their best friends, and thus get again into power. Remonstrances, memorials, etc., are now circulating through the whole of the Western country, and signed by the body of the people. The measures we have been pursuing, being invisible, do not satisfy their minds. Something sensible, therefore, has become necessary; and indeed our object of purchasing New Orleans and the Floridas is a measure liable to assume so many shapes that no instructions could be squared to fit them. It was essential, then, to send a Minister Extraordinary, to be joined with the ordinary one, with discretionary powers. . . . All eyes, all hopes, are now fixed on you; and were you to decline, the chagrin would be universal, and would shake under your feet the high ground on which you stand with the public. Indeed, I know nothing which would produce such a shock. For on the event of this mission depend the future destinies of this republic.”¹ The entire correspondence of Mr. Jefferson shows that he regarded the acquisition of Louisiana as necessary to the United States in order to preserve peace at home and friendship abroad. His pacific policy finally proved of great benefit to the Union.

Just before the arrival of Mr. Monroe, M. Talleyrand requested Mr. Livingstone to make an offer for the whole Province of Louisiana. Mr. Livingstone intimated that 20,000,000 francs would be a fair price, but that sum was considered too little by the French Minister. It was not the intention of the United States to purchase entire Louisiana, and Mr. Livingstone had really no authority to negotiate for it. The instructions to Mr. Livingstone and Mr. Monroe on March 2, 1803, gave a plan which expressly left to France “all her territory on the west side of the Mississippi.”² France, however, wanted to dispose of the whole Province of

¹ Jefferson's Works, IV, 454.

² American State Papers, II, 540-44.

Louisiana. On April 12, 1803, Mr. Monroe arrived in Paris. The next day M. Barbé Marbois, the Minister of the Treasury, opened the negotiation with the two American Ministers, who offered him, on behalf of the United States, 50,000,000 francs. This sum was refused, for Napoleon wanted 125,000,000 francs. In this negotiation the American Ministers were acting beyond their instructions.

There were rumors of England's intention to capture Louisiana. Quick negotiation was therefore needed. Napoleon had previously intended to send the French fleet at San Domingo to Louisiana, in order to take possession of it. Should the negotiation fail, he might renew his object. Besides, the treaty of San Ildefonso had a restrictive clause touching the alienation of Louisiana, and should Spain learn of the intention of Bonaparte she might interfere with the negotiation, and the plan of Mr. Jefferson might consequently fail.

Fear of English capture and of Spanish interference, on the one hand, and, on the other, the proposition of the French Government, which was beyond ministerial instructions, were pressing considerations with Messrs. Livingstone and Monroe. Their political good sense must decide what course to pursue for the benefit of the United States. They finally accepted the proposition of M. Marbois to take the whole Province of Louisiana for 80,000,000 francs, one-fourth of which sum was assigned to the payment of the claims of American citizens against the French Government, in case they should amount to that figure. The cession was made April 30, 1803, with three separate provisions: First, a treaty of cession; second, a convention as to the payment of purchase-money; and third, a convention as to the settlement of the American claims against the French Government.¹ On October 19, 1803, the Senate ratified the treaty, and ratifications were exchanged at Washington two days later. On October 23, 1803, the President was authorized

¹ See Public Domain, 96-99, for these treaties.

to take possession of the ceded territory, which was not yet in the hands of the French. On November 30, 1803, however, Pierre Clement Laussat, the French Commissioner, received the Province of Louisiana from El Marquez de Casa Calvo, the Spanish Commissioner, and after an occupation of twenty days, France, on December 20, 1803, ceded Louisiana to the United States.

UNCONSTITUTIONALITY OF THE LOUISIANA PURCHASE.

Mr. Jefferson freely admitted that his act was unauthorized by the Constitution. In a letter to Breckenridge under the date of August 12, 1803, he says: "This treaty [referring to the treaty of cession] must, of course, be laid before both Houses, because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying and paying for it, so as to secure a good which would otherwise probably be never again in their power. But I suppose they must then appeal to *the nation* for an additional article to the Constitution, approving and confirming an act which the nation had not previously authorized. The Constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union. The Executive, in seizing the fugitive occurrences which so much advance the good of their country, had done an act beyond the Constitution. The Legislature, in casting behind them metaphysical subtleties, and risking themselves like faithful servants, must ratify and pay for it, and throw themselves on their country for doing for them unauthorized what we know they would have done for themselves had they been in a situation to do it."¹ Indeed, the entire party connected with the purchase had done a thing unauthorized. The Ministers abroad went far beyond their instructions. The President, knowing the

¹ Jefferson's Works, IV, 500-501.

unconstitutionality of the purchase, deliberately made it for the good of the country and with faith in the nation. Congress took the part of a "guardian" and invested the people's money in Louisiana, but with no constitutional authority. The result justified the act, and the nation acquiesced and rejoiced in the acquisition of the new territory.

SPANISH PROTEST AGAINST THE CESSION OF LOUISIANA.

It was Spain that fared worst in the transaction between France and the United States. The day on which Spain secretly transferred Louisiana back to France determined the destiny of the Spanish colonies in North America. She was bound to lose them, either by cession or by revolution. Spain protested against the cession of Louisiana to the United States, but the protest availed nothing. Mr. Jefferson wrote to Mr. Livingstone, under the date of November 4, 1803, that "Spain had entered with us a protestation against our ratification of the treaty, grounded, first, on the assertion that the First Consul had not executed the conditions of the treaties of cession; and, secondly, that he had broken a solemn promise not to alienate the country to any nation. We answered that these were private questions between France and Spain which they must settle together; that we derived our title from the First Consul, and did not doubt his guarantee of it."¹ There appear to have been some rumors that Spain would not deliver the whole Province of Louisiana to France, and Mr. Pinckney, the American Minister at Madrid, made inquiry of the Spanish Government, which assured him that the King had given no order whatever for opposing the delivery of Louisiana to the French, and that he had thought proper to renounce his protest against the alienation of Louisiana by France, notwithstanding the solid grounds upon which that protest was founded; affording in this way a new proof of his benevolence and friendship for the United States.²

¹ Jefferson's Works, IV, 511.

² Public Domain, 104.

Spain thus renounced her claim to Louisiana, but the boundary-lines between Louisiana and the Spanish Floridas were not fixed till 1819. Spain claimed that the portion of territory lying below 31° north latitude, and between the Iberville and Perdido Rivers, was within the limits of West Florida. The United States claimed that this territory was within the ancient boundary of Louisiana, and was therefore a part of the cession by Spain to France by the treaty of San Ildefonso, which part, by virtue of the treaty of 1803, should now come under the jurisdiction of the United States. This controversy, known as "Perdido Claim," was settled by the cession of Florida to the United States by Spain in 1819, although the former disregarded the Spanish claim, and actually took possession of the territory before that date.

The following table shows the cost and area of the Louisiana Purchase, as well as its subsequent division into the States and Territories.

TABLE III.¹

THE LOUISIANA PURCHASE.

Principal.....	\$15,000,000.00
Interest to redemption.....	8,529,353.00
	\$23,529,353.00
The French Spoliation Claims paid by the United States...	3,738,268.98
	\$27,267,621.98
	Area in Square Miles.
Alabama : between the Perdido and State of Mississippi.....	2,300
Mississippi : between Alabama and Louisiana, below 31° N.....	3,600
Louisiana.....	41,346
Arkansas	52,202
Missouri.....	65,370
Kansas : all but southwest corner.....	73,542
Iowa	55,045
	Amount carried forward
	293,405

¹ Public Domain, 105.

Amount brought forward.....	293,405
Minnesota : west of the Mississippi River... ..	57,531
Nebraska	75,995
Colorado: east of the Rocky Mountains and north of the Arkansas River.....	57,000
Oregon	95,274
Dakota	150,932
Montana.....	143,776
Idaho.....	86,294
Washington	69,994
Wyoming: all but the zone in the middle, south and south- west part.....	83,563
Indian Territory... ..	68,991
Total area of Louisiana Purchase.....	1,182,755

PURCHASE OF THE FLORIDAS.

As we have already seen, when Mr. Jefferson opened the negotiation through his Ministers with Bonaparte for the purchase of Louisiana, it was not the Province of Louisiana, but rather New Orleans and the Floridas, that he intended to purchase. The fact that Spain did not cede the Floridas was only later known to the United States. Therefore, the offer by Bonaparte of the entire Province of Louisiana was beyond the expectation of Mr. Jefferson.

The correspondence of Mr. Jefferson clearly shows that his original idea was to secure New Orleans and the Floridas, and thus to have for the United States a well-rounded national domain east of the Mississippi. Therefore, Mr. Jefferson must have begun the negotiation with the idea that the territory of West Florida extended as far east as the Mississippi, with 31° north latitude for its northern boundary, as settled in the treaty with Spain of 1795. If it were understood, on the contrary, that West Florida extended only to the Perdido River, then Mr. Jefferson should have given instructions to his Ministers to negotiate the purchase of both Floridas, of New Orleans, and that part of Louisiana east of the Mississippi and lying between the rivers Perdido and Mississippi. But, instead of this, as the instructions

were for the purchase of New Orleans and the Floridas, Mr. Jefferson must have taken it for granted that West Florida extended to the Mississippi, as Spain afterward claimed.

GROUNDS OF AMERICAN AND SPANISH DISPUTES.

From the above facts, there seem to be good reasons for the claim of Spain to the tract of territory west of the Perdido River. In the first place, France ceded to Great Britain, in 1763, the territory east of the Mississippi, as well as Canada, and confirmed to Spain the cession of the previous year—namely, the Province of Louisiana west of the Mississippi, with New Orleans and its island. By the same treaty Spain ceded to Great Britain the Province of Florida. Out of these cessions by France and Spain, Great Britain organized, among others, the two provinces of East and West Florida in the southern portion of her newly-acquired territory.

By the treaty of 1783 the southern boundary of the United States was recognized by England as 31° north latitude. But Spain, taking advantage of the American Revolution, wrested from England the provinces of the Floridas. She claimed the British Province of West Florida, whose northern boundary-line ran from the confluence of the Yazoo with the Mississippi on the west to the Appalachicola River on the east, as fixed by the Royal Order to Governor Elliot of May 15, 1767.¹ But, as we have already seen, Spain waived this claim by the treaty of 1795, and recognized the southern boundary of the United States as set forth in the definitive treaty of 1783. This treaty of 1795 settled the boundary dispute of the two nations, and Spain was once more the ruler of the Floridas and the vast empire of Louisiana.

But the secret cession to France by Spain of Louisiana in

¹ Laws of the United States (Duane edition), I, 451.

1800, and its purchase from France by the United States in 1803, again brought forth a fresh dispute between the United States and Spain as to the boundary-line between Louisiana and West Florida. Spain claimed the boundary-line as ceded by Great Britain in 1783, to which country France ceded her possessions east of the Mississippi in 1763. The United States claimed the ancient boundary of Louisiana as France had possessed it previous to 1763. Spain argued that France did not cede to her the territory east of the Mississippi in 1763, and that she did not cede back to France in 1800 what France did not cede to her in 1763. All the disputes arose from obscurity in the treaty of 1803 between the United States and France regarding the boundaries of Louisiana. Not only as to the eastern, but also as to the western boundary-line, the United States had a dispute with Spain, to which we shall later refer.

SITUATION OF SPANISH COLONIES AFTER THE LOUISIANA PURCHASE.

By the purchase of Louisiana by the United States, the Spanish colony in Mexico was separated from that in Florida by a growing nation whose interests in the development and settlement of the western country were stronger and more rational than those of an ambitious and capricious nation like the French. Spain was destined to lose both of the colonies. Mr. Jefferson saw that the United States would ultimately succeed in the acquisition of the Floridas, and was fully convinced of the vast importance of the Mississippi navigation. In a private letter to Breckenridge under the date of August 12, 1803, he wrote as follows: "Objections are raising to the eastward against the vast extent of our boundaries, and propositions are made to exchange Louisiana or a part of it for the Floridas. But, as I have said, we shall get the Floridas without, and I would not give one inch of the waters of the Mississippi to any nation, because I

see in a light very important to our peace the exclusive right to its navigation and the admission of no nation into it."¹ With regard to the boundaries of Louisiana, Mr. Jefferson wrote in the same letter the following: "We have some claims to extend on the seacoast westwardly to the Rio Norte or Bravo, and, better, to go eastwardly to the Rio Perdido, between Mobile and Pensacola, the ancient boundary of Louisiana."

The Perdido claim, however, was not pushed by the United States, but efforts were made to purchase the Floridas from Spain by Armstrong and Bowdoin, Monroe and Pinckney, under instructions from President Jefferson. All negotiations failed. In 1810 a revolutionary party in West Florida declared independence of Spanish rule and formed a State. The independents elected one Rhea for President, and asked of the United States admission to the Union. They further asked for a loan of money, and that the United States would recognize vacant lands in West Florida as the common property of the new commonwealth.² President Madison did not grant the requests of the revolutionary party, but issued a proclamation to take possession of the territory east of the Mississippi under the treaty of 1803. Governor Claiborne, of Orleans Territory, was sent there to take possession.

The revolutionists from Fort Stoddart attacked Mobile, which was then held by the Spanish authority, but were repulsed. Another attack was, however, threatened, and, alarmed at the condition of affairs, Tolch, the Spanish Governor, wrote a letter to the American authorities, and intimated that he would transfer the territory to the United States unless he were soon reinforced from Havana or Vera Cruz.

On April 14, 1812, the territory lying between the Pearl and Mississippi Rivers was annexed to Louisiana, and the

¹ Jefferson's Works, IV, 499.

² Hildreth. History of United States, VI, 223.

remaining portion, as far east as the Perdido River, was incorporated, May 14, 1812, with the Mississippi Territory.

In the meantime a fresh trouble arose in East Florida. By a secret act of Congress, General Mathews, of Georgia, was commissioned to East Florida to receive the province, if the Spanish authority would transfer it by an amicable settlement, or to take possession of the province by force if any foreign power should attempt to seize it. Mathews co-operated with the insurgents and defied the Spanish authorities.¹ Congress disapproved his act, and replaced him by appointing Governor Mitchell, of Georgia. Mitchell pursued the same policy as General Mathews, and did not withdraw the American troops from Florida. The Legislature of Georgia passed an act November 20, 1812, that a State force should be raised to reduce St. Augustine and punish the Indians.² They resolved that the occupation of East Florida was essential to the safety of the State, whether Congress should approve their act or not.

Thus Georgia apparently came in conflict with the National Government, but its legislative measure must have coincided with the policy of the administration, which was compelled by the existing state of affairs to resort to military operations, both against the hostile Indians and the British forces now in Spanish territory. On July 14, 1814, General Jackson was ordered to take possession of Pensacola, but before the order reached him a British naval force reached Pensacola and lent aid to the hostile Creeks. Jackson succeeded in driving out the British, and delivered over the town to the Spanish authorities.

In 1816 Don Orris, the Spanish Ambassador, who was recognized as such the previous year, protested against the occupation of West Florida by the United States, and insisted upon non-intercourse between the United States and Mexico,

¹ Hildreth. *History of the United States*, VI, 311.

² *Ibid.* 375.

for the latter was now in revolt against Spain.¹ Mr. Monroe, then Secretary of State, suggested the transfer of the Floridas to the United States in exchange for a part of Louisiana lying near Texas, but nothing resulted from this communication.

In the following year Mr. Monroe became President, and proposed the cession of the Floridas by Spain in lieu of the claims of American citizens against that country, and a diplomatic correspondence upon this question ensued between John Quincy Adams and Don Orris. During the same year the Seminole Indians harbored Creek refugees and were a source of trouble to the Georgia settlers. General Jackson was ordered to conduct a campaign against the Seminoles, and was instructed to pursue them into Florida, if necessary. In April, 1818, Jackson took possession of the Spanish fort at St. Mark's in Florida, and in the following month he entered the town of Pensacola. The Spanish Governor held the fort at the Barrancas, which capitulated three days later. On June 17, 1818, Don Orris protested against the action of General Jackson, but Adams replied that it was justifiable on the principle of self-defence, and because of the non-fulfilment of the treaty obligation of Spain to restrain the Indians within her territory.

FORMAL NEGOTIATIONS FOR FLORIDA.

Jackson's military operations in Florida caused hot discussions in Congress, but, while the matter was pending, the ratification of the convention of 1802 between the United States and Spain arrived at Washington. This was a convention for adjusting the mutual claims of each government. According to instructions received from the Spanish Government in connection with the ratification, Don Orris opened negotiations for the cession of the Floridas. There was some disagreement at first with regard to the western

¹ Public Domain, 110.

boundary of Louisiana, but at last a compromise was effected, and on February 22, 1819, a treaty of cession was signed by Adams and Orris.

Mr. Benton, regretting that the western boundary of Louisiana was not extended as far westward into Texas as it ought to be, and remarking the political considerations that entered into the question, said that "the repugnance in the Northeast was not merely to territorial aggrandizement in the Southwest, but to consequent extension of slavery in that quarter; and to allay that repugnance and to prevent the slavery-extension question from becoming a test in the Presidential election was the true reason for giving away Texas, and the true solution of the enigma involved in the strange refusal to accept as much as Spain offered."¹

The acquisition of the Floridas and the settlement of the Louisiana boundary seem, however, to have met with popular approval, for Mr. Benton himself declared that he stood "solitary and alone" in this question, and was mortified at finding that not a paper in the United States supported his opposition.

The Orris-Adams Treaty was unanimously ratified by the United States Senate, but Spain hesitated to ratify it, and suffered the time for ratification to elapse. After much correspondence, Spain finally agreed to the treaty, October 29, 1820, and in the following year she surrendered the disputed territory to the United States.

The third and fourth articles in the treaty that related to the western boundary of Louisiana remained a dead letter for many years, because of the war between Mexico and Spain. But when Mexico became independent, the United States entered into treaty with the new Republic, and obtained the confirmation of the articles established by the treaty of 1819.

The Florida purchase cost the United States \$6,489,768.

¹ Benton. *Thirty Years in the U. S. Senate*, I, 16.

It added to the national and public domain 59,268 square miles.¹

TEXAS ANNEXATION AND TEXAS CESSION.²

The annexation of the Republic of Texas in 1845 added to the national domain 376,123 square miles, or 240,718,720 acres, but nothing whatever to the public domain until after the Mexican War. Texas was originally claimed both by Spain and France. Spain claimed it before 1763. France never ceded to Texas the claim based upon discovery by La Salle in 1682, and upon actual colonization in 1685, at Matagorda Bay.³ By the purchase of Louisiana in 1803, the United States acquired the French claim to Texas. In a letter to James Monroe, under the date of February 4, 1816, Mr. Jefferson wrote as follows: "On our acquisition of that country [meaning Louisiana] there was found in possession of the family of the late Governor Messier a most valuable and original MS. history of the settlement of Louisiana by the French, written by Bernard de la Harpe, a principal agent through the whole of it. It commences with the first permanent settlement of 1699 (that by De la Salle in 1684 having been broken up) and continues to 1723, and shows clearly the continual claim of France to the Province of Texas as far as the Rio Bravo (Rio Grande), and to all the waters running to the Mississippi, and how by the roguery of St. Denis, an agent of Crozat, the merchant to whom the colony was granted for ten years, the settlements of the Spaniards at Nacadoches, Adais, Assinays and Natchitoches, were fraudulently invited and connived at."⁴ Thus the author of the treaty of 1803 firmly believed that Texas, as far as the Rio Grande, was included in the Province of

¹ Public Domain, 120.

² Von Holst. *Constitutional History of the United States, 1828-1846*, Chapter VII, and also *ibid.* 1846-1850, Chapter III.

³ Public Domain, 120.

⁴ Jefferson's Works, VI, 551.

Louisiana, and consequently came into the possession of the United States through its purchase. But by the purchase of Florida from Spain in 1819, the United States agreed to accept for its western boundary the present eastern boundary of the State of Texas, which was then acknowledged as a province under Spanish rule. This treaty of 1819 was regarded by some as "the cession of Texas,"¹ as well as the purchase of the Floridas. But it was "a temporary measure," and Texas was destined to become a member of the Union.

TEXAS AFTER THE MEXICAN INDEPENDENCE.

On February 24, 1821, Mexico, by the treaty of Cordova, obtained its independence; Texas and Coahuila became one of the States of the Mexican Republic. Meanwhile the tide of immigration began to roll into the United States. The number of immigrants increased rapidly after 1825. They preferred to settle on free soil, and went to the Northwest. The Southerners began then to cross the border of Mexico and to settle in Texas. They were slaveholders and land speculators. In order to counteract the influence of the non-slaveholding States, the Southerners found themselves compelled to extend slave territory. The plains of Texas were good soil for the propagation of servile institutions. The Sabine River was but a nominal international boundary, for though Texas was under a new Mexican Government, it was dominated by the Anglo-Americans from the Southeastern States. These Texas settlers obtained large grants of land from the Mexican Government, under the pretence of being Roman Catholics.

From 1827 to 1829 attempts were made on the part of the United States to purchase Texas from the Republic of Mexico. In 1827 Mr. Clay, then Secretary of State in President Adams' cabinet, offered \$1,000,000 for the cession of Texas,

¹ Benton. *Thirty Years in the United States Senate*, 15.

but the offer was not formally tendered to the Mexican Government by the United States Minister, Mr. Poinsett. In 1829 Mr. Van Buren, Secretary of State under General Jackson, offered \$5,000,000 for Texas, but Mexico refused the offer. She misapprehended the situation. It was fore-ordained that revolution was to sever Texas from the new Mexican Union. It was impossible to keep free, liberty-loving, adventurous Anglo-American settlers in Texas under a Latin, Roman Catholic domination in Mexico.

The colonization laws of Texas granted a league of land, equivalent to 4,604 acres, to each settler who was the head of a family. She also granted one-third of a league, or 1,476 acres, to each single man.¹ This liberal land policy induced adventurers from neighboring States to settle in Texas and to identify themselves with her people. In 1830 the Mexican Government issued orders forbidding any further emigration from the United States; but in 1833 the population of Texas had grown so large that she was able to call a convention, and to constitute herself a Mexican State independent of Coahuila.

The separation of Texas from Coahuila was but the first step toward complete independence of Spanish-Mexican rule. Antipathy of race and land speculations worked together and carried Texas into a revolutionary war. On November 1, 1835, a "general consultation" of all Texas was held at San Felipe de Austin. War already existed between Mexico and Texas. Hostilities opened on September 20, 1835, on the western bank of the Guadalupe River. On November 11 the "consultation" adopted the plan of a provisional government, and on the following day it elected Henry Smith Governor.

On March 1, 1836, a convention assembled at the town of Washington, on the Brazos River. In this the darkest period of their history, the Texans made a declaration of

¹ W. M. Gouge. *Fiscal History of Texas*, 22.

independence, adopted a constitution, and established a government, to act till the constitution could be brought into full operation.¹ David G. Burnett was made President. On April 21 the battle of San Jacinto was fought. General Houston, the Texan commander, with a force of seven hundred men, met Santa Anna, the Mexican President, who commanded five thousand troops, fresh from work of devastation in the region beyond the Rio Grande. But Santa Anna was defeated and made a prisoner of war. He acknowledged the independence of Texas and obtained release.

On October 3, 1836, the first Congress of Texas met at the town of Columbia, and, on the 22d, General Houston, the hero of San Jacinto, was formally installed as President of the new Republic. In March of the following year the United States acknowledged the independence of Texas. This diplomatic course was followed by England and other European powers.

FINAL ANNEXATION OF TEXAS.

In August, 1837, Texas made an application to the United States for admission into the Union, but was refused. Meanwhile Texas had sold off her public lands, the chief source of her revenue. Land speculators and Southern politicians became now the advocates of the Texas annexation. In 1843 the question evolved into a national issue. In 1844 Mr. Polk was selected as the Democratic candidate for President upon the platform of annexing Texas. In April of the same year Calhoun, then Secretary of State in President Tyler's Cabinet, concluded an annexation treaty with Texas, but it was rejected in the Senate by a vote of 35 to 16. The Southern States of the Union favored annexation, but the North opposed it. It was an issue between slavery and free soil. Annexation was spoken of by Southern politicians as

¹ W. M. Gouge. *Fiscal History of Texas*, 49.

“re-annexation,” for they regarded Texas as having been ceded to Spain by the treaty of 1819. Opponents to annexation regarded it as a virtual declaration of war against Mexico, for, by admitting Texas into the Union, a large tract of disputed territory would be incorporated into the United States, and, moreover, Mexico did not consider the recognition of Texan independence by Santa Anna as binding upon her.

The questions involved in the annexation of Texas may be briefly summarized as follows:¹

1. The constitutional power of the Federal Government to admit independent foreign States into the American Union.

2. The effect of such annexation, if constitutional, in relations between the United States, Mexico, and other foreign powers.

3. The effect of the annexation as an extension of the territory of the United States and upon their commercial interests.

4. The effect of the annexation upon slavery.

5. The effect of the annexation upon the Union.

It is impossible here to discuss in detail any of these points. Suffice it to say that the Texas annexation was one of the most significant events in the history of the territorial expansion of the United States.

The Congress of the United States passed, March 1, 1845, a joint resolution for the annexation of the Republic of Texas. On July 4, 1845, Texas assented to annexation. Section 2, Article II, of the resolution provided that Texas “shall retain all the vacant and unappropriated lands lying within its limits to be applied to the payments of the debts and liabilities of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as

¹ Cf. a pamphlet entitled “Thoughts on the Proposed Annexation of Texas,” by “T. S.” First published in the *New York Evening Post*, under the signature of “Veto.” New York, 1844.

said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States."¹ This was the most important clause. Thereby Texas retained all her public land, and guaranteed the United States against all claims on account of her State debts. But it was soon found necessary for the United States to assume certain Texan obligations, and to purchase from her a disputed territory.

FINANCIAL CONDITION OF TEXAS.

When Texas revolted against Mexico her finances were in a most deplorable condition. We can better illustrate the general fact by quoting a report of the General Council which assembled November 3, 1835, at San Felipe de Austin. It says: "We authorized a contract for a loan of one hundred thousand dollars of the citizens of New Orleans, and appointed T. F. McKinney an agent to repair to New Orleans, and to carry it into effect. Our finances arising from the receipt of dues for lands, as will appear on file in Mr. Gail Borden's report, marked F, which were in his hands, are fifty-eight dollars and thirty cents. This money has been exhausted, and an advance by the President of the Council of thirty-six dollars. There were also several hundred dollars in the hands of Mr. Money, the alcalde of the municipality of Austin. Upon this money several advances have been made by Mr. Cochran, and probably will nearly cover the amount of money in the alcalde's hands; as such, you may consider that at this moment the Council is out of funds."²

Thus the revolutionists in Texas undertook war with an empty chest. All they had was land. They pledged public lands and public revenue in payment for loans. In the annexation treaty, therefore, public lands were retained by Texas. But she was deprived of import duties, which were

¹ Public Domain, 122.

² W. M. Gouge. Fiscal History of Texas, 18.

an important source of public revenue. The United States Government was therefore under some obligation to compensate Texas for this loss of economic resources in the discharge of her public debts.

There was, moreover, a boundary question to be settled between the United States and Texas. Texas claimed all the lands east of the Rio Grande which are now in the Territory of New Mexico. The people in New Mexico declared that they were not in the jurisdiction of Texas. During the Mexican War, New Mexico was captured by General Kearney. The United States had therefore the right of conquest over that disputed territory, but Texas had a claim to at least a part of the conquered land.

On September 9, 1850, the "Boundary Act"¹ was passed by Congress. It was an act proposing to Texas: 1. The establishment of her northern and western boundaries; 2. The relinquishment of all territory claimed by her beyond the said boundaries, and of all claims upon the United States; and 3. The organization of New Mexico as a new territory. The territory to be ceded by this act was situated to the north of 30° 30' north latitude, west of the one hundred and third meridian of longitude west from Greenwich, and north of the thirty-second parallel of north latitude, and to extend to the Rio Grande River. In consideration of this cession of territory, and the relinquishment of all claims upon the United States, the act proposed to pay to Texas \$10,000,000 in bonds bearing five per cent. interest and running for fourteen years. This bargain was virtually a sale of public lands by Texas to the United States, in order to redeem old pledges to her creditors. General Houston, who was the Senator from Texas, said that "it was the best sale ever made of land of a worthless quality and a disputable title."²

Texas called a special session of the Legislature, and on

¹ Statutes at Large, Vol. IX, 446.

² Quoted by Gouge. *Fiscal History of Texas*, 180.

November 25, 1850, accepted the proposed Act of Congress. On December 13, 1850, the Act of September 9, 1850, became operative, and the territory came into the jurisdiction of the United States. The cession embraced an area of 96,707 square miles, and the entire cost, including principal and interest, amounted to \$16,000,000.¹

THE MEXICAN CESSIONS.

By the treaty of Guadalupe Hidalgo, February 2, 1848, the United States obtained a most valuable acquisition of territory from Mexico. This was one of the economic results of the Mexican War. We are not here concerned with the military history of that war. Neither can we enter into a discussion of the political questions therein involved. Suffice it to say, the incorporation of Texas was the main cause of the war. In the disputed territory between the Nueces and the Rio Grande Rivers occurred the first hostile collision between the two countries. It was alleged that American blood had been shed on American soil. Therefore, on May 13, 1846, Congress declared that "war existed by the act of Mexico."

POLICY OF THE POLK ADMINISTRATION.

From the beginning, the administration of President Polk did not enter seriously into war with Mexico. It believed that Mexico would be compelled to succumb by very weakness, and that war would soon terminate in a treaty accomplishing the political object of the United States—viz.: a cession of territory. The recall of Santa Anna from exile, his restoration to power in Mexico, and his supposed friendship for the United States, were secret springs relied upon by Polk's administration to secure speedy peace from Mexico. War was declared not for the sake of war, but for advan-

¹ Public Domain, 135.

tageous peace. Santa Anna, who was thought to be a peacemaker, proved to be a war-maker.

On April 15, 1845, Mr. Nicholas P. Trist was appointed by President Polk as Commissioner to Mexico. He was sent to Mexico to negotiate a treaty and to effect a purchase of territory. On November 10 of the same year, Mr. Buchanan, Secretary of State, instructed the United States Minister, Mr. Slidell, to offer the Mexican Government \$5,000,000 for the cession of New Mexico; and for the cession of California, \$25,000,000; and for the Bay and Harbor of San Francisco, \$20,000,000;¹ together with the assumption by the United States of all claims against Mexico. Nothing resulted from this offer. As we have already seen, war was declared in May, 1846. General Taylor took the field. He captured Matamoras and Monterey. The battle at Buena Vista was fought and Santa Anna was compelled to retreat. On March 9, 1847, General Scott reached Vera Cruz. He marched inland and defeated Santa Anna at Cerro Gordo. The city of Mexico was at the mercy of the Americans. The downfall of Santa Anna followed the capture of the Mexican capital, and a new administration under the republican party, which abhorred Santa Anna, was inaugurated in Mexico.

Mr. Trist was still at his post, although recalled a long time before. He negotiated for a treaty with the new administration, and it was concluded at the city of Guadalupe Hidalgo on February 2, 1848. The United States Senate adopted the treaty with some amendments on March 10, 1848, by a vote of 38 to 14. The ratifications of the treaty were exchanged in the following May at the city of Mexico, when the United States paid over \$3,000,000 cash, according to a provision made in the seventh article of the treaty.

Through this treaty New Mexico and Upper California were ceded to the United States, and the lower Rio Grande, from its

¹ Public Domain, 125.

mouth to the town El Paso, was made the boundary of Texas. In consideration of the acquisition made by the United States, it was agreed that she should pay to Mexico \$15,000,000, and assume the claims of American citizens against Mexico to an amount not exceeding three and one-quarter millions of dollars. The area of territory obtained by this treaty was estimated at 522,568 square miles.¹

GADSDEN PURCHASE.

On December 30, 1853, another cession of territory was made by Mexico to the United States. This is known as the "Gadsden Purchase." It was secured in order to define more definitely the boundary between the two republics. The area of territory acquired through this purchase was estimated at 45,535 square miles, and the purchase cost the United States \$10,000,000.²

THE PURCHASE OF ALASKA.

We have now come to the last acquisition of territory by the United States—viz.: the purchase of Alaska. In this purchase there are two noteworthy features of difference from all former territorial acquisitions. They are 1. Isolation of territory; and 2. The mode of the purchase. The territories hitherto acquired formed contiguous parts of the national domain. But this was not the case with Russian America. It is separated from the United States by British America. It forms a territorial outpost in the extreme northwest of the North American Continent, and lies so close to Asia that it looks "as if America were extending a friendly hand." Again, in former acquisitions, negotiations succeeded only after years of labor by such American diplomats as Livingstone and Pinckney and Trist. In the Alaska purchase, the American Minister at St. Petersburg had little to do. Even

¹ Public Domain, 134.

² *Ibid.* 138.

statesmen at home like Mr. Sumner, who was then Chairman of the Committee on Foreign Affairs, knew of it only a few hours previous to the signing of the treaty by Mr. Seward and Baron Stoeckel. The negotiation was concluded very summarily, and in a business-like manner, by the two parties concerned. Mr. Clay, the American Minister to Russia, spoke of this transaction "as a brilliant achievement which adds so vast a territory to our Union, whose ports, whose mines, whose timber, whose furs, whose fisheries, are of untold value, and whose soil will produce many grains, even wheat, and will become hereafter the seat of a hardy white population."¹

Perhaps the acquisition of Alaska has not yet been duly appreciated by the American people, except by residents along the Pacific Coast. It may some day prove good policy for the United States to form a continuous coast-line along the upper Pacific, and to extend their national domain, if not over the entire North American continent, at least to that new and extreme "Northwestern Territory" near the "Frozen Sea."

HISTORY OF THE DISCOVERY OF ALASKA.

Let us briefly review the history of Alaska. Alaska was first discovered by Captain Behring in 1728. Its discovery was due to the enterprising spirit of Peter the Great, who desired to know whether or not Asia and America were one continuous continent. He ordered out an expedition, but died before seeing its results. Behring was sent out by the Empress Catharine, and sighted land as far north as 67° 30'. He fulfilled the primary purpose of his expedition in discovering that the two continents are separated by a narrow body of water, which now bears the name of Behring's Strait. A second expedition was sent out in 1741. On this voyage Behring discovered many of the Aleutian Islands. Thus the Russian title to the peninsula of Alaska was founded as early as 1728 by discovery and exploration. Subsequent expedi-

¹ Seward's Works, V, 25.

tions and settlements under the Russian Government confirmed the title. While France and Spain had to give way to the United States in Eastern America, the aggressive policy of Russia, inaugurated by the great Czar, planted her colonies in Northwestern America, but only to follow the same inevitable course as other colonizing powers in North America.

On the Atlantic side no single European power had made exclusive exploration or settlement of any part of the country. Spain, England, France, Portugal, Holland, and Sweden had each its representative discoverers and explorers. Their claims were often so conflicting that appeal to arms was sometimes necessary to settle disputes. On the Pacific side, also, Russia was not the only nation to send out exploring parties to the Northern Seas. Not to speak of exploration in the sixteenth century by Drake, and of his christening the country "New Albion" between 38° and 42° north, the Northern Pacific coasts were explored in the latter part of the eighteenth century by the Spaniards, the French, the English, and even by the Americans. The Spanish expedition went out in 1775, and it reached the land as far as 58° north. The French expedition sailed in 1786, and reached 36' farther north than the Spanish. La Pérouse, who was at the head of the expedition, remarked of Sitka that "Nature seemed to have created at the extremity of America a port like that of Toulon, but vaster in plan and accommodations."¹ France, after losing her great colonies of Louisiana and Canada, still seemed not to have abandoned the colonial project in North America; but La Pérouse's expedition came to naught.

In 1790, the coast of British Columbia was discovered by Vancouver. Thus the entire Pacific Coast was made known. In the following year, the Oregon coast was explored in detail by the United States captain, Gray. The United States, on the ground of Gray's discovery, raised a claim to the coast as

¹ Sumner's Works, XI, 197.

far north as the Russian discovery, which claim was finally settled as $54^{\circ} 40'$ north, in the treaty of 1824 between Russia and the United States. In the following year, Great Britain made a treaty with Russia and recognized the southern boundary of Russian Alaska as $54^{\circ} 40'$ north; but she claimed the territory south of that parallel by virtue of Vancouver's discovery in 1790.

Thus the United States and Great Britain came in conflict on the Pacific Coast. The claim of the United States to the Oregon territory was based, first, upon the cession of Louisiana; second, upon the waiving of Spanish claims to it by the treaty of 1819; and third, upon the discovery of the territory by Captain Gray in May, 1791. After much dispute, a treaty was finally concluded between the two nations. It was known as the "Oregon Treaty," and was concluded at Washington in 1846. By this treaty the northern boundary of the United States was fixed as the parallel 49° north latitude, and they waived the claim to the territory between 49° and $54^{\circ} 40'$ north. The territory beyond $54^{\circ} 40'$ north was never disputed, and Russia remained in absolute possession of the same.

NEGOTIATIONS FOR THE PURCHASE OF ALASKA.

In 1859, Mr. Gwin, Senator from California, opened an unofficial correspondence for the cession of Alaska with the Russian Envoy at Washington. The equivalent for the proposed cession Mr. Gwin placed at \$5,000,000. Prince Gortschakoff, when informed of the price, said that it was "an unequitable equivalent," but wanted to think more of the matter. Meanwhile, civil war broke out in the United States, and the subject of the Alaska purchase was dropped.

In 1866, the Legislature of Washington Territory sent a memorial to the President entitled "In Reference to the Cod and Other Fisheries." In this memorial that body argued the necessity of the United States acquiring the Russian territories in North America. In June of the following year,

the charter of the Russian-American Company was to expire, but it was expected by its friends that it would be renewed. This company was organized in 1799, under a charter from the Emperor Paul. It had the power of administration throughout the whole region of Northwestern America. Its charter was renewed from year to year. The company had its headquarters at St. Petersburg, and was very much like the original London Company of England, or the more famous East India Company. Russian America was virtually the property of the Russian-American Company. But this company leased its franchise to the Hudson Bay Company, which had its headquarters at London, and did much business in Russian America, as elsewhere. Renewal of the charter of the Russian-American Company would of course be attended with the renewal of the lease to the Hudson Bay Company. This was regarded by the people on the Pacific Coast as a great disadvantage to the United States. They planned to organize a company to replace the Hudson Bay Company, but found no possible chance of rivalry unless the territory were acquired by the United States.

Mr. Cole, Senator from California, labored at Washington for the acquisition of the territory in the interest of the people on the Pacific Coast. Official negotiations were at last begun. Baron Stoeckel, on leaving St. Petersburg for Washington in February, 1867, received instructions regarding the cession from the Archduke Carlänem, the brother of the Czar. Therefore, on his arrival in Washington in March, the Russian Envoy entered into the formal negotiation with Secretary of State Seward. Seven million and two hundred thousand dollars were offered for the territory. On March 29, Baron Stoeckel received instructions by cable from his Government, and at 4 o'clock the following day the treaty was signed by the Baron and Mr. Seward. Very little correspondence took place between the two parties, and very little time was occupied in effecting the cession.

SUMNER ON THE PURCHASE OF ALASKA.

On April 9, 1867, Senator Sumner made a masterly speech on "The Cession of Russian America to the United States,"¹ and favored the ratification of the treaty. "The speech," said the *Boston Journal*, "is a monument of comprehensive research, and of skill in the collection and arrangement of facts."² The great orator from Massachusetts, in speaking of the benefits to the Pacific Slope, said, "The advantages have two aspects — one domestic and the other foreign. Not only does the treaty extend the coasting trade of California, Oregon, and Washington Territory, but it also extends the base of commerce with China and Japan."³ Sumner furthermore said: "To unite the East of Asia with the West of America is the aspiration of commerce now as when the English navigator recorded his voyage." As to the extension of dominion which this treaty would secure to the United States, he uttered very significant, statesmanlike words. He said, "With increased size on the map, there is increased consciousness of strength, and the heart of the citizen throbs anew as he traces the extending line."⁴

Again, he considered the acquisition of Alaska not only an extension of dominion, but also an extension of republican institutions. And here he touched the future. Time alone can verify his predictions. He said, "The present treaty is a visible step in the occupation of the whole North American continent. As such it will be recognized by the world and accepted by the American people. But the treaty involves something more. We dismiss one other monarch from the continent. One by one they have retired — first France, then Spain, then France again, and now Russia; all giving way to the absorbing unity declared in the national motto—*E Pluribus Unum*."⁵

¹ Sumner's Works, XI, 186-349.

² *Ibid.* 184.

³ *Ibid.* 218.

⁴ *Ibid.* 221.

⁵ *Ibid.* 223.

Finally, Mr. Sumner spoke of government, population, climate, vegetable products, minerals, furs, and fisheries in Alaska, and treated his subject so fully that a contemporary French writer well said: "All that is known on Russian America has just been presented in a speech abundant, erudite, eloquent, poetic, pronounced before the Congress of the United States by the great orator Charles Sumner."¹

The Senate ratified the treaty by an almost unanimous vote. Baron Stoeckel, when parting with Mr. Sumner on the night of March 29, 1867, at the house of Mr. Seward, said to the Senator, "You will not fail us?" Mr. Sumner did not fail them. The ratifications were exchanged June 20, 1867, and Alaska came into the possession of the United States. Its area is estimated to be 577,390 square miles, and its cost \$7,200,000. Congress has just passed a law for organizing a territorial government in Alaska. The land laws of the United States will no doubt also extend over Alaska, especially as the recent discovery of gold makes the Territory more valuable than ever.

CONCLUDING REMARKS ON THE PUBLIC DOMAIN.

We have thus sketched the history of the formation of the public domain of the United States. We have seen how it has grown, and what important questions of both national and international character have been involved in its acquisition. The purchase of Alaska completed the formation of the present domain of the great republic. Public domain is only a part of the national domain. Wherever newly-acquired public lands were situated beyond or contiguous to old national boundaries, we find new ones established. The Southeastern, Southern, Western, and Northwestern boundaries of the national domain were determined by a series of treaties with foreign powers for cession and purchase, beginning with the purchase of Louisiana in 1803, and ending with the cession

¹ Sumner's Works, XI, 185.

of Alaska in 1867. The Northern boundary question involved serious negotiations with Great Britain. It required a series of treaties and commissions, and even arbitrations by European monarchs. It required ninety years for its final adjustment.

Let us, in conclusion, summarize and illustrate the growth of the public domain by the following table :

TABLE SHOWING THE GROWTH OF THE PUBLIC DOMAIN.

	Dates.	Square Miles.	Acres.	Cost.	Cost per Acre.
Cession by States.....	Mar. 1, 1781- Apr. 24, 1802	404,955.91	259,171,787
For Georgia only ¹	Apr. 24, 1802	88,578.00	56,689,920	\$ 6,200,000.00	.10 $\frac{1}{10}$
Louisiana Purchase....	Apr. 30, 1803	1,182,752.00	756,961,280	27,267,621.98	.03 $\frac{1}{10}$
East and West Florida	Feb. 22, 1819	59,268.00	37,931,520	6,489,768.00	.17 $\frac{1}{10}$
Guadalupe Hidalgo....	Feb. 2, 1848	522,568.00	334,443,520	15,000,000.00	.04 $\frac{1}{2}$
Texas Purchase.....	Nov. 25, 1850	101,767.00	65,130,880	16,000,000.00	.24 $\frac{7}{12}$
Gadsden Purchase	Dec. 30, 1853	45,535.00	29,142,400	10,000,000.00	.34 $\frac{3}{10}$
Alaska Purchase.....	Mar. 30, 1867	577,390.00	369,529,600	7,200,000.00	.01 $\frac{1}{2}$
Total.....		2,894,235.91	1,852,310,987	\$88,157,389.98	.04 $\frac{3}{4}$

According to this table, the entire public domain embraces the area of 2,894,235.91 square miles. If we deduct from this the area of the State of Tennessee, 45,600 square miles, which formed but a nominal public domain, the actual area of the public domain remains 2,848,635.91 square miles. Again, the purchase-price is \$88,157,389.98. But, actually, public lands cost more than this sum, for we must take into account two important items—viz.: 1. The assumption by the United States of claims of American citizens against foreign powers from whom she purchased territories; and 2. The price paid to the Indians for extinguishing their land titles. These items must be included in the original cost of the public domain. Still, again, if we consider the disposition of public lands from a purely business point of view, we must, of course, add to the original cost-price the expense

¹ Area included in above.

for administration, surveying, etc.; and we must, furthermore, compare expenses with the receipts accruing from the sale of public lands. This method will enable us to realize how much the public lands have cost the nation; what income the Government derives from land sales; and the exact financial status of the land question at a given time. Public lands are no longer held as a source of public revenue: the present spirit of the land laws is to grant to actual settlers lands for house and home, and agricultural improvements. The subject of economy in administering and justice in disposing of the public lands, or the public property of the people, should interest the statesman and the citizen as well as every student of economics. In the following chapters we propose to examine these themes.

II.

ADMINISTRATION OF THE PUBLIC DOMAIN.

The first step toward administration of the public domain was taken by the Continental Congress, October 10, 1780. Congress passed a resolution on that day that territories to be ceded to the United States "shall be disposed of for the common benefit of the United States, and be settled and formed into distinct, republican States, which shall become members of the Federal Union, and have the same rights of sovereignty, freedom and independence as the other States. . . . That the said lands shall be granted or settled at such times and under such regulations as shall hereafter be agreed on by the United States in Congress assembled, or any nine or more of them."¹

This resolution was the corner-stone of the territorial system of the United States. It laid the foundation of all subsequent territorial legislation. It was the fundamental constitution

¹ Journals of Congress, III, 535.

relating to national sovereignty over the public domain. By this resolution, new States were to be erected out of the public lands, and they were to be republican in their political institutions. The United States perpetuated their union by an inseparable territorial bond. The new States were to owe their birth and life to the whole United States, and not to any individual State. They were to be colonies of the nation at large, in whose material interests all the States of the Union were to have a common concern. The Western lands were a means of uniting loosely-confederated States upon a solid basis of national interest.

The resolution had two principal objects in view—viz. : 1. The final formation of Territories into distinct, republican States ; and 2. The disposition of unappropriated lands by the National Government. The ordinance of May 20, 1785, for ascertaining the mode of disposing of lands in the Western Territory, and the celebrated ordinance of July 13, 1787, for the government of the Northwestern Territory, were both developments of the above resolution. The origin of administrative measures adopted by Congress we cannot trace earlier than this resolution of 1780. It was the beginning of American public-land legislation. It was the foundation upon which all subsequent resolutions and ordinances were built.

The resolution of September 6, 1780, is also very important. It was initiative to the land-cessions, but not to the administration of the public domain. Each had a distinct function of its own. That of September 6, 1780, led the way to cessions, but that of October 10, 1780, led to administration.

We have already seen that, as early as October 30, 1776, Maryland protested against the Virginia Constitution, which reasserted ancient charter rights to the Western lands, and urged Congress to consider those lands as a common stock, to be parcelled out at the proper time into convenient, free, and independent governments. The four years' persistent efforts of Maryland, as well as the remonstrances of other smaller

States, finally resulted in the resolution of October 10, 1780, soon followed by various ordinances for the government and disposition of the Western lands. The War for Independence lasted seven years. The dispute over the Northwestern Territory took one year longer for its final settlement. The day the Virginia cession was accepted by Congress marks the day of settlement of the long-protracted controversy. It was a day also on which a committee was appointed to draft a plan for the temporary government of the Western Territory.

For the sake of convenience, we shall divide the administration of the public domain into two heads—viz.: 1. The Ordinance of 1787; and 2. The Organization of the General Land Office. The former provided a civil government of a temporary character under the authority of Congress in the Western Territory, and the latter furnished governmental machinery for the administration and disposition of the public lands.

The territorial government and the General Land Office are two separate civil organs. The former has nothing to do with the public lands situated within the territory of its jurisdiction. According to the land laws, the General Land Office, under a superior functionary, disposes of the public lands and grants patents, but it has no connection with the territorial government.

The entire public domain is therefore under the authority of the General Land Office so far as its settlements and land grants are concerned. The territorial government deals with a body politic, and performs all its necessary functions, legislative, administrative, and judicial, until it ceases to be a territorial government. A republican State with a republican Constitution is then erected under the sanction of Congress, and enjoys a free and independent sovereignty upon an equal footing with the other States. But we are here concerned with the territorial government. To understand this, we must take a brief survey of the history of the Ordinance of 1787.

ORDINANCE OF 1787.

The very same day Virginia ceded her claims to the Northwestern Territory—that is, on March 1, 1784—a committee consisting of Mr. Jefferson, of Virginia, Mr. Chase, of Maryland, and Mr. Howell, of Rhode Island, reported a plan for the temporary government of the Territory.¹ On the 17th of the same month the report was recommitted, and on the 22d a new report was made. The new report was substantially the same as the old, except that the highly-fanciful names previously given to new districts were now stricken out. The report, after some amendment, was finally adopted April 23, by a vote of ten States to one. Two States, Delaware and Georgia, were not then represented. Thus the report of the committee, of which Mr. Jefferson was the chairman, became law. There was one important omission which we shall soon notice. This law for the temporary government of the entire Western Territory, north and south, is known as the Ordinance of 1784. It was a precursor of the Ordinance of 1787, and as such it has an historical interest.

PROVISIONS OF JEFFERSON'S ORDINANCE.

Let us first notice the provisions of the ordinance as submitted by the committee on March 1. The ordinance defined the boundaries of new States. Each State was to comprise two degrees of latitude, beginning at 31° north and extending as far northward as the Lake of the Woods. The territory adjoining the Mississippi was to be bounded by that river on the west, and on the east by the meridian that passes the lowest point of the rapids of the Ohio River. The territory east of this meridian had the same for its western boundary, and for its eastern boundary the meridian of the western cape of the mouth of the Great Kanawha.

This division of the Territory, as was shown by Dr. Adams

¹ Public Domain, 147-149.

in his study on "Maryland's Influence upon Land Cessions to the United States,"¹ seems to have been first suggested by Washington, with whom the Committee on Indian Affairs consulted. The organization and settlement of the Western Territory were inseparably connected with the Indian policy of the United States, for the claims of the natives were not yet extinguished. This had to be done before any definite occupation could take place. Therefore, the report of Mr. Jefferson's committee expressly stated that "the territory ceded or to be ceded by individual States to the United States, *whenever the same shall have been purchased of the Indian inhabitants and offered for sale by the United States, shall be formed into additional States.*" The Indian title of occupancy had to be purchased from the then hostile Indians. As to the best policy to be pursued by Congress, a committee consisting of Mr. Duane, Mr. Peters, Mr. Carroll, Mr. Hawkins, and Mr. Arthur Lee, made a report on October 15, 1783,² after conferring with the commander-in-chief.

Mr. Jefferson's territorial divisions were, therefore, an outcome of the Indian policy as first planned by George Washington. In the latter part of the ordinance, some fanciful names were given to the new States northwest of the Ohio. They were as follows: Sylvania, Michigania, Chersonesus, Assenisipia, Metropotamia, Illinoia, Saratoga, Washington, Polypotamia, and Pelisipia.³

The question might here be asked why Mr. Jefferson and the committee did not name the States to be erected southeast of the Ohio, for the ordinance comprised the entire Western Territory north and south of the Ohio. This can be explained by referring to the report of Mr. Duane's committee already mentioned. The committee recommended to Congress that

¹ See *ibid.* 42. Also Secret Journal of Congress, October 15, 1783, and Journal of Congress of the same date.

² Journals of Congress, IV, 294-296.

³ St. Clair Papers, II, 604; Sparks's Life and Writings of Washington, IX, 48.

“it will be wise and necessary, as soon as circumstances shall permit, to erect a district of the Western Territory into a distinct government,” and that “a committee be appointed to report a plan, consistent with the principles of the Confederation, for connecting with the Union by a temporary government the purchasers and inhabitants of the said district, until their number and circumstances shall entitle them to form a permanent constitution for themselves, and, as citizens of a free, sovereign and independent State, to be admitted to a representation in the Union.”¹ It might safely be inferred that the appointment of Mr. Jefferson’s committee was a direct outcome of the above recommendation, but the committee’s report said at the outset that “their report will be confined to Indian affairs in the northern and middle departments, as they are confined by the acts of Congress of the 12th July, 1775, and to the settlement of the Western country, these subjects being, in the opinion of the committee, inseparably connected, and the committee not being possessed of materials which enable them to extend their views to the Southern district.”² The Southern district here referred to evidently meant the territory to be ceded by the three Southern States. Jefferson’s committee, which was created through the recommendation of this Indian Committee, had therefore laid particular stress upon the Northwestern Territory, although the ordinance itself was general in its application, as we have already seen.

In dividing the Northwestern Territory, Mr. Jefferson must have been governed by the resolution of Congress, October 10, 1780. The resolution said that “each State which shall be so formed shall contain a suitable extent of territory, not less than 100 nor more than 150 miles square, or as near thereto as circumstances will admit.”³ The area of the maximum allowance of 150 miles square will contain 22,500 square

¹ Journals of Congress, IV, 296.

² *Ibid.* 294.

³ Journals of Congress, III, 535.

miles, and that of the ten States, each having 22,500 square miles, will be 225,000 square miles. The area of the State cessions in the Northwestern Territory is estimated at 265,877.91 square miles.¹ Thus, Mr. Jefferson's plan of dividing the Territory into ten States was quite consistent with the resolution of Congress of 1780. Numerically, the extent allowed to each State came as near as could be expected by Congress.

Now let us proceed to other points in the ordinance. It provided that the settlers, under the authority of Congress, should be granted the right to establish a temporary government, adopt the constitution and laws of any one of the older States, and erect townships or counties for legislative purposes. There was no property-qualification required for the exercise of these political rights. Free males of full age had civic privileges. This temporary government had to continue until the population in the new State reached 20,000 free inhabitants, when a permanent constitution and government could be established. After the organization of a temporary government, the settlers could have a member in Congress as their representative, with a right to debate, but not to vote. But when they should have increased to the number of the inhabitants in the least populous original State, their delegates, with the assent of nine States, as required by the eleventh of the Articles of Confederation, could be admitted into Congress on an equal footing with the original States.

Besides the points enumerated, the ordinance contained some other features of great importance. They were the general principles upon which both the temporary and permanent governments had to be established. They were as follows: 1. The new States shall remain forever a part of the Union. 2. They shall be subject to the Articles of Confederation like the original States. 3. They shall bear a part of the debts contracted by the Federal Government. 4. Their

¹ Public Domain, 11.

governments must be republican, and shall admit no person as a citizen who holds any hereditary title. 5. After the year 1800 A. D., there shall be neither slavery nor involuntary servitude in any of the new States.

Such were the provisions of the ordinance as submitted by Mr. Jefferson and his committee on March 1, 1784. The ordinance was finally passed on April 23, 1784, with some omissions and some additions. The additions were that the States should not interfere with the primary disposal of the soil by the United States; that they should not tax lands which were the property of the United States; that they should not levy higher taxes on the lands of non-resident proprietors than on those of residents; finally, that the articles of the ordinance should be formed into a charter of compact, and should stand as fundamental constitutions between the thirteen original States and each of the new States, unalterable except by common assent. The omissions consisted in striking out clauses that gave fanciful names to the new States and assigned boundaries to each of them; that which referred to the hereditary title of citizens; and lastly, that which prohibited slavery after the year 1800.¹

The slavery clause was stricken out on the motion of Mr. Spaight, of North Carolina. The six States, Massachusetts, Rhode Island, Connecticut, New Hampshire, New York, and Pennsylvania, stood for, and Maryland, Virginia, and South Carolina against, the clause. Mr. Spaight's own State was divided. The rest of the States—Georgia, Delaware, and New Jersey—were not represented. It lacked only one vote to pass this anti-slavery clause, the votes of seven States being necessary to carry any measure in the old Congress.

“The defeat of Mr. Jefferson's anti-slavery clause was regarded at the time as a great calamity,” says Mr. W. F. Poole, of Chicago, in his excellent paper on the Ordinance of

¹ See, for the ordinance, Public Domain, 147-149; Cole's History of the Ordinance, 7-10; Bancroft's Constitutional History, I, 153-159; St. Clair Papers, II, 603-606.

1787; but he adds that "Northern men soon saw that it was a most fortunate circumstance; for if slavery had been allowed to get a foothold in the Territory for sixteen years, it could not have been abolished at the end of that period."¹ The defeat proved fortunate, indeed, because of the later ordinance that prohibited slavery at once and forever in the Northwest after the passage of the fundamental law.

The Nestor of American history, Mr. George Bancroft, says: "The design of Jefferson marks an era in the history of universal freedom."² But it proved an initial attempt, rather than actual accomplishment. Mr. Jefferson seems to have been fully conscious of the defeat of his anti-slavery clause. Two years afterward he said: "The voice of a single individual would have prevented this abominable crime from spreading itself over the new country. . . . Heaven will not always be silent; and the friends to the rights of human nature will in the end prevail."³ This "single individual," the mover against the anti-slavery clause, was one whom Jefferson styled "a young fool." In his declining years Jefferson again referred to the Ordinance of 1784, and said: "My sentiments have been forty years before the public; although I shall not live to see them consummated, they will not die with me; but, living or dying, they will ever be in my most fervent prayer."⁴ The dying statesman's sentiments, originally cherished in the prime of his manhood, were realized forty years after his death⁵ by the "Thirteenth Amendment" of 1865, when the curse of slavery was removed forever by the constitutional law of the United States. Mr. Jefferson's Ordinance of 1784, shorn of its chief glory, the proscription of slavery, became a law of the land. Soon after its passage,

¹ W. F. Poole in *North American Review*, April, 1876, 238.

² Bancroft's *Constitutional History*, I, 156.

³ Jefferson, IX, 276.

⁴ Jefferson to Heaton, May 20, 1826; quoted in Bancroft's *Constitutional History of United States*, I, 158.

⁵ Jefferson died July 4, 1826.

the author of the law left Congress for a mission abroad. Jefferson's connection with the ordinance then ceased.

WASHINGTON ON TERRITORIAL GOVERNMENT.

The ordinance, however, was a dead letter. "No settlement of the Territory was made under it."¹ Washington was early and always aware of the importance of developing the Western country. Under the date of December 14, 1784, he wrote to R. H. Lee as follows: "Nature has made such a display of her bounty in those regions, that the more the country is explored the more it will rise in estimation. The spirit of emigration is great; people have got impatient; and though you cannot stop the road, it is yet in your power to mark the way."² Again, under the date of March 15, 1785, Washington wrote to the same gentleman and argued that Congress ought to point out the most advantageous mode of seating lands in the Western Territory, in order that good government might be administered. He says: "Progressive seating is the only means by which this can be effected." He suggested also that one State should be marked out instead of ten, in order to avoid any sectional conflict in the West.³

We have already seen that Jefferson's plan of dividing the Western Territory first came from the suggestions of Washington; but here we find him advocating the marking out of one State instead of ten. This change of view might be attributed to the defeat of Jefferson's anti-slavery clause, and the probable change in political conditions of the Northern and Southern States. Massachusetts abolished slavery in her Constitution of 1780.⁴ So did Pennsylvania. Connecticut made a partial abolition in 1784. The Northern and Eastern

¹ Poole's Ordinance of 1787, *North American Review*, April, 1876, 238.

² Sparks, IX, 80-81.

³ Quoted in Bancroft's *Constitutional History of the United States*, I, 177, from MS.

⁴ Poore's *Charters and Constitutions*, Part I, 957.

States were thus abolishing slavery. But if, according to the Ordinance of 1784, ten new States were to be erected in the Northwest, where slavery was not prohibited, the anti-slavery States of the North would lose their political vantage-ground with the recognition of numerous slave States in the West. It must have been to quiet political uneasiness in the minds of Northerners that Washington suggested the marking out of only one State. Indeed, it would not be too much to say that this idea of Washington, leading to what he termed the "progressive seating" of Western lands, was another "pioneer thought" in relation to the Ordinance of 1787, wherein the entire Northwest was organized as a single Territory, to be gradually formed into States not less than three nor more than five.

Congress did not take any further initiative, nor did the settlers petition that body to form a temporary government in the Western Territory according to the Ordinance of 1784. Accordingly, no government was organized under that ordinance, and the great Northwest remained but a wilderness. The census taken sixteen years later, in 1800, shows that the entire Northwest then contained but 50,455 inhabitants, distributed as follows: Ohio, 45,365; Indiana, 2,517; Illinois, 2,458; and Wisconsin, 115.¹ From the year 1800, Ohio showed a very rapid increase of population. She doubled it in every two years throughout the succeeding decade. But this great frontier State had only a few detached settlements at the time when the ordinance of Mr. Jefferson was passed. In fact, the entire Northwest, except at Kaskaskia, St. Vincent's, and neighboring villages, was the home of roving Indians and wild beasts. The settlements named were mostly colonies from Canada and Louisiana, and the settlers were slaveholders, for slavery was established by the French laws of Louisiana. Besides, the emigrants from Virginia who emigrated to the Northwest, after the capture of French

¹ Tenth Census: Population, Part I, 4.

military posts by Colonel George Rogers Clark, brought with them negro slaves from the Old Dominion. Governor Coles states that it was this knowledge of the actual existence of slavery in the Northwest that led Mr. Jefferson to a gradual abolition movement, rather than to a sudden prohibition of the evil.¹

PRELIMINARY STEPS TOWARD THE ORDINANCE OF 1787.

We have seen that Washington was reminding Congress of its duties to the West. Timothy Pickering was also aware of the importance of the settlement of the Western country. He wrote a letter, under the date of March 8, 1785, to Rufus King, of Massachusetts, which became historical on account of the controversy concerning the authorship of the Ordinance of 1787. He wrote as follows: "Congress once made this important declaration: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; and these truths were held to be self-evident. To suffer the continuance of slaves till they can gradually be emancipated, in States already overrun with them, may be pardonable, because unavoidable without hazarding greater evils; but to introduce them into countries where none now exist can never be forgiven. For God's sake, then, let one more effort be made to prevent so terrible a calamity! The fundamental constitutions for those States are yet liable to alterations, and this is probably the only time when the evil can certainly be prevented. It will be infinitely easier to prevent the evil at first than to eradicate it or check it in any future time."²

Pickering was informed of the course of public business in Congress by Gerry, a member of Massachusetts. He was aware that the Land Ordinance reported May 7, 1784, by

¹ Governor Coles' Ordinance of 1787, 16.

² Pickering's *Life of Pickering*, I, 509-510.

a committee of which Mr. Jefferson was chairman and Mr. Gerry a member, would be read a second time March 16, 1785, and thought it opportune to write the letter to King, who was Gerry's colleague.

Mr. King did not disappoint his correspondent, for he made a motion on March 16, 1785, seconded by Mr. Ellery, of Rhode Island, that the following proposition be committed: "That there shall be neither slavery nor involuntary servitude in any of the States described in the resolve of Congress of the 23d of April, 1784, otherwise than in punishment of crimes whereof the party shall have been personally guilty; and that this regulation shall be an article of compact, and remain a fundamental principle of the constitutions between the thirteen original States and each of the States described in the said resolve of the 23d of April, 1784."¹ The motion was to commit the proposition to a committee of the whole House. It was an attempt to restore to the Ordinance of 1784 its anti-slavery article, which was lost by the motion of a delegate from North Carolina. On the question for commitment, eight States—New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, and Maryland—voted in the affirmative, and three States—Virginia, North Carolina and South Carolina—in the negative. Mr. Grayson, of Virginia, voted in the affirmative, but his vote was neutralized by those of his colleagues. Neither Delaware nor Georgia was represented. The proposition was referred to a committee, but it was never called up for action, nor ever alluded to again in Congress.

With the commitment of the proposition, Mr. King's connection with the anti-slavery question in the ordinance ceased, for although Mr. King, as chairman of the committee to whom the proposition was referred, made a report April 6, 1785, recommending a fugitive-slave law, as well as the

¹Journals of Congress, IV, 481.

prohibition of slavery after 1800 in the Western Territory, "there is no evidence that it was ever again called up in that Congress."¹

From the time Mr. King put the motion till the final passage of the Ordinance of 1787—that is, during the period of two years—the subject of the government of the Western Territory was frequently taken up and discussed. During the winter of 1786, Monroe traveled through the Northwest, and formed an opinion that it was advisable to divide the Territory into States—not less than three nor more than five—and on his return moved in Congress that the subject of the division of the Territory should be referred to a grand committee. On March 24, 1786,² the grand committee made a report, and recommended to repeal that part of the ordinance which referred to the division of the Territory, in order that Congress might divide the Territory according to its own discretion.

About this time Mr. Dane made a motion that a committee should be appointed to consider the form of a temporary government in the Western States. The motion was adopted, and a committee consisting of Mr. Monroe, of Virginia; Mr. Johnson, of Connecticut; Mr. King, of Massachusetts; Mr. Kean, of South Carolina, and Mr. Pinckney, of South Carolina, was appointed. On May 10, 1786, the committee submitted their report. "It asked the consent of Virginia to a division of the Territory into not less than two nor more than five States; presented a plan for their temporary colonial government, and promised them admission into the Confederacy on the principle of the ordinance of Jefferson. Not one word was said of a restriction on slavery."³ The report was recommitted, and was considered from time to time.

While Congress was considering the plan for the temporary government of the Northwest, a petition was presented from the

¹ Bancroft's Constitutional History of the United States, I, 180.

² Public Domain, 150.

³ Bancroft's Constitutional History of the United States, II, 100.

inhabitants of the Kaskaskias for the organization of government in that district. The petition was referred to a committee consisting of Mr. Monroe, Mr. King, Mr. Pinckney and Mr. Smith, who made a report August 24, 1786, and ordered "that the Secretary of Congress inform the inhabitants of the Kaskaskias that Congress have under their consideration the plan of a temporary government for the said district, and that its adoption will be no longer protracted than the importance of the subject and a due regard to their interest may require."¹ The petition was probably the only one of the kind on record that was presented to Congress after the adoption of the Ordinance of 1784.

On September 19, 1786, a committee consisting of Mr. Johnson, of Connecticut; Mr. Pinckney, of South Carolina; Mr. Smith, of New York; Mr. Dane, of Massachusetts, and Mr. Henry, of Maryland, made a report on the plan of temporary government for new States. In this committee, Mr. Henry, of Maryland, and Mr. Dane, of Massachusetts, were substitutes for Monroe and King, who were away from Congress. On September 29th, the report was taken up for consideration, and a clause in the ordinance that referred to the administration of the oath was debated, but all further consideration of the ordinance was postponed.²

On the 26th of April, 1787, the same committee reported "an ordinance for the government of the Western Territory." On May 9th, it was read a second time. A provision in the ordinance that admitted a new State into the Union after its population became equal to one-thirteenth part of the population of the thirteen original States, was stricken out.³ The clause that referred to the representatives of the Territory was debated.⁴ The ordinance, as finally amended, was ordered to be transcribed, and the following day was assigned

¹ Journals of Congress, IV, 688-689.

² Journals of Congress, IV, 701-702.

³ Bancroft's Constitutional History of the United States, II, 105.

⁴ Journals of Congress, IV, 746.

for its third reading, but on that day it was postponed, and further progress was for a time arrested.

Thus far we have considered three ordinances: 1. The Ordinance of 1784, which was at this time still binding; 2. The Ordinance of May 10, 1786; 3. The Ordinance of April 26, 1787. The chairmen of the respective committees by whom these various ordinances were reported were, as we have already seen, Jefferson, Monroe, and Johnson. The provisions of the first two ordinances have already been given at some length. The text of Jefferson's ordinance is to be found in the volume called "Public Domain," 149. That of Monroe's is to be found in Volume V., 79 and following pages, of the "Journal of the Old Congress." The text of Johnson's ordinance, as it stood on May 10, 1787, for the third reading, and as it came down without amendment to the 9th of July, only five days before the passage of the final Ordinance of 1787, was first published by Peter Force in the *National Intelligencer* of August 26, 1847. It is reproduced in the "Public Domain," 150-153, and also in the "St. Clair Papers," II., 608-612.

The comparison of Johnson's ordinance with the Ordinance of 1787 shows that the former was quite unlike the latter. So far as the plan of the temporary government, the appointment of Governor, Secretary, and Judges, the organization of the General Assembly, etc., are concerned, both ordinances, indeed, agree, but the older ordinance contains nothing which makes the later ordinance so justly celebrated.

Peter Force was unable to solve the mystery attending the complete metamorphosis which an ordinance of no special legislative merit underwent in five legislative days. He thus expresses himself: "Such was the ordinance for the government of the Western Territory when it was ordered to a third reading on the 10th of May, 1787. It had then made no further progress in the development of those great principles for which it has since been distinguished as one of the greatest monuments of civil jurisprudence. It made no

provision for the equal distribution of estates. It said nothing of extending the fundamental principles of civil and religious liberty ; nothing of the rights of conscience, knowledge, or education. It did not contain the articles of compact which were to remain unaltered forever, unless by common consent."¹

PROVISIONS OF THE ORDINANCE OF 1787.

We shall now proceed to the real and final Ordinance of 1787. We shall treat its passage and provisions, but reserve to a later part of this paper the discussion about its authorship. The "Journals of Congress" show that, from May 11 to July 4, Congress had no quorum, and consequently Johnson's ordinance, which would have passed to its third reading on May 10, was postponed, and received no further consideration till the month of July. On the ninth of that month, the ordinances were referred to a new committee. The committee consisted of Mr. Carrington, of Virginia ; Mr. Dane, of Massachusetts ; Mr. R. H. Lee, of Virginia ; Mr. Kean, of South Carolina, and Mr. Smith, of New York. Among the members of the committee, Mr. Dane was in the previous committee which reported an ordinance on September 19, 1786, and also on April 26, 1787. Mr. Dane was the man who made a successful motion to appoint a committee in which Mr. Monroe, as chairman, reported an ordinance on May 10, 1786. Mr. Kean served on the committee of Monroe in the same year, but he was absent from the Congress during the summer, and his place was filled by Mr. Smith, of New York. Both Kean and Smith were put on the same committee, Kean taking the place of Pinckney, his colleague, who was on the former committee, and Smith holding his own place, which was originally that of a substitute for Kean. Mr. R. H. Lee was a new delegate from Virginia who took his seat in Congress on the 9th of July. Mr. Carrington, as well as

¹ Public Domain, 152.

Lee, was a new member of the committee. Thus, in the committee there were three Southerners and only two Northern men. The latter were old members of the committee, while the former were new members, although Mr. Kean once served on the committee of Mr. Johnson in 1786. The States which were then represented in Congress were three Northern States—Massachusetts, New York, and New Jersey—and four Southern States—Virginia, the two Carolinas, and Georgia, soon to be joined by Delaware. On the 11th of July, the committee made a report on the ordinance for the government of the territory of the United States northwest of the Ohio. On the twelfth the ordinance was read a second time, and on the thirteenth it was read a third time, and passed by the unanimous vote of the eight States then present in the Congress. The only delegate who voted in the negative was Mr. Yates, of New York, but his vote was neutralized by the combined vote of his two colleagues, Mr. Smith and Mr. Harney. Mr. Dane attributed the dissenting vote of Mr. Yates to lack of information upon the subject.

Since the Ordinance of 1787 is the most important legislative enactment that Congress has ever passed with regard to the public domain, we shall examine its provisions in some detail. The ordinance opened with a division of the Territory. It raised the territory northwest of the Ohio into one district, subject to a change into two districts at the discretion of Congress. The estates of persons dying intestate were to be divided among their heirs in equal parts. Thus gavelkind was instituted in place of primogeniture. As to the disposition of real estate, the ordinance was very liberal, placing no restrictions upon it. When of full age, the owners of estates could devise or bequeath by will in writing attested by three witnesses. The conveyance of estates was also very simple. It was by simple lease and release, or by bargain and sale. Conveyances were to be recorded by registers within one year of the transfer. Personal property could be transferred by mere delivery. Such were the general laws with regard to real and personal property.

The ordinance then fixed the terms of Governor and Secretary, who were to be appointed by Congress. The commission of the former was for three years, and that of the latter for four years. During the exercise of their office, both Governor and Secretary had to possess a certain number of acres of freehold estate in the territory. Three judges were also to be appointed by Congress. They had to exercise a common-law jurisdiction, and could continue in office during good behavior. They also must have a freehold estate like other civil officers. To the Governor and Judges the temporary enactment of civil and criminal laws was entrusted. These laws were binding until the organization of the General Assembly. The Governor was to be commander-in-chief of militia. He could appoint and commission all officers below the rank of general. He had also to appoint magistrates in counties and townships which were to be laid out in those portions of the district in which Indian titles were already extinguished.

The ordinance next considered the subject of representation in the General Assembly. When the population of the district should reach five thousand free male inhabitants of full age, the settlers could return to the General Assembly one representative for every five hundred, until the number of representatives amounted to twenty-five. After this, the Legislature had to fix the number and proportion of representatives. Citizenship of three years' standing, residence in the district, and holding of two hundred acres of land in fee-simple, were necessary qualifications for a representative. The elector of a representative must also have the property-qualification of fifty acres of land. He must be a citizen of the United States, and a resident in the district; or, if not a citizen, then two years' residence and the holding of sufficient landed property would qualify him for an elector. The term of representatives was fixed at two years.

Next in order came the organization of the General Assembly, the manner of appointment of members of the Legislative

Council, and the authority and functions of the General Assembly. The General Assembly was to consist of the Governor, Legislative Council, and a House of Representatives. The Legislative Council was to be of five members. The members were to be nominated by the House of Representatives and appointed by Congress. Their commission continued for five years, and their property-qualification was the same as that of representatives. The General Assembly was authorized to make laws for the good government of the district not repugnant to the principles and articles laid down in the ordinance. All bills that passed both Houses of Legislature needed the assent of the Governor to become laws of the district. The Governor had the power to convene, prorogue, and dissolve the General Assembly. The Governor was required to take an oath before the President of Congress. All other officers appointed by Congress took oath before the Governor. The Legislature was authorized to elect a delegate to Congress by joint ballot of both Houses, who had the right of debating, but not of voting.

Such was the organization of the temporary government for the Northwestern Territory. The provisions of the ordinance were comprehensive, covering all necessary technicalities as to administration, legislature, and judiciary in the new Territory. But such provisions related merely to the routine business of government. There is nothing especially remarkable in them. If the ordinance had ended here, it would never have deserved the praises which have been lavished upon it. But the ordinance, happily, did not end here. It contained a Bill of Rights which has made it world-famous. Here let the noble ordinance speak for itself: "And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected, to fix and establish those principles as the basis of all laws, constitutions and governments which, forever hereafter, shall be formed in the said Territory; to provide, also, for the establishment of

States and permanent government therein, and for their admission to a share in the Federal Councils on an equal footing with the original States, at as early periods as may be consistent with the general interest: *It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact between the original States and the people and States in the said Territory, and forever remain unalterable, unless by common consent.*"¹ Thus ends the preamble of this celebrated compact.

The articles are six in number, and are as follows: First, religious freedom was guaranteed, whether in worship or sentiment. Second, the benefits of the writ of *habeas corpus* and of trial by jury were secured to the settlers. Furthermore, by the second article, the representation in the Legislature was to be proportionate, and judicial proceedings must be in accordance with the common law. All persons wereailable, except in extraordinary cases. All fines were to be moderate, and no cruel punishments could be inflicted. No man was to be deprived of his liberty or property except by due process of law. Private contracts or engagements were never to be interfered with in any manner whatsoever. The third article says: "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Again, due regard must be paid to the property, rights, and liberty of the Indians. The fourth article states that the new States must forever remain a part of the United States of America, and subject to the Articles of Confederation. They were to pay a part of the Federal debts, and to contribute duly to the expenses of the Government. They could not interfere with the primary disposal of the soil by the Federal Government, neither could they tax lands which belonged to the United States. Non-resident proprietors were not to be taxed higher than residents. Finally, the navigable rivers leading into the

¹ Public Domain, 155.

Mississippi and St. Lawrence were declared common highways, and forever free to all the citizens of the United States.

The fifth article related to the division of the Territory into States, and the boundaries of such States. The Territory had to be divided into not less than three nor more than five States. When the new States had a population of 60,000 free inhabitants, they could be admitted by their delegates into Congress on an equal footing with the original States. Then they could form a permanent constitution and government in conformity to the principles contained in these articles.

The sixth and last article, which brought about so much controversy with regard to its authorship, was in the following language: "There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted. *Provided, always,* that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid."¹

EULOGIES ON THE ORDINANCE OF 1787.

Such were the provisions of the charter of compact in this celebrated Ordinance of 1787, which superseded the resolutions of April 23, 1784, known as Jefferson's Ordinance. The act of 1787 became the corner-stone of territorial governments in the Western Territory. Statesmen and public writers have been loud in their praises of this ordinance not so much because of theoretical principles embodied in the ordinance as from its practical merits and from results at once and forever beneficial to the interests of the whole Union. "We are accustomed,"

¹The text of the ordinance may be found (1) in the Public Domain, 153-156; (2) in the St. Clair Papers, II, 612-618; (3) in the Journals of Congress, IV, 752-754; (4) in the Magazine of Western History, Nov. 1884, 56-59.

says Daniel Webster, "to praise the lawgivers of antiquity; we help to perpetuate the fame of Solon and Lycurgus; but I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked and lasting character than the Ordinance of 1787. We see its consequences at this moment, and we shall never cease to see them, perhaps, while the Ohio shall flow."¹ The words of Judge Timothy Walker are no less decided than those of his great contemporary. Judge Walker said, "Upon the surpassing excellence of this ordinance no language of panegyric would be extravagant. The Romans would have imagined some divine Egeria for its author. It approaches as nearly to absolute perfection as anything to be found in the legislation of mankind; for, after the experience of fifty years, it would perhaps be impossible to alter without marring it. In short, it is one of those matchless specimens of sagacious forecast which even the reckless spirit of innovation would not venture to assail. The emigrant knew beforehand that this was a land of the highest political as well as national promise, and, under the auspices of another Moses, he journeyed with confidence toward his new Canaan."²

Eminent constitutional writers like Judge Story³ and Mr. Curtis are also among the admirers of the Ordinance of 1787. Here are the words of Mr. Curtis: "American legislation has never achieved anything more admirable as an internal government than this comprehensive scheme. Its provisions concerning the distribution of property, the principles of civil and religious liberty which it laid at the foundation of

¹ Webster's Works, III, 263.

² An address delivered at Cincinnati, December 23, 1837. Transactions Ohio Hist. and Phil. Society, I, Part II, 189. Quoted by Mr. W. F. Poole in North American Review, April, 1876, and in the St. Clair Papers, I, 118.

³ Judge Story says, "The ordinance is remarkable for the brevity and exactness of its text, and for its masterly display of the fundamental principles of civil and religious liberty."—Story's Commentaries, III, 187.

the communities since established under its sway, and the efficient and simple organization by which it created the first machinery of civil society, are worthy of all the praise that has ever attended it. It was not a plan devised in the closet upon theoretical principles of abstract fitness. It is a constitution of government drawn by men who understood from experience the practical working of the principles which they undertook to embody. Those principles were, it is true, to be applied to a state of society not then formed, but they were taken from states of society in which they had been tried with success.”¹ Again, Mr. Chase, late Chief Justice of the United States, in the introduction to the “Statutes of Ohio,” said, “Never, probably, in the history of the world did a measure of legislation so accurately fulfil, and yet so mightily exceed, the anticipations of the legislators. The ordinance has well been described as having been a pillar of cloud by day and of fire by night in the settlement and government of the Northwestern States.”²

Many similar eulogies on the ordinance and its framers might be cited, but we shall be content with one more quotation, and that from an eminent authority, whose praise of the ordinance is somewhat more definite and precise than any of the eulogistic opinions hitherto quoted. Mr. Joseph S. Wilson, late Commissioner of the General Land Office, says, “This noble statute [referring to Section II. of the ordinance] struck the key-note of our liberal system of land law not only in the States formed out of the public domain, but also in the older States. The doctrine of tenure is entirely exploded; it has no existence. Though the word may be used for the sake of convenience, the last vestige of feudal import has been torn from it. The individual title derived from the government involves the entire transfer of the ownership of the soil. It is purely allodial, with all the incidents pertaining to that title as substantial as in the infancy of Teutonic civilization.

¹ Curtis' Constitutional History of the United States, I, 306-307.

² See W. F. Poole in North American Review, April, 1876, 234.

Following in the wake of this fundamental reform in our State land laws are several others which constitute appropriate corollaries. The statute of uses was never adopted in the public-land States, and hence the complex distinction between uses and trust has never embarrassed our jurisprudence. We have, however, adopted one of the methods of conveyance to which that statute gave rise—to wit, the method of bargain and sale. Feoffments, fines and recoveries are entirely dispensed with, as also livery of seisin and its consequences. A conveyance is completed by the execution and delivery of the deed. Entailment and perpetuities are barred by the statute, which renders void all limitations beyond persons in being and their immediate issue, and which provides that an estate tail shall become a fee-simple in the heirs of the first grantor. All joint interests in land are reduced to tenancies in common. Joint tenancies never had an existence, and coparceners are now on a footing of tenants in common. Real actions, with their multitudinous technicalities, never had an existence in our Western jurisprudence, though some of the fictions of this form of action were and are still tolerated in some localities—*e. g.*, the allowance of fictitious parties to a suit. Ejectment is now the universal remedy, being the only action for the recovery of lands. Action by ejectment is limited to twenty-one years, but refractory tenants may be more speedily dispossessed by the action for forcible entry and detainer. A dispossessed claimant may, at the option of the ejector, either pay for the land or receive pay for the improvements. For waste the party is liable in simple damages and no more. A tenant in dower forfeits the place wasted. In the older States we see evidences of the reflex benefits of the land legislation of our public-land States.”¹

After quoting this able exposition, the Public Land Commission adds, “This great American charter contains the basic

¹ Land Office Report, 1870, 28-29.

propositions as to land tenures of the laws of the United States and of most of the States of the Confederation, and became and is the foundation of the same statutes in all the public-land States and Territories. Under its care and provisions the Central and Western States and Territories of the Union, and the States in the territory south of the river Ohio, have grown from weak and straggling settlements to mighty commonwealths and organizations containing more than 25,000,000 of people. The ordinance began with a wilderness. Its principles, embraced in existing laws, now govern in area and population the domain of an empire.”¹

Such are the opinions of eminent authorities on the Ordinance of 1787. Indeed, the ordinance is a grand monument to American statesmanship, and will forever tower among the works of Federal legislation.

CONSTITUTIONALITY OF THE ORDINANCE.

Before we enter into the subject of the authorship of the ordinance, one word must be said touching its constitutionality. The Articles of Confederation made no provision for erecting the Territory into new States, and for admitting them into the Union. Therefore, the ordinance which extended national sovereignty over the new Territory was an unauthorized act. But the ordinance was a necessary sequence of the resolution of October 10, 1780. Virginia and other States quit-claimed the Western Territory, reposing faith in Congress that such an ordinance as that of 1787 would be issued by Congress in conformity to the resolution. Therefore, the root of constitutionality primarily lies in the resolution and not in the ordinance.

Although no constitutional question as to the validity of the ordinance was ever raised in Congress, yet contemporary statesmen seem to have been aware of its legal defects.

¹ Public Domain, 159.

Madison thus speaks in the *Federalist*: "A very large proportion of the fund [referring to the Western Territory] has been already surrendered by individual States; and it may be expected that the remaining States will not persist in withholding similar proofs of their equity and generosity. We may calculate, therefore, that a rich and fertile soil of an area equal to the inhabited extent of the United States will soon become a national stock. Congress have assumed the administration of this stock. They have begun to make it productive. Congress have undertaken to do more: they have proceeded to form new States, to erect temporary governments, to appoint officers for them, and to prescribe the conditions on which such States shall be admitted into the Confederacy. All this has been done, and done without the least color of constitutional authority. Yet no blame has been whispered, and no alarm has been sounded."¹

That the public acquiesced in the ordinance was because of its necessity. The vital issues and common interests that were involved in governing the Western Territory on such a basis as the ordinance proposed were enough to justify it, in spite of its non-constitutionality. Congress could not have acted otherwise than to enact this fundamental law. The true function of an enlightened government is to do what the public interest (the *salus publica*) requires. "Government is derived from the living necessities and united interests of a people. The State does not rest upon compact or written constitutions. There is something more fundamental than delegated powers or chartered sovereignty. The State is grounded upon that community of material interests which arises from the *permanent* relation of a people to some fixed territory."²

The ordinance was legislation upon a national "community of material interests," and therefore found its

¹The Federalist, No. XXXVIII, 42-43.

²H. B. Adams. Land Cessions, 49.

support in the economic foundation of the State. "The truth is," says Judge Story, "that the importance and even justice of the title to the public lands on the part of the Federal Government, and the additional security which it gave to the Union, overcame all scruples of the people as to its constitutional character."¹ This fact also illustrates the old truth that institutions are not made, but grow by historical processes. The living necessities of a body politic are the loftiest guiding principles of government. The *salus publica* will perpetually guide the history of society, in spite of written instruments. The unconstitutional Ordinance of 1787 has shaped the history of the entire Western Territory, because it was framed upon necessity and suited the needs of republican expansion. It fairly stood the test of seventy years, and, although then once repudiated in one of its most essential clauses, its principles have finally won a complete triumph.

AUTHORSHIP OF THE ORDINANCE.

The authorship of the Ordinance of 1787 has been much disputed ever since Webster made incidental reference to it in his first speech, January 20, 1830, on Foot's resolution concerning the Western lands. "At the foundation of the constitution of these new Northwestern States," said Webster, "lies the celebrated Ordinance of 1787. . . . That instrument was drawn by Nathan Dane, then and now a citizen of Massachusetts."² This statement was opposed by Mr. Benton and Mr. Hayne, who ascribed its authorship to Thomas Jefferson. The controversy then became an issue between sections—the North and the South. Webster not only ascribed the authorship of the ordinance to a Northern man, but its passage to Northern influence; "for," said he, "it

¹ Story's Commentaries, III, 187.

² Webster's Works, III, 263-264.

was carried by the North, and by the North alone." This was a gross error, and was contradicted by the Southern Senators. As we have already seen, the ordinance was carried chiefly by Southern votes. All the Southern States, except Maryland, were then represented, while the North was represented by only three States. Webster made some other errors in the course of his speech, which were corrected by Mr. Benton. But the Southern opponents of Mr. Webster were also wrong in their attempt to eliminate Northern elements from the ordinance, and in ascribing its authorship chiefly to Mr. Jefferson. As a matter of fact, the dispute in the Senate brought no true light whatever upon the subject; and the authorship of the ordinance, if it was due to a single individual, was left undiscovered for half a century.

The above controversy drew, however, a letter from Mr. Nathan Dane, of Massachusetts, the only surviving member of the committee who served in the old Congress in forming a temporary government for the Western Territory in 1787. His letter was a reply to Webster's inquiry about the origin of the ordinance, and was dated March 26, 1830. It was published by the Massachusetts Historical Society in its "Proceedings," 1867-1869 (475-480). In this letter, Mr. Dane strongly urges his claims to the authorship of the most important parts of the ordinance. He considered Jefferson's resolution of 1784 merely as an incipient plan, not at all matured for practical legislation, while the final ordinance was a completed system. He said that the ordinance, which was so "totally different in size, in style, in form and principle," did not contain altogether twenty lines that were taken from Jefferson's resolution, and that even these were differently expressed. He then analyzed the ordinance and divided it into three parts. The first part consisted of "the titles to estates, real and personal, by deed, by will and by descent; also personal, by delivery." These, he said, were selected from the laws of Massachusetts, except that the ordinance omitted the double share to the oldest son. The

second part consisted of preliminary measures for the temporary government of the Territory. "Neither these parts nor the titles," he says, were "in Jefferson's plan." In this Mr. Dane was somewhat mistaken. The titles, indeed, were not found in Jefferson's plan, as Mr. Dane truly says, but the temporary measures formed its chief bulk. The third part consisted of "the six fundamental articles of compact expressly made permanent and to endure forever." These permanent parts, Dane assured Webster, were his own original production. He had added them, as well as the titles, to the previous ordinance, which came down to the third reading on May 10, 1787. With regard to the slavery clause, Dane said: "I have, as you will see, ever been careful to give Mr. Jefferson and Mr. King their full credit in regard to it." But he said that since a slavery clause in his handwriting was found attached to the printed ordinance, it was also his work and not entirely theirs. He did not, however, claim originality for the anti-slavery clause, but what he did claim was authorship of the clauses touching contracts, Indian protection, religion, morality, knowledge and schools.

Mr. Dane's claims are quite sweeping, but there are some self-contradictory passages in his letter. He expressly states that the titles and the six articles were taken from the laws and Constitution of Massachusetts, but, at the same time, he claims originality for some parts of them. Conflicts of statement are still more apparent if we examine another letter, written by Mr. Dane under the date of May 12, 1831, addressed to J. H. Farnham, Secretary of the Indiana Historical Society, which letter was printed in the *New York Tribune* of July 18, 1875. He says: "It will be observed that Provisions 4, 5, 6, [which] some now view as oppressive to the West, were taken from Mr. Jefferson's plan." He admits that these three provisions were taken from Mr. Jefferson's plan, but in a letter to Webster he states that, "if any lawyer will critically examine the laws and constitutions of the

several States as they were in 1787, he will find the titles and six articles were not to be found anywhere else so well as in Massachusetts, and by one who, in '87, had been engaged several years in revising her laws." Thus Mr. Dane implied that he utilized the laws of Massachusetts for the ordinance, and did not give credit to Mr. Jefferson for any important parts of the ordinance except the anti-slavery clause, with some modification.

Another testimony of importance to Mr. Dane's cause is the letter addressed by him to Rufus King under the date of July 16, 1787—a letter printed in the *New York Tribune* of January 31, 1855.¹ In this letter, Mr. Dane states that "when I drew the ordinance (which passed, a few words excepted, as I originally formed it), I had no idea the States would agree to the sixth article, prohibiting slavery, as only Massachusetts, of the Eastern States, was present, and therefore omitted it in the draft; but, finding the House favorably disposed on this subject, after we had completed the other parts I moved the article, which was agreed to without opposition." This quite agrees with what Dane wrote to Webster concerning the anti-slavery clause. He stated that he added the sixth article after the ordinance went into print. This must be the reason why the anti-slavery clause is found in his handwriting and attached to the printed ordinance. This letter is the most important one of all, for it was written only three days after the passage of the ordinance, and under no outside influence.

Thus we have three letters of Mr. Dane in which he claimed, more or less directly, the credit of framing the Ordinance of 1787. They are: 1. A letter to Rufus King, July 16, 1787; 2. A letter to Daniel Webster, March 26, 1830; 3. A letter to J. H. Farnham, Secretary of the Indiana Historical Society, May 12, 1831. Besides these letters,

¹ Bancroft's *Constitutional History of the United States*, II, 430; or Spencer's *History of the United States*, II, 202-209.

Dane also stated his claims to the authorship of the Ordinance of 1787 in his "General Abridgment and Digest of American Laws," published in Boston, 1823-24. In his letters to Webster and Farnham, Mr. Dane quoted several passages from the above work. In fact, Mr. Dane's contemporaries must have derived their knowledge of the authorship of the ordinance from the statements he made in the seventh volume of his "Abridgment of American Laws," 389, 390. A writer in the *North American Review*, July, 1826, reviewed Mr. Dane's "Abridgment," and said that Mr. Dane was "the framer of the celebrated Ordinance of Congress of 1787 for the government of the territory of the United States northwest of the river Ohio—an admirable code of constitutional law by which the principles of free government were extended to an immense region, and its political and moral interests secured on a permanent basis. One of its fundamental provisions—that there shall be neither slavery nor involuntary servitude in the said territory—prevented, by a wise foresight, a mass of evils and rendered that fine country the abode of industry, enterprise and freedom."¹ The writer further says that, "in drafting this ordinance, Mr. Dane incorporated into it the cardinal preventive provisions against impairing the obligations of contracts by legislative acts." Again, Judge Story, in a foot-note to page 130 of the third volume of his "Commentaries on the Constitution," says: "It is well known that the Ordinance of 1787 was drawn by the Hon. Nathan Dane, of Massachusetts, and adopted with scarcely a verbal alteration by Congress. It is a noble and imperishable monument to his fame." Mr. Dane, in his letter to Webster, referred to the statement of the reviewer of his "Abridgment of American Laws" in the *North American Review*, July, 1826, and also to that of Judge Story in his "Inaugural Address" (page 58), as a support of his claim to the authorship of the ordinance.

¹ *North American Review*, July, 1826, 40-41.

In 1847, Colonel Peter Force, of Washington, as we have already stated, printed in the *National Intelligencer*, of August 26, several ordinances relating to the Northwestern Territory, but he did not enter into any controversy concerning the authorship of the ordinance. He simply brought forward several new facts, and left the work of philosophizing upon them to other investigators. The valuable service which Colonel Force had contributed toward the solution of the true authorship of the ordinance was the publication of the ordinance which came down to the third reading on May 10, 1787. It was an entirely different ordinance from that of July 13, 1787. He did not explain, could not explain, how such complete changes were brought about, but he stated certain facts in the following words: "It appears that in five days it was passed through all the forms of legislation—the reference, the action of the committee, the report, the three several readings, the discussion and amendment by Congress, and the final passage."¹ These facts proved to be interesting data for the future settlement of the great problem of the authorship of the ordinance.

On June 9, 1856, Governor Coles read a paper before the Historical Society of Pennsylvania on "The History of the Ordinance of 1787." He was a native of Virginia, and private secretary to President Madison. He was Governor of Illinois from 1822 to 1826, and at the time he read his paper was a citizen of the Keystone State and a member of the Historical Society. Governor Coles ascribed the authorship of the ordinance to Mr. Jefferson. After comparing the difference in the provisions of the ordinance of Mr. Jefferson and those of 1787, and after affirming that Mr. Jefferson's anti-slavery clause was adopted by Congress in the Ordinance of 1787, "with no change except the omission of the postponement of its operation until 1800, and the introduction of the clause for the restoration of fugitive slaves,"²

¹ Public Domain, 152.

² Coles' History of the Ordinance of 1787, 15.

Governor Coles then adds that "some of the above particulars would not have been stated so fully but for a claim which has been made to the authorship of the ordinance on behalf of Nathan Dane, of Massachusetts. To show a misconception somewhere, and, in a word, the groundless character of this claim, it is only necessary to state that Mr. Dane took his seat in Congress for the first time on the 17th of November, 1785—more than eighteen months after the ordinance had been conceived and brought forth by its great author, and been adopted by Congress, with certain alterations, the principal one of which, on motion of Mr. King, had been in effect cancelled and the original provision restored nearly in the words of Mr. Jefferson, eight months before Mr. Dane took his seat in Congress."¹

Governor Coles' errors are too evident to need any refutation. His explanation of the origin and history of the ordinance is also a hasty patchwork; but the history of the practical operation of the ordinance, which occupies more than half of his work, is very valuable, and shows that he was a strong anti-slavery man. The paper was written two years after the principles of the ordinance were repudiated in Congress, and he therefore wrote it in full anticipation of the dreadful calamity of civil war. His object seems, not chiefly to come to the support of Mr. Benton and Mr. Hayne in the matter of the questioned authorship—although he paid an appropriate tribute to Mr. Jefferson—but to show the wise provisions of the ordinance, under which the Western States have grown into a free and prosperous country. Mr. Benton, however, found a support for his cause in Governor Coles, and, in his "Thirty Years in the United States Senate," stated that he fully concurred with the statement of Governor Coles concerning the authorship of the Ordinance of 1787.

We have seen, thus far, that the names of Jefferson and Dane have been chiefly mentioned in connection with the

¹ Coles' History of the Ordinance of 1787, 15.

ordinance. The historic question lay between a Southern statesman and a Northern lawyer. In 1872, another name came before the public. It was the name of Dr. Manasseh Cutler. The Rev. Dr. Joseph F. Tuttle read passages from the journals of Dr. Cutler before the Historical Society of New Jersey on May 16, 1872. Dr. Tuttle briefly sketches the life of the Massachusetts divine as follows: "The Rev. Manasseh Cutler, LL.D., was born at Killingly, Conn., May 28, 1742. He was graduated at Yale College in 1765. He then studied law and was admitted to the bar. He removed to Edgartown, Martha's Vineyard, and began the practice of his profession. Not long afterward he determined to study theology, and was ordained September 11, 1771, and installed pastor of the Congregational church in Hamilton, then Ipswich Hamlet, Mass. He served as chaplain in the American Army, during two campaigns, in the War of the Revolution. In 1786, Dr. Cutler had become associated with a company (subsequently known as the Ohio Company), whose leading spirits were Revolutionary officers, for the purchase of land north of the Ohio. In June, 1787, he went to New York as the agent of the company to negotiate with the American Congress for the purchase of a large tract somewhere in the new country west of Pennsylvania and Virginia. With consummate tact he accomplished his mission, and made a contract for the purchase of over a million and a half acres at two-thirds of a dollar per acre. He kept a journal of his journey and his proceedings at New York, from which it appears that his plan could only be carried out by allowing some private parties to make an immense purchase of Western lands under the cover of the contract of the Ohio Company. The bargain included five millions of acres, one and a half millions of which were for the Ohio Company, and the remainder for the parties operating through him."¹ After giving extracts from the journals, Dr.

¹ Proceedings of New Jersey Historical Society, Second Series (1867-74), III, 75.

Tuttle continues: "I cannot bring myself to drop this part of Dr. Cutler's history without referring to two *facts*, as I fully believe them to be such. The ordinance to be submitted to Congress was placed in Dr. Cutler's hands for his examination, and his two grand suggestions were adopted. The first was the exclusion of slavery forever from the Northern Territory, and the second was the devotion of two entire townships of land for the endowment of a university, and Section Sixteen in every township of land and fractional township in that vast purchase for the purpose of schools. These two ideas, adopted by all the new States, made the Great West what it is."¹

The object of Dr. Tuttle was to present passages from the journals of Dr. Cutler which referred to New Jersey, Pennsylvania, and Ohio in 1787-88. Therefore, the reverend doctor did not enter into discussion of the ordinance further than the above citations. But, in the history of the literature touching the authorship of the Ordinance of 1787, we find, for the first time, the name of Dr. Cutler connected with the ordinance. His relation to the ordinance, as well as to the Ohio Company, certainly needed a further and more careful investigation, in order to reach the long-desired end of the controversy over the authorship of the Ordinance of 1787. It is, indeed, a somewhat singular fact that the true authorship of the world-renowned ordinance was so long shrouded in mystery. But the mystery was soon to be removed by the hands of a careful investigator. The credit of solving this long-mooted question is due to Mr. William Frederic Poole, now of Chicago. He entirely exploded old notions upon the subject in an able article entitled "Dr. Cutler and the Ordinance of 1787," which was published in the *North American Review*, April, 1876.

The year 1876 was the centenary of American Independence, and it suggested various reviews by able writers on the prog-

¹ Proceedings of New Jersey Historical Society, Second Series (1867-74), III, 75.

ress of American politics, economics, education, law, religion, and other kindred matters, during the century. Among these articles is found Mr. Poole's valuable contribution to the history of the Ordinance of 1787. Mr. Poole went through all existing literature relating to the ordinance, and made a careful examination of all, especially of the journals of Dr. Cutler. The result of Mr. Poole's investigation showed that Dr. Cutler, while negotiating for the purchase of lands for the Ohio Company, was taken into the counsel of the committee who were framing the ordinance, and was asked to make remarks and propose amendments, which he did on the 10th of July, and that these remarks and amendments formed the moral bulwark of the ordinance. Mr. Poole further showed that the sudden change in the final ordinance from that form which came down to the third reading on May 10, is to be accounted for by the personal influence of Dr. Cutler in the shaping of the ordinance. He wished the government and laws of the new Territory adapted to the needs of emigrants from New England. Mr. Poole shows how the enactment of the ordinance was inseparably connected with the "Ohio purchase." He says: "The Ordinance of 1787 and the Ohio purchase were parts of one and the same transaction. The purchase *would* not have been made without the ordinance, and the ordinance *could* not have been enacted except as an essential condition of the purchase. Both were before Congress and under consideration at the same time. . . . The ordinance has hitherto been treated as an isolated piece of legislation, and as such it has been a marvel and an enigma. When considered together, every fact in the origin and passage of the ordinance is explained, and is found to be connected with the agency of Dr. Manasseh Cutler."¹ "The ordinance," he further says, "is a condensed abstract of the Massachusetts Constitution of 1780. . . . The Ohio Company, organized in Massachusetts and mainly composed of Massachusetts men, was the party proposing to

¹ Poole in *North American Review*, April, 1876, 257.

purchase these lands. That these prospective emigrants should desire and claim the privilege of living under the laws and with the institutions they had cherished and helped to frame, was as natural and reasonable as that this boon should have been granted to them by Congress. There was no intention on the part of Congress, or of any member, of forming an ordinance on this basis until after Dr. Cutler had arrived in New York on the 5th of July. . . . The new point of procedure having been fixed, the drafting of the ordinance was much a matter of clerical routine. The work was evidently turned over to Mr. Dane, he being the only member of the committee who was familiar with the Massachusetts Constitution."¹

By this course of argument, Mr. Poole shows that it was Dr. Cutler who furnished the committee with suggestions as to the proper basis and best principles upon which to frame the ordinance. Thus the historic gap which Colonel Force could not fill was made full and satisfactory. In the centennial year, the mystery involved in the history of the ordinance was cleared away.

We shall not, however, do justice to the subject if we here part company with Mr. Poole's article. The interest created by Mr. Poole in Dr. Cutler has perhaps carried some of his readers a little too far, and made them under-estimate the service which others besides Dr. Cutler rendered in the formation of the ordinance. The editor of the "St. Clair Papers," Mr. William Henry Smith, says that Mr. Poole himself "gives too little consideration to the influence of others."² Dr. Adams, who reviewed the "St. Clair Papers," entertains the view that there were many authors. "The Ordinance of 1787, like all products of wise legislation, was created, not by one man or one section of country, but by the concurrent wisdom of many men, and by the unanimous vote of Congress. Jefferson and Dane; Pickering and King, of Massachusetts; Carrington and

¹ Poole in *North American Review*, April, 1876, 258.

² *St. Clair Papers*, I, 122.

Lee, of Virginia; Kean, of South Carolina, and Smith, of New York; the moral and educational interests of New England (represented by Dr. Cutler), the economic interests of the whole country (providing for its public debts by the sale of public lands), the 'private speculation' of 'many of the principal characters in America' (Cutler's diary), the personal popularity of St. Clair with the Southern party, which wished to reimburse the General for his Revolutionary losses by making him Governor of the Northwest—all these influences, and many more besides, entered into the formation and adoption of the Ordinance of 1787."¹

Neither the friends of Dane nor those of Jefferson and Dr. Cutler can justly claim the sole authorship of the ordinance for their candidate. So many influences came into play, from Jefferson's first motion to the final passage of the ordinance, that it would be unjust to disregard them. Mr. Poole's enthusiasm for the shrewd and diplomatic New England clergyman has certainly carried many of his admirers away. In reality, Mr. Poole's views are perhaps not very far removed from those of Mr. W. H. Smith, who says: "Dr. Cutler organized the victory," and secured liberal principles in the ordinance.

The writer of this monograph thinks Mr. Poole did not deal quite fairly with Nathan Dane. He was somewhat severe in criticising Mr. Dane's style of writing as obscure and ragged. In fact, Dane's bad style was one of Mr. Poole's grounds for believing that the ordinance was not Mr. Dane's own production, although Mr. Poole admits that Mr. Dane may have performed the clerical work. Mr. Poole also casts rather

¹ Dr. H. B. Adams' review of the St. Clair Papers in *The Nation*, May 4, 1882.

Note.—I do not understand that Mr. Poole ever regarded Dr. Cutler as the actual author of the entire Ordinance of 1787. Mr. Poole has been misapprehended by some of his friends and critics. His main idea was that the clever parson, Dr. Cutler, in the interest of the Ohio Company, pushed a revised ordinance through Congress—an ordinance expressing both Virginia and New England ideas in a way satisfactory to all parties.—ED.

strong reflections on Dane's character, for he says Dane did not make any claim to the authorship of the ordinance during the lifetime of Dr. Cutler, or during that of any other person concerned in its formation. Dr. Cutler died July 23, 1823. Mr. Dane's "Abridgment" appeared from 1823-1829. In this work Dane set forth his claim to the authorship of the ordinance. It would be extremely unjust to the honor of that representative and codifier of Massachusetts law to assume that he purposely withheld his "Abridgment" until after Dr. Cutler's death. Such a thing is more than improbable. Besides, Mr. Dane, in his letter to Rufus King, written three days after the passage of the ordinance, expressly stated that he drew up the ordinance, and that it was accepted with only a slight alteration. Webster's speech shows that he held Mr. Dane in high esteem. As to his legal attainments, a contemporary writer says that the author of the "Abridgment" has honorably discharged that which "every man, according to Lord Coke, owes to his profession."

Again, Mr. Poole reflected perhaps rather too severely upon St. Clair, who is said to have been cool toward Dr. Cutler until the Governorship of the Territory was suggested for the former. This point was strongly contested by Mr. Smith in the "St. Clair Papers," and, following him, by Mr. William W. Williams, in his contribution of an article entitled "Arthur St. Clair and the Ordinance of 1787" to the *Magazine of Western History*, November, 1884. In spite of these criticisms, Mr. Poole's article remains the masterpiece upon the subject of the Ordinance of 1787.

Let us, in conclusion, say with Spencer, though with the addition of a few more names, that enough of enduring honor for each and all must forever be associated with the names of Dane and Jefferson, Pickering and King, Grayson and Smith, Monroe, Carrington, Lee, Kean, Johnson and Cutler, and perhaps others, for the part taken by each in the long, laborious, and eventful struggle which had so glorious a consummation in the ordinance, consecrating forever, by one

imprescriptible and unchangeable monument, the very heart of this land to freedom, knowledge, and union.¹

OPERATION OF THE ORDINANCE.

The first Governor of the Territory appointed under the ordinance by the old Congress was St. Clair. William Sargent, Dr. Cutler's partner, was appointed Secretary. When the new Constitution took effect in 1789, the first Congress passed an act recognizing the ordinance under the new Constitution of the United States. On May 7, 1800, the Territory was divided into two portions, and the western portion became Indiana Territory. On November 29, 1802, the eastern portion was admitted into the Union as the State of Ohio. On January 11, 1805, Indiana Territory was divided into two parts, and the northern central portion became the Territory of Michigan. On February 3, 1800, Indiana was again divided, and its western portion was created into the Territory of Illinois. Indiana and Illinois were admitted into the Union in 1816 and in 1818 respectively. In 1836, the Territory of Wisconsin was formed out of the western portion of the Territory of Michigan. Michigan and Wisconsin were admitted into the Union in 1837 and in 1848 respectively. In authorizing the Territories to frame State Constitutions for their admission into the Union, Congress stipulated that the government should be republican and not repugnant to the Ordinance of the 13th of July, 1787, or to the fundamental compact between the original States and the people and States of the territory northwest of the river Ohio. So the principles of the ordinance entered into the provisions of the State Constitution, and guided the political life of those new commonwealths.

After the Ordinance of 1787 was adopted, attempts were made from time to time by the people of the Territory of Indiana to repeal or suspend the sixth article of the charter.

¹ Spencer's History of the United States, II, 209.

Petitions to that effect were often presented to Congress, but fortunately with no effect. In 1802, General Harrison, then Governor of the Indiana Territory, and afterward the President of the United States, took part in the effort to introduce slavery into the Territory. A memorial of the Governor and Territorial Legislature was laid before Congress. It was referred to a committee in the House of Representatives of which Mr. John Randolph was chairman. The committee reported against the introduction of slavery, and the report was accompanied by the following remarks: "The rapid population of the State of Ohio sufficiently evinces, in the opinion of your committee, that the labor of slaves is not necessary to promote the growth and settlement of colonies in that region; that this labor, demonstrably the dearest of any, can only be employed to advantage in the cultivation of products more valuable than any known to that quarter of the United States; that the committee deem it highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness and prosperity of the Northwestern country, and to give strength and security to that extensive frontier. In the salutary operation of this sagacious and benevolent restraint, it is believed that the inhabitants of Indiana will, at no distant day, find ample remuneration for a temporary privation of labor and of emigration."

Both the Senate and the House repeatedly refused the petitions of the inhabitants of Indiana Territory, and sanctioned the Ordinance of 1787. After the Territory was divided into two portions, the contest for slavery diminished in the eastern, or Indiana part, and finally Indiana became a non-slaveholding State in 1816. In Illinois the battle continued till after that State was admitted into the Union; but there also the anti-slavery party triumphed, and never admitted that accursed institution to corrupt the freedom and industry of a young State. The reason why the two States in their early history evinced a tendency to slave-

holding was because of their proximity to slaveholding States, and the consequent influence of early settlers who either emigrated from the slaveholding States or were actually slave-owners before the passage of the ordinance, according to the French laws of Louisiana or the laws of the English colonies after 1763. In general, the case was quite different in Ohio. There, with local exceptions in some counties, the settlers were chiefly from the Northern and Eastern States. Connecticut had its "Western Reserve" in regions bordering Lake Erie. The Ohio Land Company had settlements on the Ohio and Muskingum Rivers. Referring to the settlement by the Ohio Company, which was principally a New England enterprise, and which was composed of men of high position and wealth, Washington said: "No colony in America was ever settled under such favorable auspices as that which has just commenced at the Muskingum. Information, property, and strength will be its characteristics. I know many of the settlers personally, and there never were men better calculated to promote the welfare of such a community."¹ "Before a year had passed by," says Bancroft, "free labor kept its sleepless watch on the Ohio."²

Besides these settlements, there were also colonies sent out by Symmes and his associates of New Jersey, that settled on the Ohio and the Miami Rivers. The ordinance was prepared for these settlers of non-slaveholding States in the North and East, and the settlers themselves naturally expected an abode for free and industrious men who would subdue Nature and overcome all obstacles for the sake of home and posterity. Ohio had a fair start, and sturdily supported the ordinance. Michigan and Wisconsin concurred with Ohio, and never permitted their virgin soil to be defiled by slavery. The provisions of the ordinance were extended to all the Territories north of 36° 30', and shaped the history and institutions of the great Northwest.

¹ Sparks, IX, 385.

² Bancroft's History of the Constitution, II, 117.

To the territory south of the Ohio River the provisions of the ordinance were extended by the Act of Congress, May 26, 1790; but the sixth article was discarded. When the "Missouri Compromise" was repealed in 1854, the ordinance, for a short period, sank into oblivion. Here let us quote from Governor Coles' "History of the Ordinance": "To a cool and dispassionate observer, who has a knowledge of the enlightened origin, the great popularity, and beneficial effects of the ordinance, it seems to be incredible that it should have been repealed, and especially denounced as violating the great principles on which our Government is founded. Yet such has been the fact; and what adds to the astonishment is, that this has been done by men professing to be of the Jefferson school of politics. . . . The wisdom, expediency and salutary practical effects of the ordinance could not be more clearly shown than by contrasting its operations with those of its substitute. Under the ordinance from 1787 to 1854, the Territories subject to it were quiet, happy and prosperous. Since its principles were repudiated in 1854, we have had nothing but contention, riots and threats, if not the awful realities of civil war. . . ."¹

Indeed, the country experienced "the awful realities of civil war" not long after Governor Coles uttered these words; but the United States now enjoy peace, prosperity, freedom and steady economic growth. The wise and enlightened principles of the ordinance pervade the government and life of the people in the remaining Territories. When they grow in population to the required standard, they too will have State Constitutions, republican in form, and "not repugnant to the principles of the ordinance," and will be admitted into the Union. Then, and only then, will the great colonial and territorial dependencies of the United States in the West cease to exist.

¹ Coles, 32-33.

GENERAL LAND OFFICE.

The General Land Office is the Government-machinery through which the United States dispose of their public lands. It was instituted under the Treasury Department April 25, 1812, and was reorganized July 4, 1836.

Previous to the organization of the Land Office, Congress enacted from time to time various laws with regard to the disposition of public lands, and sold off portions through its agents. The Ordinance of May 20, 1785, created an office known as "the Geographer of the United States."¹ Thomas Hutchins was the first-appointed Geographer. He had a number of surveyors under his direction. One was elected from each State. The Geographer was not, however, a negotiator of the public lands. His duty consisted chiefly in the supervision of surveys, and in the transmission to the Board of Treasury of the series of plats whenever the seven ranges of townships had been surveyed. The Treasury Board in turn transmitted these plats to the Commissioners of the Loan Office of the several States, who, after the execution of certain preliminaries, sold the lands at public vendue. Thus the Treasury Commissioners and the Loan Office Commissioners constituted administrative officers of the public domain, and sold out the surveyed lands in accordance with the ordinances of Congress.

HAMILTON'S PLAN FOR A LAND OFFICE.

When the new Constitution went into operation in 1789, and a new Congress had assembled, Mr. Scott, of Pennsylvania, argued the necessity of creating a General Land Office,² in order that the public lands might be disposed of to the best interest of the people, and especially of the pioneer settlers who had just begun to seek a home in the West. The

¹ Journals of Congress, IV, 520.

² Debates of Congress, I, 99-115.

need of parcelling out the lands in smaller lots than had hitherto been granted, and of granting them directly to actual settlers through agents of the General Land Office, was strongly emphasized by Mr. Scott and his followers, but their efforts bore no fruit.

The importance of the subject was not, however, overlooked by Congress. The House of Representatives called upon Alexander Hamilton, January 20, 1790, for suggestions respecting the best plan of disposing of the public lands. Hamilton transmitted his report to the House on July 20, 1790.¹ The report is said to have formed the basis for the future administration of the public lands. It concerns us here to see what was his idea as to the administrative organ of the public domain. Hamilton reported in favor of instituting a General Land Office at the seat of Congress. He argued this policy from a financial point of view. To institute the General Land Office was to realize the greatest returns from sales of the public lands. He also reported the advisability of opening district land offices for the accommodation of small purchasers.

The General Land Office was not, however, organized till twenty-two years later. But under the act of May 18, 1796,² the office of Surveyor-General was created, and in the following year General Putnam was appointed Surveyor-General of the Northwestern Territory. By the same act, the Secretary of the Treasury became the chief agent for disposing of the public lands. The act of May 10, 1810,³ established district land offices in the Northwestern Territory, and they were placed under the charge of registers. Hitherto the Surveyor-General transmitted the plats of survey to the Secretary of the Treasury, but from this time forth he was to transmit them to the registers also. Besides the Register, the

¹ Public Domain, 198-200.

² Statutes at Large, I, 465.

³ Public Domain, 201.

office of Receiver was instituted. He was to receive money paid for the lands.

ESTABLISHMENT OF THE GENERAL LAND OFFICE.

On April 25, 1812, the General Land Office was instituted.¹ The new Commissioner was to perform those duties pertaining to the public lands which had hitherto been discharged by the Secretaries of Treasury and of War. All returns relative to the public lands hitherto made to the Secretary of the Treasury were hereafter to be made to the Commissioner, and all patents were to be issued from his office.

At this time the General Land Office had charge of the cessions from various States and the whole of Louisiana. Its administrative field was to expand more and more, according to the progress of surveys and new acquisitions of territory. Edward Tiffin, of Ohio, was appointed the first Commissioner.

In 1836, "an act to reorganize the General Land Office" was passed.² The act provided for the creation of several new officers in the department. They were as follows: Principal Clerk of the Public Lands; the Principal Clerk of Private Land Claims; the Principal Clerk of the Surveys; the Recorder of the General Land Office, and the Solicitor. The act further provided for the appointment of a Secretary by the President, whose duty was to sign for him all land patents.

In 1849 came another change in the General Land Office. Hitherto it had been a subordinate bureau in the Treasury Department. The act of March 3, 1849,³ created the Department of the Interior, whose Secretary, according to a provision of the act, was authorized to perform all duties in relation to the General Land Office—of supervision, appeal, etc.—

¹ Statutes at Large, II, 716.

² *Ibid.* V, 107.

³ *Ibid.* IX, 207.

hitherto discharged by the Secretary of the Treasury. From that time the General Land Office has remained a subordinate bureau in the Department of the Interior.

As the superior officer of the Commissioner of the General Land Office, the Secretary of the Interior is allowed a certain amount of discretionary power in order that he may act with a certain degree of freedom, without being obliged always to go through legislative forms. He can discontinue the district land offices in any locality when he thinks their existence is no longer required. He has authority to order the departure from the regular rectangular surveys in the States where he thinks the system impracticable. The issue of military land patents ; the appraisal and sale of reservations for town-sites ; the adjustment of swamp-claims and claims to overflowed lands with the Governors of the States interested ; the calling of the Board of Equitable Adjudication for suspended entries of public lands and pre-emption claims ; the designation of agricultural lands apart from mineral lands ; the control of Yellowstone Park, and several other duties either of a routine or discretionary character, devolve upon the Secretary of the Interior. Finally, he must take the necessary measures for the completion of the public-land surveys.

RESPONSIBILITIES OF THE COMMISSIONER.

The existing laws thus require of the Secretary of the Interior the *supervision* of public business relating to the public lands, but the actual executive head of this important branch of public service is the Commissioner of the Land Office. It is this Commissioner who superintends all the machinery of the great Land Court of the country. It is he who chiefly disposes of innumerable cases of land claims. Upon him rests the responsibility of the faithful execution of the settlement laws. From him springs directly the title to land. Upon him depends the economic safety of the pioneer settler who struggles to create a home. He must fight with lawless

land "grabbers." He must keep a watchful eye upon the condition of railroad corporations to which land grants have been made. Public interest requires him to avoid the introduction into the United States of English landlordism and other forms of land monopoly. These and all other such duties devolve upon the responsible office of the Commissioner of the General Land Office.

We shall now briefly inquire how the Land Office is managed under the direction of the Commissioner. In treating of the administration of the General Land Office, we shall divide the subject into two heads: 1. The General Land Office proper; 2. The local offices subordinate to the General Land Office.

For the sake of conveniently carrying on practical administrative work, the General Land Office has created from time to time minor subordinate offices within itself. Each office is in charge of a chief clerk. At present there are twelve subdivisions—from Division A to Division P.¹ The entire force in the General Land Office, from the Commissioner down to the laborers, numbered 301 on June 30, 1883. Their compensation amounted to \$383,000 per annum.²

The local subordinate officers are Surveyors-General and district land officers. At present there are sixteen surveying districts, each of which is under the charge of a Surveyor-General. These districts are Arizona, California, Colorado, Dakota, Florida, Idaho, Louisiana, Minnesota, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.³ The Surveyor-General is authorized to appoint his deputy to survey the public lands within his district. The cost of survey varies according to localities, but it cannot exceed the maximum fixed by act of Congress. The Surveyor-General makes contracts with his deputy under the approval of the Commissioner. The Surveyor's district

¹ Public Domain, 1230.

² *Ibid.* 553.

³ *Ibid.* 554.

has no reference to the political divisions of the States, and is entirely conventional, depending upon the location of the public lands. When the survey of public lands within any particular surveying district is completed, then the Surveyor-General's office is closed and its archives are filed with the State Government.

Quite independent of surveying districts, the district land offices have been created for the accommodation of settlers. Since 1800 there have been created two hundred and fifty-eight district land offices, but there now remain only one hundred and five offices.¹ Each office is in charge of a Register and Receiver. The district land officers are agents for disposing of the public lands, and they come in direct contact with settlers. The execution of various settlement laws depends much upon the faithful discharge of the duties of these local officers.

In recent years efforts have been made to advance the General Land Office into a special department like the Department of Agriculture. In the first session of the Forty-Seventh Congress, the Committee on Public Lands, in the Senate, instituted investigations as to the actual condition of administration in the General Land Office. They reported a recommendation to create a Department of Public Lands. The Public Land Commission, which was created under the act of March 3, 1879, to codify the land laws of the United States, held the same view as did the Senatorial Committee. The late Commissioner, Mr. McFarland, repeatedly called the attention of Congress to the increasing work of the Land Office, and the lack of proper provision for the work.

We shall close this chapter by quoting words of the Public Land Commissioners, in their valuable work "Public Domain," with regard to the importance of the General Land Office. "The General Land Office," says one Commissioner, "holds the records of title to the vast area known as

¹ Public Domain, 555.

the public domain, on which are hundreds of thousands of homes. Its records constitute the 'Domesday Book' of the public domain of the United States."¹ In the later edition of the work, the same Commissioner again says: "The General Land Office, charged with the care and custody of the public lands under the supervision of the Secretary of the Interior, is one of the most important and responsible public divisions in the administrative circles of the Government. The survey, sale or other disposition of the nation's public lands is within its control. . . . Its jurisdiction reaches from Lake Erie to the Pacific Ocean, and from Canada to the Gulf of Mexico. Four-fifths of the lands of the entire area of the United States have been or are now under its supervision."² Public lands are a public trust. Recent investigations disclose shameful frauds and deceptions as prevailing in public-land entries.³ The nation's interest demands a fair disposition of the public domain, and the importance of the office to which is entrusted the nation's property can hardly be exaggerated.

III.

LAND SYSTEM OF THE UNITED STATES.

The land system of the United States is of historical growth. It has passed through various legislative enactments, and through almost a century of practical administration. The present system has grown, perhaps, far beyond the anticipations of those who were first called upon to legislate concerning the public lands.

The chief object of the early legislators was to dispose of

¹ Public Domain, 166.

² Public Domain, 1222-1223.

³ See in New York *Herald* a series of articles (April 6, 1886, and succeeding issues) upon such subjects as "Greedy Land Grabbers," "New Mexican Land Thieves," etc.

the lands as fast as they could, and with the proceeds to discharge public debts, to which the public lands were already pledged. Legislators did not look upon the public lands from the standpoint of settlement, but from that of finance. The Revolutionary War had wrecked the finances of the States. Commerce had faint life. Manufactures had not come into being. State contributions were often attended with technical difficulties. Loans accumulated, while credit was small. Continental paper was of little or no value. At this point of financial embarrassment, the most promising source of revenue was from the sale of Western lands, which became public domain through fierce political controversy. It is not strange, therefore, that early American financiers favored the passage of land laws which had revenue for their sole object. Public lands were then the common purse—the treasury of the nation.

EFFECT OF TERRITORIAL GROWTH.

While the question of revenue had so preponderating an influence, there came another influence which modified the land laws. It was the growth of the public domain. The legislators who deliberated on the public lands in the hall of Congress in Philadelphia, or in New York, had in view no broad Western horizon. Their outlook was limited to the lands lying west of the Alleghany Mountains and east of the Mississippi River. The lands which were pledged to public debts; the lands which were wrested from the British Crown; the lands which placed the Union on a solid basis of common interest; the lands which played the part of a centripetal force against the centrifugal tendencies of the States—these were the only lands which, in actual government and disposition, taxed the wisdom of the early legislators of the country. Beyond the Mississippi their views did not extend. They had no conception that the public agrarian trust was a growing one. They did not dream that the public lands

would extend, within so short a time, not only beyond the Mississippi River, but even beyond the Rocky Mountains, beyond the Sierra Nevada, and finally down to the Pacific Coast. But such was the decree of fate. "America is a fortunate country," said Napoleon; "she grows by the follies of our European nations." True, Napoleon's own "follies" caused him to part with the vast imperial territory of Louisiana, and America grew to an enormous size. The original thirteen States almost trebled their domain. After the Louisiana Purchase, the public domain kept on growing, till the Czar of Russia ceded the peninsula of Alaska. So, finally, has arisen a vast agrarian empire of almost 3,000,000 square miles, which stands behind the original States like a territorial bulwark against any aggressive power beyond the Pacific.

The physical characteristics and natural conditions of this vast public domain are varied indeed. Some lands are subject to periodical floods. Some are now treeless deserts which need irrigation for successful culture. Some localities are valuable only for timber and stone. Some lands have coal and mineral deposits. Still others are particularly exposed to attacks from the Indians, and thereby need special protection to encourage settlement. Other lands, still, are covered with private land claims arising from grants by foreign powers. Again, as the public domain grew in size, certain lands had to be used, not only for purposes of settlement, but also for internal improvements, as well as for the advancement of education. These and many other facts and conditions had to be taken into consideration in the disposition of public lands. With the growth of the public domain, the land laws became very varied in different regions.

CHANGES IN PUBLIC SENTIMENT.

It was not merely the growth of the public domain that introduced variation in the early land laws of the country. Another potent factor in this process was the growth of

public sentiment in regard to the ultimate disposition of the public lands. The old revenue idea gave place to the idea of actual settlement. The grant of homesteads for honest settlers became the spirit of the land laws.

In speaking of the waste lands in England, Edmund Burke said: "The principal revenue which I propose to draw from these uncultivated wastes is to spring from the improvement and population of the Kingdom. Throw them into the mass of private property, by which they will come, through the course of circulation and through the political secretions of the State, into well-regulated revenue." Such was the case with the wild lands of the United States. The nation had to derive wealth and strength from permanent material improvements upon the public lands by inviting enterprising settlers from the old States or from abroad, through free and liberal grants of land. The policy of land sales for the mere sake of revenue thus gave way to land grants for actual settlement.

This change in public sentiment was very gradual. It was the result of experience as well as of changed conditions. The sufferings of land purchasers under the credit system; the failure to realize any considerable revenue from cash sales; the increasing prosperity of the country from commerce and manufactures; the need of immigration of foreign-born citizens to occupy and develop the public lands—all these causes worked together to mould public opinion and shape the ultimate land policy of the United States.

Again, problems and motives of purely political concern often mingled with the land question. Not unfrequently party lines were drawn on agrarian issues. One party was instrumental in purchasing and acquiring new territories, while another enacted and executed land laws. The endless petitions and intrigues of speculators to secure special land grants hastened the enactment of a general land law in the form of the pre-emption act of 1841. In fact, the land laws of the United States developed from the actual needs of the people.

As is often the case with historical institutions, many early land laws have outlived their usefulness. They should be codified and reduced to a much simpler form, thereby remedying many incident evils. Experience will always show into what form the settlement laws of a country ought to drift. For historical illustration, let us now review the development of the land laws of the United States and see how they stand at the present time.

MILITARY BOUNTIES.

The earliest use which Congress had made of public lands was neither for revenue nor for settlement. It was for military bounties. "The primary use of *focland*, according to Bede's celebrated epistle to Egbert, was to reward soldiers."¹ So it was with the *focland* of the United States.

As early as August 14, 1776,² Congress promised a land bounty to British deserters, chiefly Hessian mercenaries. One month later, Congress passed an act promising land grants to officers and soldiers in the Continental Army. Through the prospect of land grants, Congress endeavored to enlist men in the army. This was the so-called "Continental Plan."

At this early stage of the Revolutionary War, Congress had little anticipation of the future constitutional controversy which conflicting bounty acts and the conflicting claims to the Western lands were instrumental in bringing about. Still less had Congress formed any idea what gigantic land corporations would eventually be called into existence by these same bounty acts. There was as yet no room for the consideration of conflicting claims to the Western settlements. Independence had just been declared. The war had only begun. The enlistment of soldiers on any plan which promised to secure a sufficient quota of troops was the one

¹ Henry Adams, *Anglo-Saxon Law*, 92.

² *Laws of the United States* (Duane Edition), I. 575.

thing needful. Accordingly Congress resorted to land bounties. The ways and means of fulfilling promises were for subsequent consideration.

The land question cropped out in the Articles of Confederation. The ninth article provided that no State was to be deprived of territory for the benefit of the United States. Through this provision Congress recognized the claims of the several States to their Western lands. This recognition caused Maryland publicly to oppose the validity of such claims—an opposition begun with the passage of the bounty act of September 16, 1776.

The United States had at that time no public lands. How was the Confederation to fulfill its promises? By purchasing lands from individual States? Then the States, in their collective capacity, would have to contribute money to buy these bounty lands, and ultimately enrich such great landed States as Virginia. Not only the money, but the very men who were now fighting for the cause of liberty would sooner or later find their way to the territory where the bounty lands were to be allotted. The growth of the landed States, both in wealth and population, was a necessary consequence too obvious for calculation. Such an overgrowth of the large States would both politically and economically preponderate over the small States. Maryland and other landless States would not be able to hold their own against such an aggressive tendency on the part of the landed States. Controversy over the land question was inevitable from the very dawn of federal history, especially as the validity of the claims to the Western lands could be questioned.

Thus arose at the dawn of the Republic's history a constitutional controversy on the disposition of unoccupied territory. The controversy continued several years, and ended in cessions of land claims by the larger States. These cessions gave birth to the public domain. It strengthened the Union, and laid for it a lasting foundation. It created a common federal interest and made valid the promise of the land bounty.

While the question of the land cessions was yet pending, Congress passed a resolution that the ceded lands should be disposed of for the common benefit of the United States, and be settled or granted according to the manner agreed to in Congress. This was the first resolution as to the disposition of the Western lands. When New York ceded her claims, and Maryland signed the Articles of Confederation, Congress began to discuss modes of disposition, but nothing was determined till after the Virginia cession. The Virginia cession took place March 1, 1784, and on May 20, 1785,¹ Congress passed the first ordinance for ascertaining the mode of disposing of the Western lands.

GENESIS OF THE LAND SYSTEM.

This ordinance, the genesis of the land system, deserves examination in some detail. The ordinance instituted the so-called "Rectangular System" of surveys. According to this system, the Territory was to be divided into townships of six miles square by lines running due north and south, and by other lines crossing the first at right angles. The first line running north and south began on the river Ohio, at a point due north from the western termination of a line which was run as the southern boundary of the State of Pennsylvania. The first line running east and west of course started at the same point. The townships were designated by progressive numbers from south to north. Each range always began with No. 1, the ranges themselves being designated by progressive numbers from east to west. The townships were subdivided into sections of one mile square, or 640 acres, each township containing 36 sections, or 23,040 acres. This was the size of the normal township. In case natural hindrances made it necessary to have the survey of only a fractional part of the township, then the

¹Journal of Congress, IV. 520, or Laws of the United States (Duane Edition), I. 563.

sections actually laid out bore the same numbers as if the township had been entire. The actual size of such a township depended upon the extent of natural obstacles preventing the survey of an entire township.

RECTANGULAR SYSTEM OF SURVEY.

This rectangular system of survey has been established in the United States ever since the Ordinance of 1785. Its merits have been recognized, and are well known. Unfortunately, the origin of the system is not so well known. The plan was first reported May 7, 1784, by a committee of which Mr. Jefferson was chairman. The report recommended the division of the Western Territory into "hundreds," of ten geographical miles square, and these again to be subdivided into lots of one mile square. As we have seen in the Ordinance of 1785, the size of the "hundreds" or townships was finally reduced to six miles square. From what source the idea of dividing public lands into rectangular forms was first suggested to Mr. Jefferson and his colleagues is a matter of conjecture. Mr. Donaldson, of the United States Land Commission, thinks that the natural features of the Western lands facilitated the work of longitudinal and latitudinal survey; this, and the fact that Virginia in her deed of cession provided for the division of the Territory into States rectangular in form, not less than one hundred nor more than one hundred and fifty miles square, perhaps influenced Jefferson to recommend the rectangular system of survey.¹ Professor Austin Scott, of Rutgers College, thinks that the idea was first suggested to Jefferson by De Witt, the Dutch surveyor, and that the system, imported from Holland, was primarily of Roman origin.²

Whatever may have been the origin of the system, it proved to be one of the best features of legislation respecting

¹ Public Domain, 178.

² The Rutgers Targum, December 12, 1884.

the public lands of the United States. Speaking of the merits of this system, Mr. Donaldson says: "Its recommendations to the public lie in its economy, simplicity and brevity of description in deeding the premises by patent and for future conveyancing, and in the convenience of reference from the most minute legal subdivision to the corners and lines of sections, and of townships of given principal base and meridians. Its greatest convenience is its extreme simplicity. . . . It was originated for land-parcelling for sale, and it has answered the purpose."¹ Again, General R. D. Mussey, of Washington, D. C., in a letter to Dr. H. B. Adams, of Johns Hopkins University, said: "I was specially interested in the history of the Ordinances of 1784 and 1787, and recalled the remark of a friend who had had a great deal to do with colonizing emigrants and others. He said that the rectangular method of land surveying was as great a conception in its way as any in that grand scheme for the management and disposal of the public lands. The ease, certainty and dispatch which this system has introduced into the determination of 'metes and bounds' have been of incalculable advantage in promoting the settlement of the West. . . . According to the 'Public Domain,' last edition, this plan had its origin in a committee of which Jefferson was a member, and presumably the idea was largely his. If so, it deserves to be ranked among the best of his contributions to the practical details of our Government machinery." Indeed, the value of the rectangular system of surveys can hardly be overestimated. Not only does it afford positive advantages to the settlement, but, negatively, it prevents litigations, which are an inevitable consequence of irregular surveys and settlements.

METHOD OF SALE.

The Ordinance of 1785 established in detail a system of sale for the public lands. As soon as seven ranges of town-

¹ Public Domain, 188.

ships had been surveyed, the geographer had to transmit the plats to the Treasury Board. Thence the Secretary of War was authorized to take, by lot, plats for a number of townships equal to one seventh part of the entire number of townships contained in the seven ranges. This procedure was to satisfy the claims of soldiers to land bounties. Each time the geographer transmitted plats upon the survey of every seven ranges, the Secretary of War had to repeat the above procedure, until a sufficient quantity of land had been drawn to satisfy military grants. The remainder of the surveyed lands was drawn by the Treasury Board in the name of the thirteen States, according to their respective requisitions from the federal treasury. The board then transmitted a copy of the original plats of survey to the Commissioners of Loans in the several States, and notified them what townships had fallen by distribution to each particular State. The commissioners were authorized to advertise lands for the space of from two to six months, and then to sell them at public vendue in a manner prescribed by the ordinance.

The manner of disposing was to be as follows: Township No. 1 in the first range was sold entire, and No. 2 was sold only in sections, and so on alternately throughout the townships of the first range. Township No. 1 in the second range was sold by sections, and No. 2 entire, and so on throughout the second range. The third range was sold like the first, and the fourth range like the second, and thus alternately throughout all the ranges. The minimum price of land was one dollar per acre, not including the cost of survey, which was one dollar per section, or thirty-six dollars per township.

The ordinance further directed the reservation of Lot No. 16 in every township for the maintenance of public schools. This provision proved very beneficial to the cause of education.

This ordinance is significant in more than one respect. Not only did it institute the land system, but it respected

the promise of land bounties made to the officers and soldiers of the Continental Army at the outbreak of the Revolution. This promise the Government now proposed to fulfill through the privilege given the Secretary of War of reserving bounty lands before great tracts were put into the market.

But this provision was repealed July 9, 1788,¹ in consideration of a military reservation of a million acres which was ordered by the resolution of October 22, 1787. The proportionate distribution of lands to the several States, and the subsequent sale by the Loan Commissioners in each State, were alike found impracticable. The Treasury Board was, however, authorized to select lands for sale.

Another significant feature in this Ordinance of 1785 was the proposed sale of lands in an unlimited quantity above the required minimum, which was an entire section of 640 acres. A rapid disposal of public lands and immediate realization of revenue were greatly desired at the beginning of the administration of the public land. "These Western lands were looked upon by all the financiers of this period as an asset to be cashed at once for payment of current expenses of Government and extinguishment of the national debt."² That this was the fact, can be judged from the tone of the resolution of April 29, 1784, which urged the cession of lands to the States which still held them in suspension. It says that "they [referring to the States] be urged to consider that, the war being now brought to a happy termination by the personal services of our soldiers, the supplies of property by our citizens, and loans of money from them as well as from foreigners, these several creditors have a right to expect that funds shall be provided on which they may rely for indemnification; that Congress still consider vacant territory as an important resource."³ By Act of March 3, 1795, "the

¹ Laws of the United States (Duane Edition), I. 569.

² Public Domain, 196.

³ Journals of Congress, IV. 392.

net proceeds of the sales of lands belonging or which shall hereafter belong to the United States, in the Western Territory thereof,"¹ were constituted one of the six provisions that went to the "sinking fund."

With desire of immediate revenue, the Ordinance of 1785 allowed no credit for land purchases. Payments could be made either in specie or in loan-office certificates, reduced to a specie value on the then scale of depreciation, or by certificates of liquidated debts of the United States, including interest. In case immediate payment was not forthcoming, the lands were again to be offered for sale. In unfortunate contrast to this policy of immediate payments, the credit element was allowed to enter into the land system of 1787.² The resolution of April 21, in that year, required one third of the purchase-money to be immediately paid, but allowed three months' credit for the remaining two thirds. This was but another means to an economic end. It was to achieve the quickest possible sale of the public lands.

EARLY ATTEMPTS AT SETTLEMENT.

The settlement of the Western Territory, for which the Ordinance of 1785 was created, was not a novel idea. As early as 1742, the Ohio Company was organized in Virginia. Its object was to trade with the Indians and to settle the country. It secured a grant of several hundred thousand acres of land. Thomas Lee, Lawrence Washington, and other prominent Virginians, were the originators of this Ohio scheme. After the close of the French and Indian War, the subject of settlement received a fresh impulse from various sources. No less a personage than George Washington figured as one of the land speculators of the time.³ In the *Maryland Journal*

¹ Statutes-at-Large, I. 435.

² Journals of Congress, IV. 739.

³ See Washington's Interest in Western Lands, in Dr. Adams' paper on Land Cessions, University Studies, 3d Série, No. 1.

of August 20, 1773, Washington advertised 20,000 acres of land on the Ohio and Great Kanawha Rivers. About the same time the Walpole Grant was obtained through the personal influence of Benjamin Franklin. Several other land companies were started, some only in name, and others becoming afterward sources of litigation.

The Revolutionary War broke up every speculative scheme and checked every enterprise. Neither the Ohio Company nor the Walpole Grant was heard of again. But as soon as the war came to an end, individual settlers began to move toward the West. They began to trespass upon the public domain. They settled without title on unsurveyed lands. Thus they began to violate the fundamental provisions of the land system instituted in 1785, which required the extinguishment of Indian titles, and the survey of public lands before settlement. But these settlers were not very numerous. At the time the Ordinance of 1787 was passed, we find only a few scattered settlements on the Kaskaskias and at St. Vincent's, and a few French and Canadian villages.

OHIO COMPANY AND SYMMES' ASSOCIATES.

With the Ordinance of 1787 began active settlement in the Western Territory. The movement was inaugurated by the organization of the Ohio Land Company in 1786. The leading spirits of the company were General Rufus Putnam and General Benjamin Tupper. Both men were appointed surveyors under the Ordinance of 1785.¹ One night's friendly conference of the two veterans by a New England fireside resulted in a vast plan for colonization. The plan was accepted by the veterans of the Revolutionary Army, and such men as Winthrop Sargent, John Brooks, and Thomas Cushing joined the enterprise. The corporation was formally organized in Boston on March 3, 1786. It aimed to raise a fund to the amount of one million dollars in Conti-

¹ Journals of Congress, IV. 547.

mental certificates, and immediate steps were taken to collect subscriptions. But local discontent in New England from financial depression, and the consequent outbreak of Shay's Rebellion, retarded the progress of the company. In 1787, negotiations were opened with Congress for the purchase of lands in Ohio. Dr. Manasseh Cutler was then a special agent of the company.¹ We have already noticed the important service which the New England clergyman rendered in the passage of that celebrated ordinance. He succeeded also in effecting the purchase of lands for the Ohio Company. He and Winthrop Sargent, in behalf of the company, entered into a contract with the Board of Treasury, October 27, 1787, for the purchase of tracts of land on the Ohio and Scioto which were estimated to contain two million acres. At the conclusion of the contract, \$500,000 of the purchase-money was to be paid down, but credit was given for the rest. The price was one dollar per acre, but a rebate to two thirds of a dollar was allowed under certain conditions. Rights to military bounties were recognized, acre for acre, in the payments of the company to the amount of one seventh of the entire purchase-money. Two sections in each township were granted for the support of schools and religion, and two entire townships for the founding of a university. Later, we find a donation of 100,000 acres to actual settlers within the purchase of the company. Originally, the contract stipulated for the purchase of 1,500,000 acres, but this amount was finally reduced to 964,285 acres, for which the company paid \$642,856.66 in certificates and army land-warrants.²

Closely following the purchase made by the Ohio Company, John Cleves Symmes and his associates also bought a tract of land on the Ohio and Miami Rivers—a tract originally estimated to contain one million acres, but finally reduced to

¹ For the Ohio Company, see Poole's Ordinance of 1787 in *North American Review*, April, 1876. Also Alfred Mathews' Organization of the Ohio Land Company, *Magazine of Western History*, November, 1884.

² Laws of the United States, II. 277. See also Public Domain, 17.

248,540 acres. The terms of the purchase were the same as to the Ohio Company. The associates of Symmes were also Northern men. His petition was made "on behalf of the citizens of the United States westward of Connecticut."¹ Another contract for the sale of lands was made with the State of Pennsylvania in 1788. The tract now lies in Erie County, and is known as the "Erie Purchase."

Thus there were three large land-sales by Congress before the adoption of the system of disposing of lands through district land offices. Two of these purchases were made by private corporations of Northern men for the purpose of colonizing emigrants in the Western Territory. The same restless, enterprising, progressive spirit that had been the characteristic of the hardy Puritan settlers of New England, was manifested when they saw before them vast, fertile plains and primeval forests awaiting only the approach of labor and capital. New England society and institutions were reproduced in the Northwest, and they were destined to extend their influence from sea to sea.

HAMILTON'S PLAN FOR THE PUBLIC LANDS.

When Congress assembled in 1789, under the new Constitution, the subject of the public lands formed one of the most frequent topics of discussion. The House of Representatives soon called upon Alexander Hamilton for his views concerning the best plan of disposing of the public lands. On July 20, 1790, Hamilton made a report to Congress.²

This report was remarkable for its practical and financial suggestions. Hamilton thought that there would probably be three kinds of land purchases: First, by moneyed individuals and associations for the purpose of investment; second, by colonizing associations for the purpose of settling emigrants; and third, by unassociated persons either already inhabitants of the Western Territory or those who intended to emigrate

¹ Laws of the United States, I. 495.

² Public Domain, 198.

thither. Since the first two purchases already proposed would be of such a character as to embrace a large quantity of land, Hamilton thought that, from a financial point of view, they required primary attention. But as the last purchase was also an important one, he sought to harmonize the interests of both large and small purchasers. For the accommodation of the former class, he recommended the opening of a General Land Office at the seat of Government where large contracts would mostly be negotiated by interested parties, while for the benefit of the latter class he recommended the establishment of local land offices where small purchases could be made. Besides the commissioners in charge of these land offices, Hamilton suggested the office of a Surveyor-General, with power of appointing a Deputy Surveyor-General, as well as a number of Deputy Surveyors.

Hamilton's suggestions as to the practical details in the business of the Land Office were very characteristic of him. While finance was to him a supreme interest, Hamilton did not overlook the question of landed property. He seems to have favored small land-holdings, for he made one hundred acres the maximum quantity of an actual settler's holding. But any quantity of land could be bought by special contract, and two years' credit was allowed for the purchase of more than a township of ten miles square—subject, however, to certain conditions. Hamilton laid special stress upon the financial value of the public lands. He deemed them one of the foundations of his financial policy, for the certificates issued for land on the public loan then proposed were allowed to serve for warrants, and had to be received acre for acre in payment for lands.

IMPORTANT FEATURES OF THE LAND SYSTEM.

Such was in substance Hamilton's plan for the disposition of the public lands. Some of the suggestions which Hamilton made in his reports soon reappeared in acts of

Congress, notably in the Act of May 18, 1796.¹ This was the first land ordinance which the new Congress passed since its organization in 1789. There was nothing especially original in it, for it was a modification of the Ordinance of 1785, with the embodiment of some of Hamilton's suggestions. The leading features of the old ordinance—*i. e.*, the system of surveys, and the method of dividing land into townships, and of subdividing the townships into sections; the procedure of sale; the reservation of certain sections in each township for specific purposes—were all retained in this act. The creation of the office of a Surveyor-General, the formal inauguration of a credit system, and the payment of certain fees for certificates and patents, were things recommended by Hamilton, and they were now made law by this act. The price of land, instead of being reduced, as recommended by Hamilton, was doubled, being now fixed at \$2 per acre.

The next important change in the land system was introduced by the Act of May 10, 1800.² This act created the office of Register and Receiver, whose duty was to take charge of a land office. The act created in all four land offices—one at Cincinnati, one at Chillicothe, one at Marietta, and one at Steubenville. They were the first land offices established by Congress. The present method of disposing of public lands through district land offices began at this time.

Hitherto land had been sold in quarter townships and sections. The above act ordered the Surveyor-General to make further subdivisions of land—that is, into half sections. In 1804, provision was made for the division of land into quarter sections, and in 1820 the minimum quantity was reduced to half-quarter sections; still later to quarter-quarter sections—*i. e.*, 40 acres—which is the present minimum body of land for sale.

Another important provision of the above act related to the so-called "offered lands." Such lands as remained unsold

¹ Laws of the United States, II. 533.

² Statutes-at-Large, II. 73.

at the public vendue were subject to private sale at the then minimum price of \$2 per acre. Some change was made in the mode of paying the purchase-money. Credit was allowed for four years. Payment could be made in four instalments, one fourth part of the purchase-money being paid each year. This method reduced considerably the revenue from public lands, the amount received in 1800 being only \$443.75.¹ But, on the whole, this plan was an improvement upon the Act of 1796, and it was the first serious attempt toward the establishment of a general land system.

There intervened several decades between this time and the institution of a general pre-emption act. During this interval there were several important agrarian measures of both a general and a special character. During the first half of this period the purchase of Louisiana and Florida was effected. In 1805, a standing committee on public lands was appointed in the House of Representatives. In 1812, the General Land Office was organized. The public lands were now being rapidly settled, and several new States arose. Nothing is so remarkable as the rapid increase of population in the public-land States. In 1800, the entire Northwest contained only 50,000² inhabitants, the ratio of population being about one tenth to every square mile; while in 1840 the population had increased to 2,920,000, the ratio therefore increasing to about seven per square mile. In Ohio alone, from 1800 to 1810, the increase was nearly 409 per cent.

THE CREDIT FEATURE IN THE LAND SYSTEM.

The first forty years of the present century can be called the formative period of the general land system. The bitterest political controversy was connected with this period. As the struggle of the landed States in the old Congress had been to prevent the institution of the public lands, so now the struggle of the new landed States was to break up and

¹ Public Domain, 17.

² See Tenth Census of the United States—Population, Part I. 4.

appropriate the public lands within their own jurisdiction. To this period belongs one of the measures which instituted the so-called "American System" for internal improvement, and led the way to gigantic land grants which subsequently became sources of corruption and abuse. Again the country reached its most prosperous period, and the public debt was almost extinguished. As the surplus revenue is an economic problem in the United States to-day, so was it in this period of national history. Especially was it the case with the proceeds of public-land sales. Hence arose the question of distribution of proceeds, which for a time was carried by its friends.

During the early part of the present century, the land system presented one most discouraging feature. This was speculation in public lands. Speculation was an outcome of the credit feature in the land system. The Act¹ of 1800 provided: First, that every purchaser of public lands should pay toward surveying expenses six dollars for every section of land, and three dollars for every half section. Secondly, that the purchaser should deposit one-twentieth part of the purchase-money at the time of purchase, and one-quarter of the entire purchase-money, including the deposit, within forty days. A second quarter had to be paid within two years, a third quarter within three years, and the last quarter within four years after the day of purchase. Thirdly, that the purchaser should pay to the Register of the Land Office, when application was made, a fee of three dollars for every section and two dollars for every half section. Fourthly, that a fee of five dollars for patenting a section, and a fee of four dollars for patenting a half section, should also be required from every purchaser.

MOVEMENT OF POPULATION WESTWARD.

The terms of purchase provided by the Act of 1800 were very liberal, and offered sufficient inducement for enterpris-

¹ Statutes-at-Large, II. 73.

ing men to emigrate westward. At this time, several States of the Union were making primary disposition of lands within their own boundaries. Massachusetts was selling her lands in Maine; Connecticut, her "Western Reserve" in Ohio; Pennsylvania, her chartered lands through the State Land Office; while Virginia put into the market her lands in Kentucky; North Carolina, her lands in Tennessee; and Georgia, her lands in Alabama and Mississippi.¹ The States offered their lands at a reduced price, so that Federal and State public lands came into open competition in the market.

The nineteenth century opened in America with the westward movement of population. European nations were at that time involved in the Napoleonic wars; consequently, emigration from the Old World was small. Prior to 1820, it has been estimated that the number of immigrants averaged about 8,000 persons per annum.² It was not, therefore, emigrants from Europe that moved to the West at this particular period of American history, but rather emigrants from the eastern part of the United States. Land could be obtained for an insignificant sum of money. The terms were so liberal that settlers could pay the price of land with the first produce of their newly-broken farms. Let us observe with how little money a settler could take up a section of 640 acres. A cash payment of \$331 was all that the settler needed in order to acquire this vast estate. The charges were distributed as follows:

1. Register's fee for application,	\$3 00
2. Expense for surveying,	6 00
3. One-twentieth of \$1280, the price of a section at \$2 per acre, to be deposited,	64 00
4. One-fourth of \$1280, including deposit, paid within forty days after purchase,	256 00
5. Other small fees,	2 00
	\$331 00
Total charges,	\$331 00

¹ Public Domain, 202.

² The American Almanac, 1884, 27.

As we have already seen, the other three-fourths (\$960) of the purchase-money could be paid in three instalments, one each year, after the second year following the purchase, so that it required in all four years for the Government to realize the entire purchase-money. Any enterprising and industrious settler would be able to realize something from his newly-acquired land within two years of settlement, and thus find means for the payment of another fourth part of his indebtedness. At any rate, the agrarian inducements were so attractive to eastern farmers that a great exodus began to the Western Territory.

Speaking of the movement of settlers in the western part of New York, John Bach McMaster says: "They formed companies and bought millions of acres. They went singly, and purchased whole townships as fast as the surveyors could locate, buying on trust and selling for wheat, for lumber, for whatever the land could yield or the settler give."¹ In another place he says: "In 1800, the high-peaked wagons, with their white canvas covers, the little herd, the company of sturdy men and women, were to be seen travelling westward on all the highways from New England to Albany, and from Albany toward the Lakes. They were the true settlers, cleared the forests, bridged the streams, built up towns, cultivated the land and sent back to Albany and Troy the yield of their farms."² What was thus true of the western frontier of New York, was also true of the Ohio Valley. Restless immigrants kept constantly moving westward. Not all, however, were *bona-fide* settlers: some were land speculators, who bought real estate on credit with the hope of a future rise in value.

The credit system resulted in financial distress to many of the settlers. They became encumbered with debts to the Government, and the Government became the creditor of the distressed pioneers. On the 1st of October, 1808, the amount

¹ McMaster's History of the People of the United States, II. 573.

² *Ibid.* 574.

due the Government was estimated at \$2,041,673.¹ Petitions were presented to Congress for the relief of the burdened settlers. It became necessary that relief should be granted in one way or another. On January 9, 1809, Mr. Morrow, of the Committee on Public Lands, reported to the House of Representatives in favor of the relief of land purchasers.² The committee first recommended the remission of interest. The Act of 1800 provided that a discount of eight per cent. should be allowed on the payments made before they became due, but also that six per cent. interest should be charged for the last three payments that were allowed to stand on credit. But the Act of March 26, 1804,³ modified the above provisions. According to this act, no interest was to be charged for payments punctually made on the day they became due, but six per cent. interest was to be charged for all outstanding debts. It was the remission of this interest that the committee recommended. The committee also favored an extension of the time for completing payments. They reported that the general suspension of commerce prevented agricultural products from coming to market, thereby distressing farmers. The committee further urged an abolition of the credit system. They proposed to identify the interests of the settlers with those of the Government, and to prevent the accumulation of a large credit from increased sales, especially as at this time the lands owned by States and corporations were likely to become exhausted. The final recommendation of the committee was the reduction of price as a natural sequence of the abolition of credit.

ABOLITION OF THE CREDIT SYSTEM.

The result of the recommendations of the committee was an act, passed March 2, 1809,⁴ which granted to the purchasers

¹ State Papers, Public Lands, I. 909.

² *Ibid.*

³ Statutes-at-Large, II. 281.

⁴ *Ibid.* 533.

of land an extension of two years for the completion of payments. This was the first relief act passed by Congress. It was speedily followed by other and similar acts. From 1809 to 1832 inclusive, no less than twenty-three relief acts were granted by the Government. They were either general or special in their application. By far the most important act was that of March 2, 1821. All other relief measures find their centre here. Previous to 1821 one act followed another, either extending the terms of payment, or suspending the sale or forfeiture of land for failure to complete payments. Such relief measures were only temporary, and could not effectually relieve the distress now spreading over the entire public domain. Neither could they eradicate the evil. Something more radical had to be done. The legislatures of the Territories often memorialized Congress for the relief of unfortunate settlers. The memorial of the Legislature of Indiana Territory which was presented to Congress under the date of September 21, 1814, shows in a measure that the settlers bought Government lands with the expectation of paying the cost out of the produce of the farms. The memorial says: "Many of the settlers have purchased their lands of the United States, and their last cent has in many instances been expended in making the first payment, under the impression that by means of their industry the produce of those very lands, together with the sale of surplus stock, would enable them to meet their respective balances as they would become due."¹

The settlers were disappointed. Frontier life was often disturbed by outbreaks of Indians, and the settlers' farms remained unimproved for years. If the arrears on farms were not paid, the law had to take its course, and the lands reverted to the Government. To eject unfortunate settlers from their lands and log cabins must have seemed to the pioneers an inhuman thing. But the law had to be executed by Government representatives until relief came from Congress. Accordingly, one act after another was passed relieving the

¹ State Papers, Public Lands, II. 888.

pioneers of the West, as the agrarian laws of Rome relieved the suffering plebeians. But relief was endless unless the root of the evil was cut out. This root was the credit system. Congress became aware of the fact, and at last abolished the credit feature of the land system. This was done by the Act of April 24, 1820.¹ The act also reduced the price of land from \$2 to \$1.25 per acre, and thenceforward the duty of issuing proclamations for the sale of the public lands devolved upon the President of the United States.

CRAWFORD'S SYSTEM OF RELIEF.

The act prevented evils in the future, but did not altogether remedy those of the past. Cries for the relief of deep-seated distress did not stop. Mr. Crawford, then Secretary of the Treasury, recommended to Congress a plan which subsequently became law. This was the Act of March 2, 1821.² It was very comprehensive. Heretofore, relief had extended only to those who held land amounting to less than 640 acres, but this act extended the relief indiscriminately to all parties. It allowed all purchasers to relinquish their claims to the lands for which payment was not completed. The money could not be refunded by the United States, but could be credited for the lands men wished to retain. The act entirely remitted interest that had become due. It divided agrarian debtors into three classes. The first class were those who paid one-fourth of the purchase-money; the second class, those who paid one-half; and the third class, those who paid three-fourths. The first class of debtors were allowed to refund the balance in eight equal annual instalments; the second class in six years; and the third class in four years. The new debt or balance thus created had to bear an equal annual interest at the rate of six per cent., but the interest was to be remitted in case payments were made punctually

¹ Statutes-at-Large, III. 566.

² *Ibid.* 612.

at the time they became due. Such were the chief provisions of the Act of 1821. They enabled settlers to consolidate their holdings into such shape as their means would allow, and at the same time put the Government, by receiving the relinquished lands, into such a position as to be able to execute that provision of the Act of March 3, 1820, which authorized the President to sell the lands which had reverted to the United States. Since the passage of the relief act of 1821, no less than ten similar measures were enacted. Most of them followed the policy of the relief once established, and extended the terms or allowed further contractions of holdings. Under the credit system, the Government realized about twenty-eight million dollars from the sale of about fourteen million acres of the public lands.

POLITICS IN THE LAND QUESTION.

By the time the settlers' distress was relieved, the public lands had developed another important matter for legislation, and became the subject of much Congressional discussion. One party supported one measure, and another party another measure. Fierce political controversies raged from year to year. Sectional issues often came to the front, and no little ill-feeling existed between opposing factions. Constitutional questions also were involved in the strife, and were discussed *pro* and *con* by the ablest statesmen of the Republic—by Webster, Clay, Calhoun, Benton, and others.

Never, perhaps, in the history of the public lands, was Congressional warfare so fierce as at this time. The public domain itself passed through a crisis. Had it not been for the efforts of Webster and Clay, the unity of the public domain would have been destroyed. Had the proposition triumphed for retrocession, as advocated by Hayne and Calhoun, the United States could not have had the uniform and general land laws which the country has to-day. Again, the States would have begun to compete with the Federal Government,

and would have invited unscrupulous speculators into the land market.

The State cessions which were proposed at this time were the direct reverse of the State cessions to the old Congress. The demand now was for the cession of the public lands to the new States in which they were situated. We have seen that the cession of the Western lands by Virginia and other States bound the Union together by ties of common interest. In the same way the preservation of the public domain at this period was instrumental in maintaining the Union.

The main issue was between Unionists and Separatists. Calhoun and his followers attempted to undermine the very foundation of the Union by securing retrocession of the public lands to the States. Webster upheld the cause of the Union, especially in that famous speech delivered in the Senate January 26, 1830, the second speech on Foot's Resolution.¹

This remarkable controversy has a deep historical significance. Primarily, the matter was a reaction from various political measures. To effect a retrocession of public lands was to reduce the surplus revenue of the Federal Government. To reduce the surplus revenue was to check internal improvements and State distribution, as well as to suppress agitation in favor of freeing the blacks and colonizing Africa. The reaction was supported by deep-seated sectional ideas. The public-land policy was but a means to an end.

The controversy had fairly begun with Foot's Resolution. The resolution was to instruct the Committee on Public Lands to make inquiries as to the quantity of land still remaining in each State and Territory, and also to report as to the expediency of limiting for a certain period the sale of the public lands, except those already offered for sale, and then subject to private entry.² The resolution was originally inoffensive, but a few objectionable amendments and some

¹ Webster's Works, III. 270-347.

² Congressional Debates, VI. Part I: 11; or Webster's Works, III. 248.

remarks¹ on the resolution at once opened a field for discussion. We need not here examine in any detail the Webster-Benton-Hayne controversy; suffice it to say, Webster ably defended the national land policy. Webster's great speech, however, could not check the dispute; neither did it offer a solution to the vexed question.

APPEALS OF THE "LAND STATES."

During the two decades after the close of the second war with England the United States had increased steadily in wealth and population. The war of 1812 made the nation a debtor of over one hundred and twenty-seven million dollars, but in 1835 the debt was reduced almost to zero. At this period the public lands filled the treasury with their proceeds. In 1836, land revenue exceeded customs revenue by almost one and a half million dollars.

Again, immigrants had begun to pour in from Europe. In the decade from 1822 to 1832, their number increased almost tenfold. These immigrants became prosperous farmers by thrift and industry. Webster, speaking of the settler's prosperity, said: "Selection is no sooner made, cultivation is no sooner begun, and the first furrow turned, than he already finds himself a man of property."²

Such being the settler's good fortune, the public lands were fast taken up. The new States had no authority over the primary disposition of the lands; neither had they a right to tax them till after private ownership was established. Thus the Federal Government was in one capacity a great landlord, and in another a great untaxed proprietor.

When the public lands began to assume an important place in the economy of the nation, and when the legislators brought the land question into a political arena, the Western

¹See Benton's Speech, *Thirty Years in Congress*, I. 131-134. See Hayne's Speech in *Congressional Debates*, VI. Part I. 43-58.

²Webster's Works, I. 352.

States, ever alert to their own interest, manifested a strong desire to own the public lands. The legislatures of several States presented memorials to Congress, and they were supported by the anti-tariff party. The legislatures petitioned for the reduction of price as well as for the cession of the public lands.

The whole question was referred to the Committee on Manufactures, of which Mr. Clay was chairman. This was out of the regular order, because the question had naturally to go to the Committee on Public Lands. The reason why the question was referred to Clay's committee is explained by Clay's biographer, Mr. Colton. He says: "Mr. Clay being a candidate for the Presidency in 1832, it was thought by his political opponents that, by imposing on him the duty of making a report on the land question, he would injure his prospects in the western and new States. They believed that he could not make a report on that subject consistent with his known principles; and having a majority in the Senate, they conspired to impose on him this duty, by referring the subject to the Committee on Manufactures, of which Mr. Clay was chairman. Mr. Clay and his friends protested against it, but it was of no avail. . . . The duty of preparing the report, as was expected and intended, devolved on Mr. Clay. Such is its origin."¹

The report was presented to the Senate April 16, 1832. It was a masterly piece of statesmanship, embodying sound views as to the public lands. It deserves to go hand-in-hand with Webster's great speech against Hayne.

Henry Clay fully understood the importance of the public lands, and never, from presidential aspirations, yielded to unscrupulous political schemes. He handled the subject honestly, and boldly reported his recommendations. His right conception of the subject may be judged from his speech, in which he said: "No subject which had presented itself to the present, or perhaps any preceding Congress, was

¹ Colton's *Life and Times of Henry Clay*, I. 460.

of greater magnitude than that of the public lands. There was another, indeed, which possessed a more exciting and absorbing interest, but the excitement was, happily, but temporary in its nature. Long after we shall cease to be agitated by the tariff, ages after our manufactures shall have acquired a stability and perfection which will enable them successfully to cope with the manufactures of any other country, the public lands will remain a subject of deep and enduring interest. In whatever view we contemplate them, there is no question of such vast importance.”¹

Clay’s prophecy was correct: the tariff is no longer a burning political issue. But the public lands still remain, and form an important branch of administration. The American public is now indignant at the prevalence of systematic fraud and deception committed by unscrupulous land “grabbers.” The popular cry is now for a reform of land laws. Again, in such a remote Territory as Alaska, the recent discovery of mineral resources has made that land an important acquisition, and will call the attention of the Government to the administration of that far-off Territory.²

We shall now briefly summarize the important points of Mr. Clay’s report. After reviewing the history and origin as well as the sale of public lands down to 1832, the committee proceeded to inquire into the expediency of reducing the price of public lands. They said: “There is no more satisfactory criterion of the fairness of the price of an article than that arising from the briskness of the sales when it is offered in the market. On applying this rule, the conclusion would seem to be irresistible that the established price is not too high.”

The committee then proved their position by showing, through statistics, the annual increase of the sales of the public lands during several preceding years. Another objection was that the reduction of the price was unjust toward

¹ Colton’s Clay, I. 457–458.

² See President Cleveland’s Message of 1885.

those who were already settled in the West. A further objection raised by the committee was that a reduction of the price would be attended by speculation. They said that "if the price were much reduced, the strongest incentives to the engrossment of better lands would be presented to large capitalists, and the emigrant, instead of being able to purchase from his own Government upon uniform and established conditions, might be compelled to give much higher and more fluctuating prices to the speculator." They cited as an example the military-bounty lands, which gave more benefits to the speculators than to those for whom the lands were intended.

Again, the committee considered that the reduction of the price would materially injure the interests of Ohio, Kentucky, and Tennessee, from which States, at this time, emigrants were moving to the West. If the price were reduced, the effect would be to depress the value of real estate in those States, as well as to drain them of their population and currency.

After the committee had refuted most conclusively the objections that the price retarded the sale, and that the price was a tax, they proceeded to the second branch of inquiry—respecting the cession of the public lands to the new States.

According to the estimate then made, the public lands consisted of more than one thousand and ninety million acres, which, at the minimum price of \$1.25 per acre, represented the value of something over \$1,362,500,000. Such being the case, the committee justly observed: "It is difficult to conceive a question of greater magnitude than that of relinquishing this immense amount of national property. If they were transferred to the new States, the subsequent disposition would be according to laws emanating from various legislative sources. Competition would probably arise between the new States, in the terms which they would offer to purchasers. Each State would be desirous of inviting the greatest number

of emigrants, not only for the laudable purpose of populating rapidly its own territories, but with a view to the acquisition of funds to enable it to fulfill its engagements to the General Government. Collisions between the States would probably arise, and their injurious consequences may be imagined. A spirit of hazardous speculation would be engendered. Various schemes of the new States would be put afloat to sell or divide the public lands. Companies and combinations would be formed in this country, if not in foreign countries, presenting gigantic and tempting, but delusive, projects, and the history of legislation in some of the States of the Union admonishes us that a too-ready ear is sometimes given by a majority in a legislative assembly to such projects.”

Another objection raised by the committee against the cession of the public lands was the new relation which from the transaction would arise between the General and State Governments. The committee apprehended that among the debtor States a common feeling and a common interest distinct from the rest of the Union would inevitably arise. Again, delinquencies on the part of the debtor States would also inevitably arise, and these would result in the relinquishment of credit through endless petitions and varied manipulations, “or, if Congress attempted to enforce its payment, another and a worse alternative would be embraced.” By the “alternative” was meant, probably, secession. Here the committee struck the very root of the evil.¹

CLAY'S DISTRIBUTION BILL.

Such were the views and considerations presented by the Committee on Manufactures with reference to the public lands. A bill accompanied the report, and was entitled “An act to appropriate for a limited time the proceeds of the sales of the public lands.” This was the so-called “Distribution Bill.” The Senate refused to take up the bill, and the subject was

¹ See Report in Colton's *Clay*, I. 453-460.

recommitted to the Committee on Public Lands. This committee made a counter-report about one month later.

Mr. Clay succeeded, however, in pushing his bill through the Senate. It passed the Senate at both the first and second sessions of the Twenty-Second Congress. But the concurrence of the House in the second session was secured only on the last day of the session, and it needed an immediate action of the President to make the bill a law. President Jackson retained the bill, "pocketed" it, as was said, and returned it with his objections at the opening of the Twenty-Third Congress. Thus the bill failed to become law.

In 1835, Clay again brought forward his Distribution Bill, which again passed the Senate, but was lost in the House. In 1841, the subject of the distribution was once more brought forward, this time as an administrative measure by which the incoming administration, under General Harrison, might make a point for itself as compared with the retiring administration of Van Buren. The bill was ably advocated by Webster and Crittenden. Here again constitutional questions were raised, and a critical examination was made of the conditions of cession to the old Congress. We cannot follow these manifold discussions; suffice it to say the distribution of the proceeds from the sale of the public lands was found to be neither unconstitutional nor impolitic. The bill finally became a law on September 4, 1841, and it provided that, after deducting ten per cent. of the net proceeds of the sales of the public lands within the States of Ohio, Indiana, Illinois, Alabama, Missouri, Louisiana, Arkansas, and Michigan, all the net proceeds subsequent to December 31, 1841, should be divided *pro rata* among the twenty-six States, and among the Territories of Wisconsin, Iowa, Florida, and the District of Columbia, according to their respective federal population as ascertained by the Sixth Census.¹

With the distribution, so-called "State-selections," to the

¹ Statutes-at-Large, V. 453-458.

amount of 500,000 acres, were granted for the purpose of internal improvements to every new State that should be admitted into the Union. The act also extended the benefit to some of the new States already admitted. Thus the angry and deeply-agitating discussions growing out of the public lands, which had been raging with fury for the last ten or twelve years, were brought to a peaceful end.

PRE-EMPTION ACT.

By far the most important of all agrarian measures was the Pre-emption Act, which, incorporated with other measures, was passed September 4, 1841.¹ Neither the principle of distribution nor State-selections enter properly into the land system. They were simply the policy of the Government. They did not originate from the necessities of agrarian administration, but were simply the measures of one political party as opposed to another. The Pre-emption Act, on the contrary, was an integral part of the land system. It was the consummation of various land laws. It is still a law of the nation, though it has long outlived its usefulness. We shall now briefly consider the history, origin, and operations of the pre-emption law.

HISTORY OF THE PRE-EMPTION LAW.

“Pre-emption is a premium in favor of, and condition for, making permanent settlement and a home. It is a preference for actual tilling and residing upon a piece of land.”² Pre-emption originated in the necessities of the settlers. It is not a free grant of land, but a privilege granted to a settler in purchasing a tract of land as against competitors. It amounts simply to the exclusion of competition, and the purchase of land at a minimum or double-minimum price, as the case may require.

¹ Statutes-at-Large, V. 453-458.

² Public Domain, 214.

The first pre-emption act was passed March 3, 1801.¹ It was a special act, and referred only to a handful of settlers within Symmes' purchase on the Miami River. Symmes' grand scheme of colonization had met with somewhat of a failure, and he was obliged to contract the area of his purchase. The non-fulfilment of conditions agreed upon with the United States entailed a forfeiture of at least a portion of his lands. Trouble ensued for the settlers. On account of the above forfeiture, the title of certain lands which the settlers had bought from Symmes became void. The settlers, aware of this fact, presented petitions to Congress, and sought recognition of their title. They argued that they were *bona-fide* purchasers and settlers; that they had paid Symmes for their holdings, and were unable to purchase a second time from the United States; that they believed their title was valid; that the rise of the price of real estate in their settlements was due to improvements which the settlers had made, and accordingly the price of land, if it must be demanded by the United States, should be reduced to the original rate—that is, to two-thirds of a dollar per acre instead of two dollars. Numerous petitions of this character were presented to Congress from time to time. Mr. Bruce, member of a committee to whom the petitions were referred, made a report, April 16, 1800, recommending that Symmes should be allowed to pay for the forfeited lands and complete his title, so that the settlers might not be disturbed.² But the Pre-emption Act of 1801 did not consider the financial relations between Symmes and his purchasers: it simply gave them the right to purchase holdings from the United States at the established price, and according to the Land Ordinance of 1800.

From this time till the passage of the general pre-emption act in 1841, no less than eighteen pre-emption acts were passed. Most of them were of a special character. Some

¹ Statutes-at-Large, II. 112.

² State Papers, Public Lands, I. 104-106.

referred to certain individual settlers in particular Territories, while others referred to the Territories or States themselves.

Pre-emption was often a relief-measure for occupiers of the public lands. Such was the case with settlers or "squatters" in some of the Southern States; for example, Louisiana, Missouri, Arkansas, Alabama, Mississippi, and Florida. Immigrants came to those States with the expectation of securing public lands immediately after their arrival; but to their disappointment they found that public lands were not offered for sale in the sections where they wished to settle. The poor immigrants had no alternative but to venture a settlement upon unoffered lands, in the hope that the United States would not deal with *bona-fide* settlers so harshly as with mercenary speculators and land-jobbers. The settlers petitioned the Territorial or State Legislature for the right of purchasing land-holdings, and the Legislature memorialized the Congress in their behalf. The result was the grant of pre-emption.

The first general pre-emption act was passed May 29, 1830.¹ By this act every settler or occupant of the public lands, after giving due satisfaction and proof of settlement or improvement, was allowed to enter in the register of the Land Office any number of acres, up to a quarter section, at the established minimum price of \$1.25 per acre. This act was to be in force only one year. It was not, therefore, a permanent system, but only a temporary measure.

This act, like any other of a similar character, was continued from year to year. The settlers petitioned Congress for its continuance on the ground of the incompleteness of survey, indistinctness of boundary-lines of settlement, or inaccessibility to district land offices. The act of June 22, 1838,² like previous acts, extended the right of pre-emption for two years, but it specified in detail the kinds of land to

¹ Statutes-at-Large, IV. 420-421.

² *Ibid.* V. 251-252.

which pre-emption could not be extended. The lands to which the Indian title was not yet extinguished; lands in any incorporated town; alternate sections of railroad and canal grants; lands for town-sites; reservations for educational purposes; and lands which had salt springs, were all exempted from the right of pre-emption. An act supplementary to this was passed on June 1, 1840, and extended the pre-emption right for another two years.¹

It must be kept in mind that pre-emption was not yet a system. It still retained its temporary character. Successive legislative enactments kept it in force. Every act of pre-emption contemplated a relief to those settlers who occupied the lands before the passage of the act in question, but not to those who should settle after its passage. The ultimate effect of the measure was, however, the encouragement of unlawful occupation of the public lands. A measure to stop this became an indirect means of promoting it; for, in wild countries, pretext could easily be found and the title could easily be secured under the provisions of the pre-emption act. The law of pre-emption explicitly stipulates that its benefit is meant to be confined to actual settlers who were found on the public lands at the time of the passage of the act; and yet adventurous and unscrupulous men emigrated to the West and settled on unsurveyed public lands with the view of procuring another enactment and of extending pre-emption right.

Where population was scant and lands were plenty, but where there was a prospect of the future increase in value of landed property, the settlers could not be expected to await patiently the completion of a survey and the offering of land for sale, especially in case these settlers were foreign emigrants who went to the West with little knowledge of the topography of the country, and with little capital beyond their own labor and industry. It was very natural that such men

¹ Statutes-at-Large, V. 382.

should settle on the first piece of land which they found suited to agricultural purposes. Thus, the administration of land laws was made difficult, and some measures were found necessary to justify the title of the adventurous settlers. A remedy was found in the right of pre-emption. This was destined to become a permanent as well as a general system.

But was pre-emption an economic loss to the United States? So far as auction sales were concerned it was, but ultimately pre-emption proved a gain to the nation. What a new country needs is the actual improvement of its landed property, and when accomplished, such improvement redounds to the general prosperity of a State or nation.

The development of Western resources was the ultimate object of disposing of the public lands. Where settlers gathered together, and where improvements were made, there sprang up a new source of wealth. To scatter such a community because settlers trespassed on unoffered lands, would have been highly impolitic, especially at a time when the great West was still a wilderness or a desert.

Pre-emption was by no means a free grant. The pre-emptors had to pay the established price for their lands. To the United States the pre-emption grant amounted practically to the private sale of lands. The only sacrifice which the Government had to make was that of public sale, because the right of pre-emption closed the market to all other purchasers save actual settlers. The sacrifice of the public sale, however, was more than compensated by the improvement and settlement of the public lands. Webster was always friendly to the measure. In this view he sometimes differed from Clay.¹ The latter advocated that the law should be suffered to take its course, and that the unlawful improvements of settlers should be sold at public auction. But the two statesmen united in an effort to pass the general and permanent Pre-emption Act of 1841.²

¹ Webster's Works, IV. 398.

² Statutes-at-Large, V. 453.

CALHOUN'S OPPOSITION TO PRE-EMPTION.

From September 4, 1841, dates the permanent pre-emption right as a system of disposing of the public lands. The act was comprehensive, and the benefit of pre-emption extended to both native and foreign-born citizens. Mr. Calhoun figured as the stoutest opponent of pre-emption as well as of distribution measures, and advocated the cession of the public lands to the new States. He considered that the land laws of the United States could no longer be applied with advantage to the altered condition of the country, and, consequently, nothing but cession to the States could remedy the evils resulting from the public-land administration.

A brief quotation from one of his speeches will show his view of the public lands at this period. Calhoun said: "I regard the question of the public lands, next to that of the currency, the most dangerous and difficult of all which demand the attention of the country and the Government at this important juncture of our affairs. . . . In offering the amendment I propose, I do not intend to controvert the justice of the eulogium which has been so often pronounced on our land system in the course of this discussion. On the contrary, I believe that it was admirably adjusted to effect its object when first adopted; but it must be borne in mind that a measure, to be perfect, must be adapted to circumstances, and that great changes have taken place in the lapse of fifty years since the adoption of the land system. At that time, the vast region now covered by the new States which have grown up on the public domain belonged to foreign powers, or was occupied by numerous Indian tribes, with the exception of a few sparse settlements on inconsiderable tracts, the Indian title to which was already at that time extinguished. Since then a mighty change has taken place. Nine States have sprung up as if by magic, with a population not less, probably, than two-fifths of the old States, and destined to surpass them in a few years in numbers, power

and influence. That a change so mighty should so derange a system intended for an entirely different condition of things as to render important changes necessary to adapt it to present circumstances, is no more than might have been anticipated. Neither pre-emption nor distribution of the revenue received from the public lands can have any possible effect in correcting the disordered action of the system. I have given to this question the most deliberate and careful examination, and have come to the conclusion that there is, and can be, no remedy short of cession—cession to the States respectively within which the lands are situated. The disease lies in ownership and administration, and nothing short of parting with both can reach it.”¹ This was a dangerous and caustic remedy. Its failure saved the public lands, and has preserved the best features in the present administration of the public domain.

The Pre-emption Act of 1841 gave right of preference to settlements on surveyed lands only, but later it was extended to unsurveyed lands in California, Oregon, Minnesota, Kansas, Nebraska, and New Mexico.² The right of preference was also extended to the alternate, even-numbered sections of the railroad grants, where the settlements were made prior to the withdrawal of these lands from the market.

PRESENT LAW OF PRE-EMPTION.³

The present law of pre-emption may be stated briefly as follows: Any person above the age of twenty-one years who is not the owner of 320 acres can enter the public lands, surveyed or unsurveyed, offered or unoffered. The essential requisites are actual residence and improvement. The maximum quantity of land allowed to any pre-emptor is 160 acres. For the final proof and payment, the period from

¹ Calhoun's Speeches, 403-404.

² Public Domain, 214.

³ Revised Statutes, 414-419.

twelve to thirty-three months is allowed. The length of time for credit depends upon whether the land is offered or unoffered. Again, the price is at a minimum or double minimum, according to the situation of the land. If the land lies along the line of railroad grants, it is at double minimum; otherwise it is at a minimum. The benefit of pre-emption extends to foreign emigrants, upon filing a declaration of intention to become naturalized.

From the nature of pre-emption law, it can easily be seen that the pre-emption was an evolution from the two earlier methods of disposing of public lands—namely, credit sale and private contract. It is not a free grant, as we have already seen. It is a sale—a credit sale. It allows one almost three years to complete his title to a holding. The term is more liberal than under the credit system in former years, as it charges no interest. Again, the sale is private. It admits no competition. It is a private sale to specially favored settlers. The condition of contract is *bona-fide* settlement and actual cultivation. The essence of the contract differs in no respect from that which the Government made with the Ohio Company and Symmes' associates. As the Government granted a premium to these parties by selling them the lands at the reduced rate of two-thirds of a dollar, so now it does virtually the same thing for pre-emptors by excluding competition.

Thus pre-emption is a law of historical growth. But as it arose directly from the necessities of actual settlers, especially those of limited means, the dominant spirit of the law is actual residence and improvement. As such, it claims the title of the first American settlement law of a really beneficent character. The Public Land Commission say that "the pre-emption system was the result of law, experience, executive orders, departmental rulings and judicial construction. It has been many-phased, and was applied by special acts to special localities, with peculiar or additional features, but it has always contained, even to this day, the germ of actual settlement, under which thousands of homes have

been made, and lands made productive, yielding a profit in crops to the farmer and increasing the resources of the nation.”¹

PRE-EMPTION NO LONGER NEEDED.

Changes in the land system since the passage of the Homestead Act introduced new features into pre-emption. The homestead law has eclipsed pre-emption, and pre-emption has now outlived its usefulness. The homestead law contains pre-emption features, and, in case a homesteader desires to avail himself of its provisions, facilities are given him to acquire title exactly on the same conditions as pre-emption. There seems now to be no necessity of retaining pre-emption as a system. On the contrary, it seems to be much abused by settlers. The same Public Land Commission which acknowledged the merit of pre-emption in its earlier years maintain that “the pre-emption laws are now the hope of the land-grabber, and are the land-swindler’s darlings.”² Mr. McFarland, the late Commissioner of the General Land Office, from time to time recommended Congress to repeal the pre-emption law. In his report for 1884, he says: “I renew previous recommendations for the repeal of the pre-emption law. . . . Economy of administration alone suggests such repeal, while the great abuses flowing from the illegal acquisition of land titles by fictitious pre-emption entries, and the exactions made upon *bona-fide* settlers, who are often obliged to buy off such claims in order to get access to public lands, render the repeal, in my judgment, a matter of public necessity.”³

Lately, bills have been introduced into Congress which propose the repeal of the pre-emption law. No definite action has yet been taken upon them.⁴ Mr. Sparks, the

¹ Public Domain, 215.

² *Ibid.* 678.

³ Land Office Report, 1884, 6.

⁴ See Public Domain, 679-682, and *Congressional Record*, January 7, 1884.

present Commissioner of the General Land Office, agreed with his predecessor in his opinion of pre-emption, and recommended its repeal in the Land Office Report for 1885. He says: "The pre-emption system no longer secures settlements by pre-emptors. If it did, or could be amended to do so, it would be useless for any good purpose, because supplanted by the more effective homestead law, if a home is the real object designed to be secured. If a home is not the object, the sooner the facility for obtaining land without making a home upon it which is offered by this system is removed from the statutes, the better for the settlement interests of the country and the future of its institutions."¹ Whether the Forty-Ninth Congress will repeal the law, remains to be seen.

VARIOUS LAND GRANTS FROM 1841 TO 1862.

During the period of twenty years in which the pre-emption law played the chief *rôle* in the land system, and served most efficiently the purpose for which it was enacted, several other important measures relating to the public lands were also passed, and some of them, like railroad grants and mining laws, are of such magnitude as to affect the economy of the whole country. It does not fall within the scope of this monograph to treat of railroad grants, much less of the mining laws. Readers are referred to special works on these subjects.²

We shall, however, briefly review a few of these important land measures.

¹ Land Office Report, 1885, 69-70.

² See article on Railroad Land Grants in *North American Review*, March, 1885, by J. W. Johnson. See also Our Public Land Policy, *Harper's Monthly*, October, 1885, by V. B. Paine; Railway Influence in the Land Office, *North American Review*, March, 1883, by George W. Julian; and a rejoinder to the latter, The Railways and the U. S. Land Office, *Agricultural Review*, April, 1883, by Henry Beard.

For mining laws see Land Laws of Mining Districts, XII., Second Series J. H. U. Studies, by C. A. Shinn.

DONATION, SWAMP, AND GRADUATION ACTS.

Congress passed a donation act on August 4, 1842, for the Territory of East Florida.¹ Persons who were able to bear arms, and to make actual settlements on certain sections of the Peninsula, were freely entitled to one-quarter section of land. Another donation act was passed for Oregon Territory, September 27, 1850. This granted to settlers public lands to the extent of from 160 to 640 acres, the quantity of land depending upon the priority of settlement and the domestic life of settlers. If a settler was a married man, he was allowed from a half section to an entire section of land, one-half always being vested in the hands of his wife. The donation act of Oregon Territory was followed by similar acts for the Territories of Washington and New Mexico, on March 2, 1853, and July 22, 1854 respectively. Actual settlement and cultivation for four consecutive years were necessary to secure land grants under these donation acts.

These several donation acts were a premium upon settlement in the frontier sections of the country which were exposed to the attacks of Indians. The settlements had, therefore, something of the character of military colonies of the ancient Republic, or of the Teutonic *Marches*.

These free grants of land were by no means a new feature in the land system of the United States. They were inaugurated by the old Continental Congress. Besides the grants of military, religious, and educational character, there were special grants to special individuals for certain meritorious services. Precedents for special grants being numerous, the public lands were made subject to various schemes and projects not always of a laudable character. The inauguration of such settlement laws as pre-emption checked many schemes.

In 1849,² Congress inaugurated a system that led to the grant of immense areas of swamps and overflowed lands to

¹Statutes-at-Large, V. 502-504.

²*Ibid.* IX. 352.

the States in which such areas are situated. In the following year, Illinois had the first railroad land grant, which was followed by a series of grants to various railroad corporations.

In 1854, the Graduation Act was passed. This was to cheapen, for the benefit of actual settlers and for adjoining farms, the price of lands which had been long in the market.

EARLY MOVEMENT FOR HOMESTEADS.

We now come to the Homestead Act, the most important of all the settlement laws. The movement to secure homesteads to actual settlers may be traced as far back as 1833, when Evans began to agitate his land reform through a paper called *The Radicals*. It was a movement against land monopoly which was destined soon to become an anti-slavery measure. Mr. Webster, in his speech on the Graduation Bill in 1839, said: "As to donation to actual settlers, I have often expressed the opinion, and still entertain it, that it would have been a wise policy of Government from the first to make a donation of a half or whole quarter section to every actual settler, the head of a family, upon condition of habitation and cultivation; that this would have been far better and freer from abuse than any system of pre-emption."¹ This speech represented a general policy which was advocated by the Whigs against retrocession. To oppose cession to the States was to oppose the propagation of slavery, for, if the new States should receive public lands as advocated by the representatives of slave-holding States, they would eventually come into servile ways of thinking and would be lost to free States.

AGITATION BY "FREE-SOILERS."

In 1844, Evans advocated, in the *People's Rights*, the following points: (1) Freedom of the public lands in a limited quantity to actual settlers; (2) Cessation of the sale

¹ Webster's Works, IV. 525.

of public lands to non-resident purchasers; (3) The exemption of homesteads, and (4) The restriction of the purchase of any other land to a limited quantity.¹ This was the year in which President Polk was elected. In four years from that time, land agitation had become a potent factor in American politics. A party called "Free-Soil Democracy" now appeared. This party consisted of two elements, political Free-Soilers and conscientious Free-Soilers. The former were confined to the State of New York, and were called "Night-Soilers" by an opposing party. The latter were found in every Northern State; scattered also through Delaware, Maryland, Virginia, and Kentucky. The conscientious Free-Soilers were frequently called "Abolitionists."

In 1848, the Free-Soil Democracy held a National Convention at Buffalo, and nominated John P. Hale, of New Hampshire, for President, and Charles F. Adams, of Massachusetts, for Vice-President. The Free-Soilers seceded from the Democrats, but did not join the Whigs. They determined to secure free soil for a free people, and to restrict slavery to its State limits. They said that "Congress had no more power to make a slave than to make a king." So they refused to introduce slavery into new Territories. In the Thirty-First Congress, the Free-Soilers were represented by only two Senators and only fourteen Representatives. In the Thirty-Second Congress, the Senators increased in number to three, and the Congressmen to seventeen. Charles Sumner was then a Free-Soil Senator.²

In the Presidential year of 1852, the Free-Soil Democracy held a National Convention at Pittsburg, and nominated John P. Hale, of New Hampshire, and George W. Julian, of Indiana, for President and Vice-President respectively. They inserted the following clause in their platform: "That the public lands of the United States belong to the people,

¹ Meyer's *Heimstätten und andere Wirthschaftsgesetze*, 403.

² See Free-Soil Party, by Alexander Johnston, in *Cyclopædia of Political Science*.

and should not be sold to individuals, nor granted to corporations, but should be held as a sacred trust for the benefit of the people, and should be granted in limited quantities, free of cost, to landless settlers." Thus the free-soil or homestead movement became a national question.

Mr. Seward was then advocating in the Senate a homestead law. In his speech on the public domain which was delivered in the Senate February 27, 1851, he said: "The gratuitous distribution of public lands to actual settlers is marked by equal humanity and good sense." Again, he said: "All will admit—all do admit—that the power over the domain should be so exercised as to favor the increase of population, the augmentation of wealth, the cultivation of virtue, and the diffusion of happiness." He further argued, from the point of industry, that "the first and fundamental interest of the Republic is the cultivation of its soil. That cultivation is the sole fountain of the capital or wealth which supplies every channel of industry."¹

In the Presidential year of 1856, there arose the new Republican party, which grew out of the Free-Soil Democracy and the Whigs. From that time no more was heard of the Free-Soil party, but its principles were represented in the platform of the new party. Free homes and the restriction of slavery were the main issues of the Republicans, as previously of the Free-Soil Democracy.

HOMESTEAD BILLS IN CONGRESS.

In 1859, the struggle for a homestead law began in Congress. The bill passed the House of Representatives by a majority vote of 120 to 76; but it failed in the Senate. It was the Cuban bill that obstructed the passage of the Homestead Act. The two bills were of opposing character, one pro-slavery, and the other for free soil. On this point Mr. Seward said in the Senate: "After nine hours' yielding to the

¹ Seward's Works, I. 156-162.

discussion of the Cuban question, it is time to come back to the great question of the day and the age. The Senate may as well meet face to face the issue which is before them. It is an issue presented by the competition between the two questions. One, the homestead bill, is a question of homes, of lands for the landless freemen of the United States. The Cuba bill is the question of slaves for the slave-holders of the United States.”¹

Although the friends of the Homestead Act did not then succeed in passing it, yet it was destined to come up again, and that soon. The following year Mr. Grow, of Pennsylvania, introduced the bill in the House. On March 12, it passed the House and went to the Senate. In the Senate, however, Mr. Johnson’s substitute for the House bill was adopted, and this, after a protracted conference with the House, was finally accepted. Mr. Johnson’s bill differed from the original House bill in not allowing pre-emptors to enjoy the benefit of the homestead law. The Senate bill also confined its provisions to lands which were subject to private entry. It limited the minimum age of settlers to twenty-five years. There were also some other differences in the Senate bill as distinguished from that of the House. Suffice it to say, through the efforts of the members of the House Committee, a compromise was effected, and much of a restrictive character in the Senate bill gave way to the more liberal elements of the House bill. The compromise was by no means satisfactory, even to the members of the committee, but it was the best they could obtain from the Senate. On this point, Mr. Colfax, a member of the Conference Committee, said to the House: “We regard this as but a single step in advance toward a law, which we shall demand from the American Congress, enacting a comprehensive and liberal homestead policy. This we have agreed to as merely *avant-courier*.”² Mr. Grow also said that they agreed with the

¹ Seward’s Works, IV. 59.

² Public Domain, 339.

Senate bill on the principle of "half a loaf is better than no bread."

PRESIDENT BUCHANAN'S VETO.¹

The compromise bill passed both Houses of Congress by a large majority; but on June 23, President Buchanan vetoed the bill and returned it to the Senate. The first objection of Buchanan was based on constitutional grounds. The veto-message dwelt particularly on this point, and urged that Congress had no power to give away public lands either to individuals or to States. This was an old objection which had been raised against the policy of internal improvement by its opponents. There were too many precedents in the way of Buchanan's constitutional objection. A second objection was partiality. The message urged: "It will prove unequal and unjust in its operation among the actual settlers themselves." The point was that if the new-comers were allowed to acquire land free or at the insignificant price of twenty-five cents per acre, the old-comers would suffer from the reduction of the price of their real estate. The same objection was raised also in behalf of old soldiers who received Government lands for their services in the Army. Again, the homestead law was unjust because it favored only one class of people—namely, the agricultural class—at the expense of other avocations. It was unjust, moreover, to the older States of the Union, because, first, it would deprive them of their just proportion of the public revenue; and, second, it would deprive them of population through the encouragement of free farms. A third objection was that the homestead law would open a vast field for speculation. Buchanan was afraid that homesteaders would become the mere tools of capitalists. His fourth objection was that the law did not extend the same privileges to native and naturalized citizens. The latter, though not heads of families, were assured of a free farm, while the former had to be masters of

¹ For the text, see Public Domain, 342-345.

households in order to secure the benefits of the law. A fifth objection was that partiality would be shown among the pre-emptors themselves. The existing pre-emptors could secure the lands at the reduced price of $62\frac{1}{2}$ cents per acre, but future pre-emptors would have to pay the full minimum price. The sixth and last objection was that the homestead law would deprive the Government of a source of public revenue. The message said the bill "lays the ax at the root of our present admirable land system." In conclusion, the message declared: "The people of the United States have advanced with steady but rapid strides to their present condition of power and prosperity. They have been guided in their progress by the fixed principle of protecting the equal rights of all, whether they be rich or poor. No agrarian sentiment has ever prevailed among them. The honest poor man by frugality and industry can, in any part of our country, acquire a competence for himself and his family, and in doing this he feels that he eats the bread of independence. He desires no charity, either from the Government or from his neighbors. This bill, which proposes to give him land at an almost nominal price out of the property of the Government, will go far to demoralize the people and repress this noble spirit of independence."

The veto thus unfortunately deprived the Democratic party of the honor and merit of passing the homestead bill. The two great parties kept their party lines with regard to the public land. It was the Democratic party that secured the acquisitions, and it was the Republican party that passed most of the settlement laws. Each party has done its peculiar service to the country.

FINAL PASSAGE OF THE HOMESTEAD ACT.

On July 8, 1861, a homestead bill was introduced in the House of Representatives. The bill received the immediate attention of the whole House, and after being referred suc-

cessively to the Committee on Agriculture and to the Committee on Public Lands, it passed the House on February 28, 1862. About a month later the House bill was taken up by the Senate. As in the previous session of Congress, a substitute for the whole bill was introduced by a Senator from Virginia, but this time it failed to be carried. After a few amendments, the House bill passed the Senate by a vote of thirty-three to seven. Agreements were soon effected with the House, and the bill received the approval of President Lincoln on May 20, 1862.

This original homestead law has been amended several times, and each amendment has granted more liberal provisions to actual settlers. But the fundamental principle of the Homestead Act is the grant of a free homestead to *bona-fide* settlers. This principle has never been lost from view.

The homestead law,¹ as it now stands, grants to every applicant who is the head of a family or above the age of twenty-one, one hundred and sixty acres of public land or a less quantity in legal subdivisions, free of charge, except certain fees to the Register, on the condition of actual settlement and cultivation. The title passes to the homesteader after five years' residence upon the holding. But if he desires to secure the title earlier, he can do so by paying the Government the full minimum price of the land. This is known as "the commutation of homestead entries," and it virtually comes under the provisions of the pre-emption act. In the same way a pre-emptor can change to a homestead entry. Thus the homestead law embraces the pre-emption provision, while pre-emption is limited to only one form of acquiring the title—that is, to a legalized private purchase at the minimum price of unoffered land. Since this is secured through a homestead provision, the uselessness of the pre-emption law is apparent, except as it enables settlers to avail themselves of the two acts, and thus increase the size of their holdings to three hundred and twenty acres.

¹ Revised Statutes, 419-424.

The most beneficial provision of the act is the exemption of the homestead from the obligation of debt contracted prior to the issue of the patent. This enables a settler to build up a new homestead free from any embarrassment under which he might have labored previous to his settlement. After the patent passes to the settler, he is protected by the homestead-exemption law of the State in which it lies.

Besides the homestead provision to ordinary settlers, there are so-called Soldiers' Homesteads and Indian Homesteads. The former extends the benefits of the homestead law to those who served in the Army or Navy during the late Civil War. The length of time the soldier was in the Army is deducted from the term of five years, or, in other words, the service in the Army is considered as a substitute for actual residence. Indian homesteads are granted to those Indians who have abandoned their tribal relations. These homesteads are inalienable for the period of five years after the issue of the patent.

EULOGIES OF THE HOMESTEAD LAW.

Many eulogies have been pronounced upon the homestead law, some of which may well be cited here. The Public Land Commission say: "The Homestead Act is now the approved and preferred method of acquiring title to the public lands, and was the outgrowth of a system extending through nearly eighty years, and now, within the circle of a hundred years since the United States acquired the first of her public lands, the Homestead Act stands as the concentrated wisdom of legislation for settlement of the public lands. It protects the Government, it fills the States with homes, it builds up communities, and lessens the chances of social and civil disorder by giving ownership of the soil, in small tracts, to the occupants thereof. It was copied from no other nation's system. It was originally and distinctly American, and remains a monument to its originators."

A land lawyer of repute, in Washington, Mr. Copp, says:¹ "To the people of Europe, where the high price of real estate confers distinction upon its owner, it seems beyond belief that the United States should give away one hundred and sixty acres of land for nothing. Yet such is the fact; a compliance with the homestead law, and the payment of small fees and commissions to the local officers, secure title to a quarter section of Government land. Laborers in other countries, who find it difficult to support their families, can here acquire wealth, social privileges and political honors by a few years of intelligent industry and patient frugality. All in the Atlantic States who are discouraged with the slow, tedious methods of reaching independence, will find rich rewards awaiting settlers on the public lands who have talent and energy, while the unfortunate in business, and they who are burdened with debt can, in the West and South, start anew in the race of life, for the homestead law expressly declares that 'no lands acquired under the provisions of this chapter (Homestead) shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.'"

The value of the homestead law for opening the Western country cannot be over-estimated. It will remain as *the* land law of the United States as long as the public lands continue to exist.

THE EDUCATIONAL LAND GRANTS.

Soon after the passage of the homestead law, Congress granted to all the States 30,000 acres of land for each Representative and Senator in Congress, for the purpose of establishing agricultural and mechanical institutions. Historically, this was an outgrowth of the early educational land grants for common schools and seminaries.²

¹ The American Settler's Guide, 25.

² Federal Land Grants for Education in the Northwest Territory, by Dr. Geo. W. Knight, Papers of American Historical Association, I., No. 3.

TIMBER AND DESERT LAND ACTS.

Acts which relate more directly to the settlers in the West are the Timber Culture and Desert Land Acts. The former was passed on March 3, 1873,¹ and grants to settlers treeless lands to the extent of 160 acres for the encouragement of tree culture. While certain sections of the public lands were treeless, and thus needed the donation of lands for tree culture, other sections are chiefly valuable for timber and stone. These are chiefly on the Pacific Coast. An act was passed June 3, 1878,² authorizing the sale of timber and stone lands to the extent of 160 acres each, at \$2.50 per acre. At the same time a strict law was enacted for the prevention of timber depredations on the public lands. The Desert Land Act was passed on March 3, 1877.³ This allows, on a credit for three years, an entry of 640 acres of desert land—that is, land which does not produce agricultural crops without irrigation. Both the Timber and Desert Land Acts have been repeatedly condemned as a source of fraudulent entries, and their repeal has been recommended by the late Commissioner of the General Land Office.

CONCLUSION.

In conclusion, we shall recapitulate a few important points. All the public lands of the United States, except those reserved for special purposes, are sold at public sale and by private entry. They are classified as follows: 1. Mineral lands; 2. Timber and stone lands; 3. Saline lands; 4. Town-site lands; 5. Desert lands; 6. Coal lands; and 7. Agricultural lands. They are disposed of under special laws governing each class. The agricultural lands are subject to the settlement laws—namely, pre-emption and homestead,

¹ Statutes-at-Large, XVII. 605–606.

² *Ibid.* XX. 89.

³ *Ibid.* XIX. 377.

But, as soon as surveys are completed, they are offered also at public sale, in which the highest bidder can purchase any amount of land. After a public sale the remaining lands are allowed for private entry. Through various kinds of sales, grants, and settlements, the public lands have been rapidly disposed of. The available lands of various descriptions, exclusive of Alaska, which still remain unsold amount to more than six hundred and forty million acres. This is more by twenty million acres than all the lands hitherto disposed of since the acquisition of the public lands down to 1883. The nation's interest truly demands wise, economic, and judicious administration of the remaining public property. But this is impossible without first reforming the existing land laws, which are much abused by unscrupulous land grabbers. Again, during the interval between 1850 and 1872, an enormous amount of lands had been granted to railroad corporations. The grants amounted to more than one hundred and fifty-five million acres. Of these, more than one-third had already been patented, but the rest ought to be recovered by the Government on account of non-fulfillment of various conditions stipulated in the grants, as well as for the interest of honest settlers. Commissioner Sparks says of these unpatented lands: "The amount of unpatented lands embraced in all the grants subject to declaration of forfeiture is estimated at one hundred million acres, an area equal to that of the combined States of New York, New Jersey, Pennsylvania, Delaware, Maryland and Virginia. The restoration to public settlement and entry of this great body of lands is a subject of the first magnitude and of profound national importance. The question presented is strictly one of legal right. The default of the companies has been voluntary. The rights of the public are now to be considered—the right of the people to repossess themselves of their own. The case is not one calling for sympathy to the corporations: it is one calling for justice to the people."¹

¹ Land Office Report, 1885, 44.

Public opinion inclines to agree with Commissioner Sparks. Although the public domain is of such vast extent, and the laws pertaining to it are so complex that some persons think that there are too many obstructions in the way of honest administration of the land laws—such obstructions, for example, as land grabbers and cattle kings—to my mind the present question of land administration in the United States is perfectly simple. Indeed, two words would suffice to indicate clearly the future policy of the public-land administration. These words are REFORM and RECOVERY—*reform of legal abuses and recovery of the public lands from railroad corporations.*

x

THE TOWN AND CITY GOVERNMENT OF
NEW HAVEN

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

FOURTH SERIES

X

THE TOWN AND CITY GOVERNMENT OF
NEW HAVEN

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CONTENTS.

I. THE DUAL GOVERNMENT. 1784-1886.	PAGE
1. TOWN-BORN VS. INTERLOPER.....	7
2. FIRST PHASES OF CITY POLITICS.....	9
3. THE FIRST CHARTER.....	11
4. DESCRIPTION OF THE CITY.....	14
5. MUNICIPAL IMPROVEMENTS.....	15
6. THE FIRE DEPARTMENT.....	19
7. ADORNMENT OF THE GREEN.....	21
8. PUBLIC LETTERS TO THE PRESIDENTS AND OTHERS.....	23
9. DOWNFALL OF FEDERALISM.....	28
10. SLAVERY AND ABOLITION.....	31
11. MUNICIPAL GROWTH.....	33
12. SECTS.....	33
13. ADMINISTRATIVE CHANGES.....	33
14. WINDFALL FROM WASHINGTON.....	40
15. LIQUOR TRAFFIC.....	41
16. LIGHT IN THE STREETS.....	43
17. HIGH SCHOOL.....	43
18. ERA OF RAILWAYS.....	44
19. NEEDS OF THE POOR.....	46
20. THE CITY MEETING.....	47
21. CHARTER OF 1857.....	47
22. TOWN OFFICERS.....	49
23. CITY IMPROVEMENT.....	51
24. POLICE AND FIRE DEPARTMENTS.....	51
25. IN THE CIVIL WAR.....	53
26. RECENT CHARTERS.....	55
27. CONSERVATIVE INFLUENCES IN THE COMMUNITY.....	57
II. THE PRESENT MUNICIPAL ADMINISTRATION.	
1. SCHOOL DISTRICT.....	64
2. TOWN GOVERNMENT.....	67
3. TOWN MEETING.....	69
4. CONSOLIDATION.....	70

5. CITY GOVERNMENT.....	75
6. CITY JUDICIARY	77
7. CITY EXECUTIVE	80
8. CITY LEGISLATURE	82
9. LEGISLATIVE CONTROL OVER THE COMMISSIONS.....	85
10. CONDUCT OF THE COMMISSIONS.....	90
11. EXECUTIVE ORGANIZATION.....	94
12. ADMINISTRATIVE COURTS.....	95
13. FREQUENT ELECTIONS	97
14. BOARD OF COUNCILMEN.....	97
15. CHOICE OF ALDERMEN.....	99

THE TOWN AND CITY GOVERNMENT OF NEW HAVEN.

I.

THE DUAL GOVERNMENT. 1784-1886.

TOWN-BORN *vs.* INTERLOPER.

The incorporation of New Haven City, like most progressive measures, was achieved in the face of no little opposition. City privileges must have been deemed Grecian gifts in those days, for the dispute over the same subject in Hartford was still more animated and prolonged. The change in New Haven was wrought out through friction between several strongly-defined elements in society. The staid, conservative families and the younger, enterprising business men who together made the town, rallied in two camps, which were described in the local vernacular as "The Town-Born" and "The Interlopers." This odd division seems to date from the days when New Haven's commerce revived, perhaps about 1760. Those who had breathed the air of New Haven at their first entrance into this world, sometimes looked askance at the influx of bustling traders, shippers, and professional men not "to the manner born"; while those individuals whose ancestry had sat in Robert Newman's barn, and had worshipped from generation to generation in the First Church, perched aloft upon social summits that have not yet been entirely leveled. These people were grieved by the destruction of their quiet town-life, by the intrusion of a rabble of sailors and workmen, and, above all, by the insurgent spirit of unrest that came with the ships and

strangers. The interlopers, on the other hand, were most directly responsible for the new commercial activities of the place. Among them were ambitious, aggressive, and broad-minded men, ready to promote progress in municipal as well as in personal affairs. The number of inhabitants in New Haven in 1748, the township including the half-dozen outlying parishes, was about 1,400. The official records of Connecticut in 1756 attribute to New Haven a population of 5,085. An increase of 3,600 in eight years was, at that time, a very prosperous growth. In 1774, the inhabitants numbered 8,022. The average annual increment from 1724 to 1748 was 20; between 1748 and 1774 it was nearly 255. The augmentation of wealth during the latter period outstripped that of the population. Compared with the former two decades, the amount of tonnage in the port had increased over forty-fold, and the value of exports had been multiplied by 470.

Such were the results of the re-infusion of the commercial spirit into the veins of Eaton's torpid town. However, it is not supposed that the business interests of the community were helplessly dependent upon sharp social distinctions. Not all the town-born eschewed business enterprise, neither did the life of the place spring wholly from young and imported blood. The feeling between town-born and interloper became an instinct, an inherited sentiment, powerful in politics and society, but often almost entirely dissociated from original conditions. Instances are not wanting of the outcropping of this old antipathy from beneath the deposits of years of social growth. Sometimes the interests of the town-born were very sternly sundered from those of the interloping element. Mr. Trowbridge relates that one Capt. Brown, being compelled by stress of storm to throw overboard some portion of his cargo, ordered that the goods of interlopers should be selected for the libation to Neptune, but that the consignments to town-born people should be saved.

Leaders of the interloping element before the Revolution were men like Benedict Arnold, Col. David Wooster, the

hero of Danbury, James Hillhouse, the most public-spirited and generous of citizens; above all, Roger Sherman, the foremost man in New Haven, if not in the State, throughout one generation. It is safe to say that while he lived he was the head and front of every species of good work for his adopted home. Sherman, Wooster, and Hillhouse were interested, in 1771, in the movement toward the formation of a city, and, when the close of war afforded once more an opportunity for domestic improvement, Roger Sherman was the central figure around which the progressive elements in society clustered. Starting in life as an apprentice to a Massachusetts shoemaker, he became a member of the Connecticut Council, a Judge of the Superior Court, a member of the Revolutionary and Continental Congresses, wherein he belonged to the committee that reported the Declaration of Independence, a member of the United States Constitutional Convention, a Representative and afterward a Senator in Congress under the Constitution. Among the prominent leaders of that era, he enjoyed the rare honor of affixing his signature to the four most important documentary expressions of the new national unity, "The Address to the King," "The Declaration of Independence," "The Articles of Confederation," and "The Constitution." Throughout the latter part of his career he was dowered with "pluralities" like a mediæval prelate. At his death, in 1793, he was a United States Senator, a Judge of the Superior Court of Connecticut, and Mayor of the city of New Haven. To that infant city, indeed, he maintained a relation quite comparable to that which subsisted between the ancient town and its Governor, Theophilus Eaton. Mr. Sherman's unsympathetic character, however, could not command that universal allegiance which waited upon the Puritan patriarch.

FIRST PHASES OF CITY POLITICS.

The distinctions of Patriot and Tory intersected society and envenomed the neighborhood animosities. The town had

officially promised, as we have seen, to forgive and forget, but the diary of President Stiles shows how beneath the surface the poison rankled.¹ A combination of interlopers, business men, and Tories, the latter probably actuated by political motives mainly, was most actively interested in the fortunes of the new city. Out of about six hundred adult males then living within the city limits, the selectmen certified that 343 were qualified² to be freemen. About one-fourth of the latter number failed to take the oath, so that there were only 261 qualified citizens at the time of the first election, February 10, 1784. The poll for Mayor showed 249 votes, of which Roger Sherman received 125—just enough to elect him. Thomas Howell, deacon of the First Church, received 102 suffrages, while 22 freemen preferred Thomas Darling, who was probably the choice of the extreme Tories. Deacon Howell, who was, like Sherman, an interloper, was elected to be Senior Alderman. Three other Aldermen were named—viz.: Samuel Bishop, Deacon David Austin, and Isaac Beers, the bookseller. Provision was made, as the law required, for a City Clerk, two Sheriffs, a Treasurer, and for twenty Councilmen. About one hundred citizens completed the election of the latter on the third day (February 12), when the new officials were formally inducted into office. Inasmuch as the charter directed that the municipal year should begin in June, the forms of election were repeated on the following first of that month. On the day after the close of the February election, Dr. Stiles sketched a bird's-eye view of the political situation.

“The city-politics are founded in an endeavor silently to bring Tories into an equality and supremacy among the Whigs. The Episcopalians are all Tories but two, and all qualified on this occasion though despising Congress govern-

¹ See Prof. F. B. Dexter's excellent paper on New Haven in 1784.

² Suffrage was limited to those who held personal estate worth at least £40, or real estate renting for £2 per annum. Loyalty to Great Britain might also be a cause for disfranchisement.

ment before; they may, perhaps, be forty voters. There may be twenty or thirty of Mr. Whittlesey's meeting added to these.¹ Perhaps one-third of the citizens may be hearty Tories, one-third Whigs, and one-third indifferent. Mixing up all together, the election has come out, Mayor and two Aldermen, Whigs; two Aldermen, Tories. Of the Common Council, five Whigs, five flexibles but in heart Whigs, eight Tories; Sheriffs and Treasurer, Whigs, but one flexible." Evidently the arrangement was not quite satisfactory to the "inflexible" President of Yale.

THE FIRST CHARTER.

The Act of January 8, 1784, which was New Haven's first city charter,² had incorporated the inhabitants of that portion of the town of New Haven which lay between the Quinnipiac and West Rivers, and between the Mill River meadows and the harbor, under the title, "The Mayor, Aldermen, Common Council, and Freemen of the City of New Haven." We have seen that twenty Councilmen were at first elected. The number of Councilmen was, however, a fluctuating quantity. Twenty was fixed by the charter as the maximum limit. The list was soon reduced to ten, it was increased to twelve, then to fourteen, and in 1853 the original membership was restored. The city legislature comprised the Councilmen, the Aldermen and the Mayor. Under the name of the Court of Common Council, it was empowered in general terms to regulate local affairs, to afford security to property and person, and to provide for the convenience of trade. The city was not divided into wards, so that the legislative body was not based upon a neighborhood constituency. The Aldermen were chosen, practically, as assistants to the Mayor, and the chief functions of both Mayor and Aldermen were

¹ Mr. Whittlesey was pastor of the First Church.

² The text of the Act can be found in Conn. Private Acts, I. 406, and in the City Year-Book for the years 1876-78.

judicial. In conformity with venerable English usage, the City Court was the Mayor's court, wherein that official and the two Senior Aldermen presided. The other two Aldermen were Judges in reserve. The new City Court wielded a jurisdiction like that of the Court of Common Pleas in all civil causes originating within the bounds of the city, except such as concerned land-titles. At least one of the parties to a suit must be a resident of the city. The criminal jurisdiction of the court was confined to offenses against the city ordinances. Justices of the Peace for the town still dispensed the ordinary criminal justice. The Mayor and his four Aldermen bear a definite resemblance to the magistrate and deputies, the Reeve and Four, with whom New Haven started in 1639. The ancient institutional stock of the five elders clung tenaciously to the New Haven soil.

Finally, all the freemen, in full City-Meeting assembled, were the ultimate arbiters of all municipal questions. This purely democratic assembly alone could levy taxes, and elect officers. Its ratification was absolutely essential to every by-law enacted by the Mayor and Common Council. Even then no by-law was valid until it had been published for three weeks successively in "Some public newspaper, in or near said city." This arrangement seems sufficiently clumsy, but the most remarkable check yet remains. Any by-law of the city might be repealed within six months after enactment by any Superior Court holden in New Haven County, if the said Superior Court judged the by-law to be unreasonable or unjust.¹

Such pains were taken to prevent arbitrary municipal rule; yet in one instance the charter itself trod closely upon vested privileges. The city was empowered to exchange or sell the

¹ The English "Municipal Corporations Act" of 1882 provides that an order of a borough-council for the payment of money may be taken to the High Court of Justice by writ of *certiorari*, and may there be wholly or partly disallowed or confirmed, with or without costs, as pleases the court.

northwestern portion of the Green, in order to secure other land or highways, or another Green. These clauses were intended to notify the Proprietors' Committee that its authority over the public square was henceforth vested in the city, and that the proprietors could no longer vote away building-sites upon the Green. However, the remainder of the Green was confirmed as a common or public walk, to remain so forever, never liable to be laid out in highways or to be appropriated to any other purpose.

Jealousy of corporate action and the assertion of State legislative supremacy were distinctive features of this early charter. Public sentiment in 1784 regarded a city as a hot-bed of aristocracy, and a single executive officer, whether local or national, as a possible Julius Cæsar. The successive obstacles to the full habilitation of a city ordinance, the ratification by the citizens, the three weeks' publication in a newspaper, and the possible veto by the Superior Court, would check in our day not only the centralization of power, but also the transaction of business. In 1784, "Thou shalt not go slowly" had not become an American eleventh commandment.

The State Legislature reserved to itself ample oversight in the affairs of the new municipality. The Mayor, although elected in the first instance by the people, held his office during the pleasure of the General Assembly—a reservation which tended to make him Mayor for life. This tenure of the Mayoralty endured until 1826—a period of forty-two years. During that time New Haven was ruled by four Mayors, two of whom died in office and three of whom enjoyed an aggregate term of thirty-eight years. During the forty-two years next ensuing after 1826, the city has elected eighteen different Mayors. Moreover, the election and tenure of Probate Judges were both subject, until 1851, to the General Assembly. In the *personnel* of the town government the establishment of the city wrought no change, and the functions of town officers were altered, if at all, in amount, but not in kind.

DESCRIPTION OF THE CITY.

The city proper of New Haven, in 1784, was the small nucleus of the town, and situated at the edge of the harbor; but the city limits included Davenport's original town plat and the two miles square, with the common fields and pastures. Although General Garth, in 1779, had thought New Haven too fine a place to burn, it was but a straggling village of 3350 inhabitants. In its centre was the unfenced, unkempt Green, marked by wagon-ruts and disfigured by weeds and bushes. Against this unsightly growth, as well as against the nomadic geese and swine, the village fathers had long waged an unavailing paper warfare. In the southwestern corner of the Green, nearly opposite the New Haven House of our day, stood the old County House and Jail, removed in the spring of 1784, at an expense of £30, across the street into what is now the College campus. Near them the old State House, erected in 1717, was situated, and was now perhaps used by the grammar school. The building which had superseded it in 1763, "The New Brick State House," formed with the First and the "Fair Haven" Congregational Churches a line of edifices upon Temple street. The only other churches in the city were the "Blue Meeting-house,"¹ or "White Haven Church," at the southeast corner of Elm and Church streets, and the Trinity Episcopal, on Church street. Two college-buildings, South Middle and the Athenæum, held the Yale of that day, though the first college-edifice was still standing, much dilapidated, in the southeast corner of the campus. Doubtless the sight of a college and a jail thus jostling each other caused more than one jocular remark in the hamlet. Student-life was boisterous then, and was destined to become more so.

¹ So called on account of the color of the paint used upon it.

MUNICIPAL IMPROVEMENTS.

A multitude of good works followed upon the new order of municipal duties. The first city tax of one penny in the pound was decreed.¹ The first by-law forbade the erection of buildings without a permit, under a penalty of ten pounds, the heaviest fine which the Council was allowed to inflict. There was a flavor of antiquity in the agreement that meetings of the City Council should be called by "Posting notices on each corner of the eight central squares." In addition a bell was to be rung, and proclamation of the day and hour made, at each corner. By September this method of convocation was deemed inadequate, and the City Clerk was instructed to notify members of the government whenever the Mayor ordered a meeting. The tolling of the State House bell summoned the annual City-Meetings on the first Tuesday of every June at nine o'clock A. M.

As soon as the first municipal year was fairly begun, the Council labored vigorously at its work of construction. It was determined that New Haven's trade should be as honest as official supervision could make it. In July, by-laws were passed creating a large number of inspectors and gaugers.²

¹Taxes upon the dollar were not laid until July, 1799, when the rate was fifteen mills.

²The City Government, during its first quarter century. Elected by the freemen of the city: The Mayor, tenure of office at pleasure of General Assembly; 4 Aldermen, term one year; Councilmen (not more than 20), term one year; Sheriff, City Clerk, Treasurer, Tax Collector, each, term one year; Gaugers of Molasses, Rum, and other Spirituous Liquors; Inspectors of Pot and Pearl Ash; Inspectors and Cutters of Hoops, Staves, Heading, and Ready-Made Casks; Inspectors and Cutters of Plank, Boards, Clapboards, Oars, Shingles, and Scantling; Weighers of Hay; Inspectors and Measurers of Wood; Inspectors of Wheat, Rye, Indian Corn, and Flour; Inspectors and Packers of Beef, Pork, and Fish; Pound-keepers; Inspector of Tobacco; 6 Fire Wardens (after 1788); Board of Health (after 1794).

Elected by the Court of Common Council: 144 Jurors of the City Court; City Attorney (after 1803).

Articles offered for sale must bear the stamp of official approval. Even prices of board and lodging were fixed by law. There were enactments against nuisances, against obstruction of highways, and against disregard of sanitary precautions. One of the earliest ordinances provided for the establishment of a public market. The ordinance was from time to time suspended until, in the next year, two city markets were built by subscription, one on the southeast corner of the Green, the other where the present city market stands. All retailing of meat and vegetable products elsewhere, between sunrise and eleven o'clock of the forenoon, was forbidden under penalty of twenty shillings. A long and bitter controversy arose over the merits of a public market as opposed to individual peddling, or the old-fashioned street-market in wagons. The city was never contented with the conclusion that had been reached, and, after much trouble and ill-feeling, the market law was formally repealed in June, 1826. President Dwight, who was a zealous champion of the city market, called its overthrow "A striking example of the power of habitual prejudice."¹

In June of the initial year the charter was found lacking in an unexpected quarter. The little village-city felt unable to extend a suitable welcome to distinguished aliens. So the needful legislation was procured from the General Assembly, and the "freedom of the city" was soon after bestowed upon the "Hon. William Michael St. John de Crevecoeur, Consul-General to His Most Christian Majesty for the States of Connecticut, New Jersey and New York"; also upon his children and upon his wife, "Mehitabel." In the following spring, the "freedom" of New Haven was again granted to a handful of dukes and princelings. Among the company were the Duc de la Rochefoucault, the Marquis de St. Lambert, and M. de la Custelle, *avocat du parlement*. To welcome

¹ He says: "There is something very remarkable in the hostility of the New England people to a regular market." (Travels, I. 195.)

and convey these honored and honorable strangers, all the half-dozen carriages in the city must have been required. Public vehicles were heavy responsibilities in those days, for every professional carter was compelled not only to carry a license, but also to give a surety of one hundred pounds.

The city was disposed to foster immigration, and an elaborate welcome was prepared for visitors of a lower degree than the French nobility. A City-Meeting, held September 23, 1784, appointed a Committee of Hospitality, consisting of Charles Chauncey, Pierpont Edwards, James Hillhouse, Timothy Jones, Jonathan Ingersoll, David Austin, and Isaac Beers, Esqrs. Their duties were "To assist all such strangers as shall come to the city for the purpose of settlement therein, in procuring houses and land on the most reasonable terms, and to prevent such persons, so far as possible, from being imposed upon with respect to rent and the value of houses and lands, and to give them such information and intelligence with respect to business, markets, commerce, mode of living, customs and manners, as such strangers may need; and to cultivate an easy acquaintance of such strangers with the citizens thereof, that their residence therein may be rendered as agreeable and eligible as possible." If this programme was carefully followed, the home-seeker must have thought New Haven a true Arcadia. Yet working-men of the better sort were not attracted, unless President Dwight's opinion of his fellow-citizens was untrustworthy. While he extolled the intelligence and virtue of the community in general, he branded the artisan and laboring classes, both white and black, as abnormally vicious.

In the autumn of 1784, suitable names were ordered for the various roads, ways, and alleys within the town-plot, and the first year of urban existence closed with an application to the General Assembly for wider powers, especially in respect to the laying out of highways. In the next year the State of Connecticut, in the exercise of its sovereign powers,

established a mint at New Haven, and issued coinage therefrom until 1787.¹

Contrary to the usual custom, neither town nor city was inclined to waste words over the Constitution of 1787, probably because there were few malcontents. The town recorded its desire for a convention of ratification, and appointed Roger Sherman and Pierpont Edwards delegates. There was no other official reference to the momentous change from a confederation to a nation, but public sentiment, as voiced in the journals, was enthusiastic in its support of Federalist principles.

The town began to feel pricks of conscience about disposing of paupers at a yearly auction, and, in 1785–86, the Town-Meeting declared that “The Town’s-poor should be kept by themselves at one place, unless some of those who now have them offer to keep them at a manifestly cheap rate.” There were then thirty-seven paupers, costing £12 per week, exclusive of clothing and doctors’ bills. Three years later, when it was temporarily the fashion to let out most of the town’s yearly expenses by contract to some one individual, there were but £270 paid for the support of the poor.

Both town and city discussed the erection of a workhouse until 1791, when it was built. The Town-Meeting of June 25, 1792, adopted what it called “The Workhouse By-laws,” which had been prepared by a committee. Any assistant, or justice of the peace resident within the town, might send to the workhouse for not more than three months, “Rogues, vagabonds, sturdy beggars, lewd, idle, dissolute, profane and disorderly persons, all runaway stubborn Servants and children, Common Drunkards, Common Night-

¹ A Connecticut copper cent from this mint, found in the basement-wall of the Hartford City Hall, bore on the obverse side the head of the Governor (probably Gov. Huntington), with the words “Autori. Connec.” On the reverse were a female figure holding an olive branch, and the inscription “Inde. et Lib., 1787.”

walkers, Pilferers, all persons who neglect their callings, mispend earnings and do not provide for their families, and all persons under distraction unfit to be at large and not cared for by their friends or relatives." Such a motley company might be punished, if need were, by the master of the house, upon the approval of his superiors, by "Fetters or Shacles, by whipping on the naked body not more than ten stripes at one time, or by close confinement without food and drink." Upon release, the criminals might claim two-thirds of their earnings, minus the cost of commitment and support. Criminals, paupers, and lunatics continued to be thus housed under one roof until the middle of the next century, when the growing scandal shocked the better class of citizens into action.

THE FIRE DEPARTMENT.

The fire department of the city made its humble beginning in January, 1788, when a "Fire Engine" was ordered at the expense of the city. Frequent legislation for three years finally gave the control of the department to six Fire Wardens, under whom the entire male population of the city between the ages of 16 and 60 was enrolled. To begin with, there had been but two fire companies, of seventeen men each. Practice with the engines in "Washing and Playing" was ordered on the first Saturday of every April, July and October. Every one must attend with bucket or pail under peril of a two-shilling fine. Ministers, and the President, tutors, and students of Yale College were alone exempted. Moreover, the Fire Wardens were empowered to appoint four sackmen, "Respectable freeholders, each of whom on every alarm of fire shall take with him to the said fire one or more sacks and shall take care of all property necessary to be removed from danger of fire." There was one clumsy check to the extensive power of a Fire Warden: no building could be destroyed, in order to prevent the spread of fire, until the consent of the Mayor, Aldermen, and the body of Fire Wardens, or the major portion of them,

had been obtained. No part of the city organization was so frequently tinkered as the fire department. Rigid rules fettered the action of the householder in minute details, and heavy fines were imposed—on paper. The fines were also inflicted, generally to be remitted at the next City-Meeting. Not only the erection of a stove, but even of a stove-pipe, without the permission of the Fire Wardens, was strictly prohibited. Oddly enough, the city re-enacted almost the same laws that had been framed in the same town in 1640, forbidding the kindling of bonfires in the street, or the smoking of tobacco within four rods of a building, and also enjoining the stated cleaning of chimneys. But the anti-tobacco legislation could not be enforced, and all the regulations brought neither safety nor satisfaction until the modern day of steam and electricity.

Danger from fire was no more dreaded than danger from small-pox. That scourge visited the community, as it had done thirty years before, with the revival of commerce. Both town and city moved to erect a small-pox hospital. A strict quarantine was maintained against all comers from New York. The town voted that "Laben Smith, who has come into the harbor with passengers from New York who do not belong to this Town," might land them on the east side of the harbor, provided that "They make off in a stage, and do not endanger the Town."¹ When it was announced in Town-Meeting, August 29, 1794, that a vessel was coming up the harbor, Mr. Adee was sent at once to the waterside, commissioned by the meeting to prevent any boat from landing. At the same time three physicians were elected health officers for the port. The city followed suit in the ensuing spring with the establishment of the first Board of Health. The mind of the city was especially exercised about the East Creek, which had become a receptacle of filthy drainage. The Board of Health consisted of ten persons, under the style and title of "The Health Committee of the City of New

¹Records, V. 247.

Haven." It had full power to abate nuisances, and to improve, as it saw fit, the sanitary condition of the city. Through the labors of this committee, the local authorities obtained from the Legislature power to establish a quarantine for foreign vessels. The community became both unhealthy and impoverished. Although the trade of the place grew rapidly, the city felt the weight of the financial pressure that was universal in the nation. It was very difficult to secure adequate taxation. As a sign of the times, the path to the Treasury was more and more securely hedged in. In 1790, the City Clerk was constituted the sole drawer upon the Treasury, and his orders must first be certified by the Mayor. At the same time it was provided that, so often as there was no cash in the Treasury, the Treasurer should number and register each bill that was presented, and should pay the same in the order of presentation. Both town and city were indebted, apparently, even for the running expenses, and every new street or turnpiked road might be the occasion of fresh borrowing. In 1802, the town-tax was five cents on the dollar, and a committee, of which Noah Webster was a member, was alarmed by a debt of \$3,000.

All the work of the Board of Health was performed at its own expense. Most of the public improvements of the time, in the way of adornment or of more efficient sanitation, were dependent upon private funds and private energy. One of the very first acts of the City Government, in February, 1784, was to vote that "Any gentlemen who might agree to defray the expense" could enclose the southeastern part of the Green so as to admit footmen only, "Sufficient room being allowed for carriages before the public buildings." In the same independent way roads were improved, streets opened, and meadows diked and drained.

ADORNMENT OF THE GREEN.

First and foremost in these enterprises were two public-spirited and wealthy citizens, David Austin and James

Hillhouse. To them principally were due the rescue of the Green from its primitive savagery, its enclosure within fences, and its adornment with trees. Not the least of the improvements was the institution in 1796 of the Grove Street Cemetery, which was then a sort of wonder of the world, and the abandonment of the old burying-ground in the rear of the Centre Church—an improvement first proposed by Governor Francis Newman, in 1659. Yet the acts by which the city granted permission for these labors concluded significantly, "Provided the same be done without expense to the city." There was active opposition to the whole procedure, not only within the city, but in neighboring towns. The rejection of the graveyard on the Green seemed to the more ignorant and conservative classes both expensive and sacrilegious, and it was urged against Mr. Hillhouse in a political canvass twenty years afterward.

However, there is evidence that, after the beautifying was completed, the city repented and made a small contribution. The gentlemen who had been most active in the reform were appointed as a sort of Park Commission, their chief anxieties being due to Yale students and to geese. Against the latter bipeds a ponderously-framed law was proclaimed: "No goose or gander shall be allowed to go at large within the limits of New Haven town, unless such goose or gander be well-yoked with yoke 12 inches long, under penalty of impounding such goose or gander; and goose or gander taken damage fessant shall pay five cents poundage fee." In 1798, with the consent of the town, the Legislature extended the limits of the city toward the East and West Rocks. Already the care of the poor was the chief burden upon the town. The first annual balance-sheet was entered in the "Town Records" for December, 1799, and out of a total expense of £630 the town's poor cost £514. The item had doubled in ten years.

With the opening year of the nineteenth century, the City Clerk was first instructed to act as the Clerk of the Common

Council.¹ The state of the public finances was constantly growing worse. The City Court was supposed to derive support from the fines imposed therein, but the penalties were not carefully collected. A partial remedy for the defect was found in 1803, when the Common Council was empowered to appoint a City Attorney.² The supply of water furnished another troublesome question. A proposition to build an aqueduct was first debated in City-Meeting in 1804. Two years later, the consent of the General Assembly was received, and a committee, headed by Noah Webster, was elected to manage the construction of an aqueduct. But poverty prevented the successful termination of this effort, and compelled the city to tolerate the inefficient service of creeks and wells. Unavailing were all endeavors to improve the quantity and quality of the water in the East Creek.

PUBLIC LETTERS TO THE PRESIDENTS AND OTHERS.

A most peculiar feature of New Haven Town-Meetings at this period were the eloquently-worded manifestoes upon public affairs. Events of unusual interest and importance could hardly fail to evoke a sermon or an eulogy from New Haven. In 1793, five long resolutions assured Washington that his policy of neutrality "Merits our warmest approbation and support," and that "We will exert ourselves to promote a conduct friendly and impartial towards the nations of Europe," etc., etc. In 1796, New Haven told the National House of Representatives its opinion of Jay's Treaty: "We view with great anxiety the opposition now attempted against the treaty. . . . We avoid declaring what our decision might have been, had this treaty been submitted to our determination. For us it is sufficient that we discover in it no principles subversive of our Constitution."

¹ July 7, 1800.

² In 1815, the appointment of a City Attorney was, by law of the State, vested in the City Court, and it has so remained.

At the close of John Adams's term of office, New Haven welcomed the homeward-bound ex-President and reviewed his administration with eulogistic words. Federalism reigned supreme in New Haven. "We view with abhorrence all attempts made in our country to mislead public opinion, to inspire distrust, to awaken a spirit of needless discontent, and to deprive magistrates, who have long and faithfully served the public, of their most grateful reward, the esteem and approbation of their constituents." Naturally enough, the community was soon embroiled with Thomas Jefferson, and favored him with frequent communications. His appointment of an aged citizen to the Collectorship has become a part of national history, but the most fruitful cause of correspondence was the embargo, or, as it was occasionally called in this vicinity, the "dambargo."

This measure completely killed a commerce which had not entirely succumbed to the unfavorable conditions of the Revolution. In 1787, 7,250 tons of shipping were registered in the port, and the amount had increased in 1800 to 11,000 tons. In 1790, the trustees of the famous wharf thought themselves justified in setting up a three-thousand-dollar lottery for the extension of their property, and they instructed Mr. Lyman, the taverner, "To increase hereafter at their meetings the quantity of his sling and toddy."

About 1792, the New Haven Bank was incorporated with a capital of \$80,000, and the Chamber of Commerce began to meet in "Ebenezer Parmalee's front room, on the first floor." There were three shipyards, and, in the South Sea fleet, about a score of ships, three of which registered over 300 tons. The most famous of these was the *Neptune*, which, in 1799, brought home from a voyage around the world a cargo of tea, silk, and china, upon which the net profits were \$240,000, and the duties upon which amounted to \$67,000, or \$20,000 more than the entire civil-list tax of the State.

The "Orders in Council" began the work of destruction. The brig *Anne*, bound homeward from a Danish port, was boarded twice by the French cruisers and three times by the English. Everything edible was removed, and the captain, remonstrating with a French officer, was told to eat pine shavings, "good enough food for Yankees."¹ If New Haven ships did not bring home many victuals, they were not so scantily provided with beverages; for, in a couple of years, there passed through the Custom House two million gallons of rum, gin, brandy, and wines altogether. It seems strange that any of the ships should have been meddled with, since they were provided with a formidably polite document which was called a "Municipal Letter," and which invoked in their aid the influence of the Mayor of New Haven.²

The year 1807 was marked by two events of memorable import in New Haven's development. The First Methodist Church and Society were enabled to buy a lot for building purposes, and the embargo was declared. The former sig-

¹ New Haven Historical Society Papers, III.: Ancient Maritime Interests of New Haven, by Thos. R. Trowbridge, Jr.

² The following is a copy of a "Municipal Letter":

"Most Serene, Most Puissant, High, Noble, Illustrious, Honorable, Venerable, Wise and Prudent Lords, Emperors, Kings, Republics, Princes, Dukes, Earls, Barons, Lords, Burgomasters, Schepens, Counselors, as also Judges, Officers, Justiciaries, and Regents of all the good Cities and places whether ecclesiastical or secular who shall see these patents or hear them read, We, Samuel Bishop, Mayor, make known that the Master of the Catherine of 84 tons burthen, which he at present navigates, is of the United States of America, and that no subject of the present belligerent powers has any part or portion therein directly or indirectly; and as we wish to see the said Master prosper in his lawful Affairs, our prayer is to all of the before-named and to each of them separately where the said Master shall arrive with his vessel, they may be pleased to receive the said Master with goodness, and treat him in a kind, becoming manner, permitting him upon the usual tolls and expenses in passing and repassing to pass, navigate, and frequent the Ports, Places, and Territories to the end to transact his business where and in what manner he shall think proper. In which We shall be willingly indebted.

(Signed)

"SAMUEL BISHOP,
Mayor."

nalizes a turning-point in the long and unequal struggle between the Orthodox Puritan and his dissenting brethren, the brunt of which, in New Haven, was so long borne by Trinity Church and by the inconsiderable band of Sandemanians. The embargo (December 22) resulted finally in the transformation of New Haven from a commercial to a manufacturing town. During the year 1808, seventy-eight vessels were shut into New Haven harbor. In August, Elias Shipman, Noah Webster, David Daggett, Jonathan Ingersoll, and Thos. Painter, Esqrs., by order of the Town-Meeting, prepared and forwarded to Thomas Jefferson a "Memorial" of about 4,500 words, "Respectfully representing" that the embargo ought to be modified or suspended. One may note the orthodox economy of this paragraph: "We are disposed to foster the growth of manufactures as rendering the people independent of foreign nations for articles of consumption, but, in a country containing immense tracts of uncultivated land, we question the policy of forcing into existence manufactures less congenial to the habits of our people than agricultural pursuits. Manufactures that are adapted to our society will best thrive with unrestricted commerce." This faithful re-echo of the new economic gospel of that day should be read in connection with Jefferson's letter in the same year to his staunch supporter, Abraham Bishop, Collector of the Port of New Haven. The President has heard that "Col. Humphreys, in your neighborhood," makes the best fine cloth in the United States; and, inasmuch as he desires to wear homespun at the "New Year's Day Exhibition," he requests Collector Bishop to forward a suit, and says that he will deposit the price of it "with any member of the Legislature here."¹

Jefferson returned, in September, a characteristic answer to the memorial, alleging that no one knew better than himself the inconvenience caused by the embargo. He referred the

¹ New Haven Historical Society Papers, I. 143.

petitioners to the "Legislature" as the only authority competent to prescribe the course to be pursued. New Haven had its share, in the following winter (1809), in persuading Congress to defeat the Administration upon the question of limiting the duration of the embargo. The Town-Meeting of January 28 adopted a long series of resolutions breathing out the spirit of the subsequent Hartford Convention.¹

"We will submit to national laws, consistent with the principles of the federal compact, and not repugnant to the spirit of the Constitution and to the fundamental principles of a free government."

"When the rulers of a free people transgress the limits of their authority, it is the right and duty of citizens to manifest a sense of injury and to seek redress."

The town solemnly declared the embargo to be a violation of the Constitution, quoted the Declaration of Independence, used such ominous expressions as "The insidious stratagems of peace become more terrible than the sanguinary operations of war," and "We must oppose the torrent of oppression." Finally there came an appeal to the Governor and Legislature to meet and take measures for the protection of rights. Subsequently the device of non-importation was found to be the same demon under a new name, and the town frequently cried out against it. The last memorial (in 1814) represented New Haven as "Already reduced to poverty and wretchedness."²

¹ In the winter of 1814-15. It assembled on the 14th of December, 1814.

² New Haven's share in the war of 1812 was not entirely confined to memorials. Mr. Trowbridge has related a laughable account of one privateering venture. In 1812, the sloop *Actress*, 60 tons, Capt. Lumsden, was fitted out in New Haven harbor as a privateer. In the Gulf Stream a big English ship was sighted, which was pronounced a tea-ship, and a veritable prize. Much elated, the crew of the *Actress* cleared for action, and were already drinking Jamaica rum in honor of their anticipated fortune. Capt. Lumsden arrayed himself in a resplendent blue suit, with red facings, and a cocked hat, lent him by Jeduthan Bradley, a Foxon militia captain. Capt. Lumsden hailed, and was answered, "The *Spartan*,

DOWNFALL OF FEDERALISM.

It would not be reasonable to suppose that these rebellious declarations were supported by the unanimous sentiment of the town. The unwavering Federalism of the official utterances was anything but popular in the taverns around Long Wharf, where the toast to "Free Trade and Sailors' Rights" was greeted with the greatest enthusiasm. But the minority in the town comprised more stable elements than sailors and laborers. We have seen how the Tory Episcopalian freemen came forward to assist actively in the formation of the city government. The freemen of whom these men were representatives, the freemen who, for one reason or another, were dissatisfied or at variance with the most flourishing Church in the community, fell easily into opposition to the first National Administrations, with which the major part of Connecticut heartily sympathized. Those men, therefore, who at first fought Federalism because they wanted to see the Government fail, "Who," as President Stiles wrote, "despised the Congress-Government," and most of whom despised also the New England Puritan idea, formed, together with those who antagonized Federalism on account of State pride or excess of republican zeal, the nucleus of the Anti-Federalist party in New Haven and in the State. But Toryism soon died away, and ecclesiastical heat availed only to keep alive the seeds of future political dissension. In the middle of President Madison's first term, the Democratic-Republican minority in Connecticut began to assume a more aggressive form, and in New Haven the omens of a new political birth were soon perceived.

of London." The name was ominous, for it belonged to a powerful frigate known to be on our coast. But, reflecting that this was a tea-ship, Lumsden said, "Consider yourself a prize to the U. S. privateer *Actress*. Send your papers aboard." The Britisher humorously asked Lumsden if he "Really expected a great ship like this to strike colors to such a little fellow." Lumsden swore, and threatened to fire, whereupon the *Spartan* displayed its sixty guns, and a voice said, "Come to our gangway, and we'll hoist you in."

The insolence of England, the prolonged supremacy of one party in the State and of another in the nation, the rights and wrongs of the various sects, the lack of a written Constitution for the State¹—all these causes helped to produce and animate a body which first found an abiding mouthpiece and oracle on the 1st of December, 1812. Upon that day Mr. Joseph Barber issued the initial number of the *Columbian Register*.

In the spring election of 1813, New Haven gave the Administration ticket 59, out of 225 votes. During the two following years there was no contest, but in 1815 the *Register* took the lead in appealing to denominational jealousies, and, from that time on, the fight waxed warm, and extended from New Haven throughout the State. The minority adopted the name "Toleration Party," and professed to maintain the broad principles of equalization of all creeds before the law, and of equal rights for all men. The Toleration journals were filled with letters addressed to "Congregational Hypocrites," to "Downtrodden Episcopalians and Methodists." It was asserted that only Congregationalists had been elected to office, that Yale College and other Congregational institutions had been aided by public money, and that Episcopal schools and charitable foundations had been slighted and ignored. One indignant churchman informed the town through the columns of the *Register* that his vote would not again be cast for Governor John Cotton Smith. The Governor had deliberately walked across the Green to his boarding-place, when he might have accompanied some of his associates to Trinity Church to hear the Bishop preach.

The Federalist papers at first affected to despise the agita-

¹A convention of Jeffersonian leaders at New Haven, Aug. 29, 1804, ventured to make the first noteworthy assault upon the venerable charter of 1662. Of what stupid tyranny the ruling party was capable may be seen in the fact that every justice of the peace who attended that convention was impeached before the next General Assembly.

tion. The *Journal* said that the Federalist party was in no new danger from Episcopalian votes, "Because two-thirds of the 2,000 Episcopalian voters in the State are and always have been Democrats." But the apathy of the *Journal* was of short duration. In the election of 1816, the Toleration ticket was partially successful throughout the State. Hartford and New Haven for the first time gave Democratic majorities, and the latter town elected Wm. Bristol as its first Democratic Representative to the Legislature. It was a stunning blow to the New Haven gentry, and it evoked the following lamentation—written, as the *Register* said, "By a half-fledged scribbler in the prostituted columns of the *Journal*"—"O Shame! Triumph of Apostacy and Delusion! In this Federalist Town of New Haven, where four-fifths of the Freemen are friends of order and steady habits, prejudice, apostacy, and fanaticism are triumphant. The result of the election this day furnishes the fullest evidence that moral depravity and personal debasement form no barrier to political delusion and sectarian prejudice. Oh, Shame! Judgment hath fled to brutish beasts, and men have lost their reason."¹

In the following year, there was a slight reaction in the town. The Federalist ticket received thirty majority, which the *Register* attributed to illegal votes cast by students and tutors from Yale College, and to "The unexpected exertions of four Congregational clergymen who attended and *voted at the polls throughout the day.*" But, in general, the Tolerationists went on from victory unto victory. Having gained possession of the State, and of most of the local boards as well, they declared in favor of a written Constitution to replace the ancient charter of 1662. The Federalists were put upon the defensive, and in a hopeless cause, for the tide of republicanism had now acquired an irresistible force. In New Haven they seem to have absented themselves from

¹ The vote in New Haven was : Dem., 288 ; Fed., 200.

the Town-Meeting of December 29, 1817, which voted almost unanimously that the town's representatives should urge the immediate formation of a written Constitution. The *Register* said proudly that about two hundred voters attended, "Mostly mechanics," and it pilloried unmercifully a young Federalist lawyer who had ventured to ask that assembly, "Where are our most respectable citizens? Why are they not here?"

In the summer of 1818 (July 4th), the Federalists of New Haven made a last vigorous effort to elect their own men to the Convention which was about to frame the new Constitution. One of their nominees was the Hon. James Hillhouse, the beautifier of the Green and of the city. Alluding to Mr. Hillhouse's agency in the removal of the graves from the Common, the *Register* exclaimed: "He is the most desperate and ferocious prosecutor of desperate and ferocious deeds. God forbid that the destroyer of the sepulchers of our fathers should ever receive the suffrages of their sons." The Democratic candidates were successful by a poll of 300 to 250, and in the next autumn the town ratified the new Constitution by a vote of 430 against 218.¹ New Haven Federalism was ended. The following eight years were years of political chaos. The Democratic body alone was a well-drilled, compact body, obeying without hesitation the commands of its half-dozen leaders. Only upon the question of slavery could an opposing majority be mustered in the town. Not until 1826 was the Whig party, which followed the standard of Clay, able to win its first victory in New Haven.

SLAVERY AND ABOLITION.

In the year after the adoption of the State Constitution, the town delivered, for the first time since the Revolution, an official utterance upon the subject of slavery.² The trumpet

¹ Records, VI. 62. In October, 1818. The Convention met in Hartford in August, 1818.

² December 27, 1819. Records, VI. 71, *et seq.*

gave no uncertain tone. The slave-power was seeking to gain both Florida and Missouri for degradation, and New Haven recorded its verdict substantially thus: "The existence of Slavery in the United States is, in the opinion of this meeting, an evil of great magnitude. It is the high and solemn duty of the government of this free and enlightened nation to prevent by all constitutional means the extension of Slavery. It is therefore

"*Resolved*, That, in the opinion of this meeting, the Congress of the United States has the undoubted right to prohibit the admission of Slavery into any State or Territory hereafter to be formed and admitted into the Union;

"*Resolved*, That, in the opinion of this meeting, the admission of Slavery into any such State or Territory would be opposed to the Genius and Spirit of our government, and injurious to the highest interests of the nation;

"*Resolved*, That the Senators and Representatives from this State in Congress be respectfully and earnestly requested to use their most strenuous exertions to prevent the further extension of Slavery in the United States."

So said the town! Meanwhile the City-Meeting said not a word about the Missouri question. It was fixing the weight of loaves of bread at "The New York Assize," and the prices of the same by statute at $6\frac{1}{4}$ and $12\frac{1}{2}$ cents—legislation surprisingly similar to Eaton's Assize of Bread in 1655. However, the time came when the city did speak, and to a very different purport from that of the foregoing.

In 1831, a number of Abolitionists, some of them residents of New Haven, subscribed funds for the establishment in New Haven of a college for the education of negro youth, and the promulgation of anti-slavery sentiment. Forthwith, as when, in Ephesus of old, a reform was proposed, the city was in an uproar. Mayor Dennis Kimberley¹ called a City-Meeting on the 10th of September. It was a crowded gathering, and adopted a long list of fiery preambles and

¹ He was a Whig.

resolutions which declared that "The propagation of sentiments favorable to the immediate emancipation of slaves, and, as auxiliary thereto, the contemporaneous founding of colleges for educating colored people, is an unwarrantable and dangerous interference with the internal concerns of other States, and ought to be discouraged; also that Yale College, schools for females, and other educational institutions already existing in this city are important to the community, but the establishment of a college in the same place to educate the colored population is incompatible with the prosperity if not the existence of the present institutions of learning, and will be destructive of the best interests of the city." Wherefore the Mayor, Aldermen, Common Council, and freemen of the city of New Haven mutually pledged themselves to resist the establishment of the proposed college by every lawful means. The Bourbons prevailed, and the project was abandoned. Not long afterward the chivalrous citizens of Canterbury, Connecticut, declared war on Miss Prudence Crandall because she was willing to teach "Niggers." Wm. Lloyd Garrison, referring to "The proscriptive spirit," wrote: "The New Haven excitement has furnished a bad precedent; a second must not be given, or I know not what we can do to raise up the colored population in a manner which their intellectual and moral necessities demand." Ten years later (1841), the town of New Haven appropriated \$150 for a school for colored children, and, in 1842, there were two such schools.¹

MUNICIPAL GROWTH.—SECTS.—ADMINISTRATIVE CHANGES.

During the rapid upspringing of the Democratic party (1810-17), and amid the birth-throes of the new Constitution, political excitement seems to have checked even the

¹ Records, VI. 197. The captives of the famous *Amistad* were brought to New Haven in 1839.

normally slow development of New Haven's municipal government. But with the winter of 1818-19 the symptoms of growth appeared again. Pressure of business caused the differentiation of a Board of Relief from the office of the selectmen. An increasing desire for official regularity in the place of previous easy informality manifested itself in a by-law by virtue of which the Common Council for the first time elected a sexton, a leader of the hearse, bell-ringers, and other officers necessary to the service of burial.

The 6th of July, 1820, was a red-letter day in the calendar of the First Methodist Church and Society. Their ambition to place their church by the side of its Congregationalist neighbors and within the jealously-guarded limits of the Green was gratified. The City-Meeting placed the seal of its final approval upon an ordinance permitting the Methodists to build an edifice upon the northwest corner of the public square.

Throughout the year the city government was engaged in framing a rudimentary Police Department. Night-watches were established, consisting of three superintendents and a score of watchmen, although the enabling act of the Legislature allowed seven superintendents and fifty watchmen.¹

¹ That the city could exist thirty-six years without a regular force of this sort would seem to argue either Arcadian simplicity or alarming insecurity. The actual condition of affairs was probably a mixture of both. President Dwight, writing in 1810, depicted New Haven as a model Happy Valley, where disturbances were unknown, where private contentions hardly existed, and where ungirt Peace ruled alone. But one burglary had been known in fifteen years. However, he adds, "This good order of the inhabitants is the more creditable to them, as the police of the Town is far from being either vigorous or exact." At the risk of involving the worthy President in contradictions, it is worth while to compare another of his paragraphs with the foregoing. After dilating upon the excellences of the various social elements in New Haven, he says "The one considerable exception is the class of labourers. By this term I intend those men who look to the earnings of to-day for the subsistence of to-morrow. In New England almost every man of this character is either shiftless, diseased, or vicious. The local and commercial circumstances of this Town have allured to it a large (proportional) number of these men; few of whom are very industrious; fewer, economical; and fewer still, virtuous." (Travels, I. 193-4, 196.)

The work of renovation was continued into the year 1821. The Fire Department was remodeled. The Fire Wardens, who had held the entire responsibility, were now empowered to elect a Chief Engineer and five Assistant Engineers. Hereafter the Chief Engineer could order the demolition of buildings, in order to prevent the spread of fire, without waiting, as formerly, for the consent of the Mayor and the majority of the Aldermen. The charter and its numerous amendments were consolidated, and the Legislature recast the charters of all the cities in the State into one Act. In the same year a Baptist society followed in the path which the Methodists had hewed out with such difficulty, and effected a territorial lodgment. In the annual Town-Election, tithingmen were chosen for the Baptist and Methodist, as well as for the Congregational Churches. Not until 1833 were the first tithingmen elected for the Episcopal Church,¹ and the Universalist and Roman Catholic Churches received this token of official recognition in 1836.² In 1849, the town met for special ballot, because it had omitted the election of tithingmen for the Society of Mishkan Israel, or, as the Town Records put it, of "Miskin Israel."³ The rapid increase in the number of congregations must have rendered the choice

¹Trinity Church had not needed tithingmen, if its worshippers were generally as choleric as the one mentioned in N. H. Hist. Soc. Papers, II. 38. Spying a little boy who was inclined to conduct himself frivolously during the service, the devout Churchman rushed up to the offender with the words, "You damned little rascal, how dare you behave so in a church? You thought you was in a Presbyterian meeting-house, didn't you, hey?"

²In this year each political party was accusing the other of sharp practice in choosing a large number of tithingmen, who were by that means qualified to become voters, and hence, it is to be supposed, party workers. The trick had been in vogue for five or six years. At first the Democrats had employed it successfully, but latterly the Whigs had beaten the former at their own game. It is satisfactory to see that, in 1836, each side was ashamed of the usage.

³The Town-Meeting was by law obliged to elect at least two tithingmen in each congregation.

of tithingmen not only troublesome, but farcical. At the Town-Meeting of November 8, 1865, one hundred and twenty-five tithingmen were elected for thirty-one churches. After that year the selection of tithingmen was relinquished to the separate churches. The North, or United Church, still elects yearly two tithingmen, and other churches may do the same.

The Farmington Canal was an Old Man of the Sea for New Haven. It cut deeper into the financial prosperity of the place than into its soil. The Town-Meeting, which enthusiastically approved of the project, was appropriately held on the first of April, 1822. A few years later the city sunk in the Canal one hundred thousand dollars of borrowed money. The principal result of the investment was the rise in the rate of taxation to seventy mills on the dollar.

Moreover, in connection with a system of extensive borrowing, this extraordinary rate continued year after year. It was the inflation-period alike of nation, State, and city. In 1840, the tax was eighty mills on the dollar, while in 1846-47 the high-water mark was attained of ten cents on the dollar for ordinary city expenses, and an extra rate of two, in the second year three, cents on the dollar to pay for the fence around the Green. The town-rate during the same period was usually from two to three cents. It should not be forgotten, however, that these excessive rates were levied under Connecticut tax-laws upon an extremely small valuation of both real and personal property. Had the assessed valuation been more nearly equal to the real one, the same sums of money might have been raised by a really moderate tax. There seems to have been some distress caused by taxation, but it probably resulted from unfavorable conditions of trade, banking, and the currency, rather than from heavy rates. There was some very peculiar and happily unique tax-legislation by the City-Meeting of 1824. In order to provide the means for preserving the city from fire, the assessors were ordered to levy taxes principally upon the

property of those citizens who had the most to fear from fire.

The Democratic phalanx, which had taken possession of the town under the standard of "Toleration," had been arbitrarily managed; and, during the second quarter of the century, the Whigs were generally predominant¹ in town and city. The growth of manufactures, encouraged by the long European wars, made Clay's "American System" popular in the community. But the political conscience of either party was then in its feeblest state. That insurgent, obstinate Democracy which we may call Jacksonism, asserting, against itself, unquestioning fealty to the will of a leader, infected both parties. As a result, almost every vestige of eighteenth-century aristocracy was gradually effaced. In 1826, the rising tide of Jacksonian Democracy left its mark upon the New Haven city government. An important amendment to the charter was obtained from the Legislature. The Mayor's term of office was hereafter limited to one year, and he was to be elected, with all other officers of the city, by ballot. Thus the chief officer of the municipality first became directly responsible to his constituents, and the hand of legislative authority was further removed. Hitherto the city offices had been generally held until death or old age incapacitated the incumbent. Under the new *régime*, offices were political prizes, and rotation was the order of the day. The peaceful atmosphere, which had previously seemed to linger even in the pages of the records, disappeared.

Henceforth the progress of urban development is more confused, more rapid, more tentative. The coming of the steamboat (1815) and the opening of the Canal (1828-1835) promised to make New Haven a distributing centre, and the necessity of improved means of local transportation seemed imperative. The roads of the town and streets of the city were in a wretched condition. The office of City Street Com-

¹ Their sway was practically unbroken, after 1834, until the dissolution of the party during Pierce's administration.

missioner had been created in 1818, and the Council had then ordered sidewalks on the principal streets, but the City-Meeting, three days later, vetoed the ordinance.

Not until 1834 was there a Superintendent of Sidewalks, with orders to see that the sidewalks were leveled and properly paved at the expense of the property-owners. There was persistent opposition. Although private individuals had used pavements since 1809, a number of citizens who were satisfied with the "good old times" seemed resolved to sustain Dr. Manasseh Cutler's observation, in 1787, that the streets were not paved and probably never would be. After some years the city overrode the most violent protesters.¹ More sympathy will be felt with the opinion of the people, in 1833, relative to an Act of the Legislature authorizing the selectmen of the various towns to sell for purposes of dissection the corpses of friendless paupers. The town strongly repudiated this Act, and instructed its selectmen to bury at public expense all such paupers who might pay the debt of nature in New Haven. In 1835, both town and city revised and improved their by-laws. Most of the changes and amendments related to contested or defective elections, or prescribed more rigidly the order of proceedings at the annual elections. For some years thereafter, the names of all freemen of the city who voted at the annual meeting were copied into the city records. The First Selectman was still the most important officer in New Haven, if size of salary is any criterion. He received five hundred dollars a year, while the Mayor was content with two hundred dollars.

The arrangement of the City Court, which had existed since 1784, began to create dissatisfaction. Mayors and Aldermen were now selected for political considerations, and it was probably seen that a good partisan might not be a

¹ It is related that Wm. Lyon, who lived between Orange and State streets, on Chapel street, when the city finally paved in front of his dwelling, took long steps across the pavement and walked in the street, declaring that "God's soil" was good enough for him.

learned judge. Therefore, in 1842, another amendment to the charter¹ divested the Mayor and the Aldermen-Judges of all judicial power and bestowed the same upon a new officer, called the City Recorder, who was to be annually chosen by the Common Council, and who was to receive one hundred dollars per annum. This curtailment of the Mayor's powers was made good in another direction. By virtue of his office he was placed at the head of the Police Department. The Recorder's Court had the same jurisdiction as its predecessor. But there were conflicting interpretations of the real meaning of the Act creating the Recorder's Court, so that Aldermen-Judges were still elected, and could sit as side-judges with the Recorder. In 1857, this usage was approved by a vote of 661 to 561.

It had been voted, in 1836, that the City Watch should serve both day and night. Three years later the labors of the watchmen were, perhaps, somewhat lessened by the return of the Fair Haven territory to the jurisdiction of the town government. In 1842-3, the watch was costing the city about two thousand dollars a year, and, apparently for no other reason than this, there were determined attempts to abolish the department altogether. In June, 1842, such a motion was defeated by only three votes in a poll of two hundred and seventy-five. One year afterward the City-Meeting (October 14, 1843) actually instructed the Common Council to discontinue the watch, and from that time until 1848 the city remained practically unguarded. An inadequate night-watch was employed, and in January, 1845, on account of depredations by students and others, the Mayor and Aldermen were commissioned to increase, at their discretion, the number of night-watchmen. Finally a series of incendiary fires frightened the people back to complete sanity.

¹In 1841, a series of letters appeared in the *Palladium* clearly and forcibly criticising the construction of the city government. The advice of this writer was almost literally followed in the next year.

A WINDFALL FROM WASHINGTON.

The resources of the town received a very material accession in 1837, as a consequence of folly in high places. On the 17th of January, the town voted that it would accept its proportion of the United States surplus deposited with this State, in accordance with the conditions imposed by the Legislature, appropriating the interest of such moneys to educational purposes. New Haven's share was the respectable sum of \$27,427.67. It was forthwith loaned upon New Haven real estate, and the "Town Deposit Fund" has figured in each annual budget since.¹ Although this windfall was blown into New Haven's lap by a Jacksonian Administration, the town does not seem to have cherished Democratic statesmen very warmly. John Tyler was a Democrat, if he was anything. A City-Meeting was convoked June 17, 1843, to provide for his reception in New Haven, and a proposition to set apart \$500 for his entertainment met this response:

"Whereas, It is expected that the President of the United States will pass through this city on his way from Bunker Hill to the Capitol; therefore,

"Resolved, That we recommend to the citizens generally to manifest in such manner as shall best accord with their own sense of propriety their respect for the office; nevertheless, without considering the embarrassed condition of the Treasury, the occasion does not require any pecuniary appropriation, or any action of the city in its municipal capacity."²

This was very cold comfort, especially when compared with the enthusiasm manifested a few years later (in 1848) over the prospect of a possible call from Henry Clay. The Mayor, at the head of a deputation of eleven citizens, was appointed

¹ Records, VI. 162.

²Jackson himself, in 1833 (June 15), met with a very ceremonious welcome to New Haven, and the *Herald* put "Jack Downing's Letter" side by side with the account of the President's reception.

to "Respectfully urge the venerable and illustrious statesman to come from New York to New Haven as the guest of the city."

But this was lukewarm when placed by the side of the long and well-written resolutions adopted upon the death of John Quincy Adams.

THE LIQUOR TRAFFIC.

With the beginning of the year 1840 the wires were laid for a temperance agitation, and with reason. Previous to that time the town had maintained a special license system.

January 10, 1840, free rum was introduced in the following by-law: "Voted, that all persons be allowed to sell Wines and Spirituous Liquors in the town of New Haven during the current year." This law was re-enacted from year to year. The results were naturally seen in the receipts of the courts and in the town balances. At the close of the fiscal year of 1839 there had been a balance in the treasury of \$3,000; the grand jurors' fees for prosecutions amounted to \$27; and the town tax-rate was at two cents. In 1843, the balance in the treasury was \$301; the jurors' fees were nearly \$1,000; and the town tax-rate had risen to three cents.

The state of affairs thus indicated could not fail to attract notice, and especially the attention of Mr. Charles B. Lines, a citizen of sleepless energy and abundant interest in public affairs. During 1843 and 1844 he conducted a brisk agitation in Town-Meetings for an abolition of the free-sale system. The question was transferred to legislative halls from 1845 to 1854, and finally a law was procured, essentially prohibitory in its intent, by virtue of which the towns might permit the sale of liquor through certain prescribed agencies, but only for sacramental, medical, or chemical purposes. Mr. Lines thereupon appeared in Town-Meeting, July 25, 1854, with a motion that all existing permissions for liquor-selling should be revoked, that the selectmen should hire some one agent to

sell whatever liquor might be needed, and that they should be empowered to draw from the treasury for that purpose. Jonathan Stoddard, Esq.; moved to table these resolutions, and his motion was carried by a vote of 803 to 671. The meeting then adopted a series of resolutions offered by Stoddard, to the effect that the selectmen might draw six and a quarter cents for the purpose mentioned, that the appropriation should take place in 1860, and that the money should be used in "The faithful execution of the law."

The first act had thus ended with the discomfiture of the temperance men; but Mr. Lines was not dismayed. Perhaps the fact that the town-tax had mounted to five and a quarter cents on the dollar aided him. On the 22d of August, 1854, he renewed his motion. Stoddard again opposed him and carried an adjournment for one year by a vote of 1,115 to 1,050. September 20, Mr. Lines repeated his motion, omitting the restriction of the selectmen to one agent. It was agreed that the town should take a day to ballot on the question. The 27th of September was fixed upon, and Mr. Lines was successful by 1,640 yeas against 1,407 nays. From that autumn until the spring of 1857, the report of the Town Liquor Agency was a feature of the annual Town-Meeting and of the annual Town-Budget. The books of the agent are preserved now in the Town Clerk's office, several neatly-kept volumes, in which the quarts or half-pints are entered opposite the purchaser's name, in the proper column of "Sacramental, Medical, or Chemical." It is perhaps needless to say that the "Medical" column is filled to overflowing. The Town Liquor Agency had another name in the mouths of the citizens, as appears by the action of the town on the 28th of November, 1856: "Voted, that Lucius Gilbert and Judson Canfield be a committee to investigate the affairs of the Town Agency, or Maine Law Grog-Shop, and report to the Selectmen." The Prohibitory System had been put on trial and had failed. The last sale of liquor in the "Maine Law Grog-Shop" is dated in February, 1857.

LIGHT IN THE STREETS.

Modern improvements were the order of the day in New Haven from 1840 to 1850. Steamboats had already come, and the Canal had impoverished the city. In 1848, the liberally-inclined citizens made up their minds to illuminate their ways with gas, and succeeded in forcing the city to do it by a vote of 182 to 80. The step was creditable to New Haven enterprise, for, at that time, Trenton, New Jersey, was the only other small city in the country which had put gas into its streets. The taxpayers who objected to the measure laid much stress upon the injury that the gas would work upon the trees, and in July, 1850, a committee was actually appointed to confer with the "President and Directors of the New Haven Gas Company with a view to ascertain what measures, if any, can be adopted to preserve the shade-trees of the city from the destructive action of the gas."

A HIGH SCHOOL.

During these years the schools of town and State were undergoing radical transformation, and were recovering from the low estate into which they had fallen in the earlier part of the century. The movement toward better things began in New Haven in 1844, when the First School District presented to the town resolutions advocating some provision for higher instruction and the formation of graded schools. The Town-Meeting consigned the subject to a committee, and the project ripened. In 1854 and 1855, graded schools were organized, and in the latter year the town elected its first Board of School Visitors. The re-organization of the New Haven School District under a Board of Education was completed in 1856.¹ Already official action by the School Society

¹The towns were originally the educational units in Connecticut. But some of them were large, and contained outlying ecclesiastical parishes. In 1712, such parishes were allowed to direct their own schools. In 1717, they were authorized to lay taxes and choose school-officers. This was, practically, the formation of school-districts within the towns, although

in 1850 and 1852 had called into being the germ of a high school, in connection with a grammar-school. The germ became a developed organism in May, 1859, when the Hill-house High School was established. In the same year the familiar title, "Acting School Visitor" was dropped, and "Superintendent of Schools" was substituted in its place, but the duties of the office remained the same as before. Since that time the increase of schools and of population has promoted the gradual but steady enlargement of the Superintendent's responsibilities. The new school-system was destined to struggle long for emphatic popular approval. After seven years an unmistakable verdict was given. In the spring of 1866, the Board of Education voted to recommend the discontinuance of the high school. In June, after a thorough discussion, New Haven, as a School District, decided to maintain the school by 1,170 votes against 449.

THE ERA OF RAILWAYS.

In our day of material forces widely subjugated to man's use, there has been no industrial revolution more momentous

the selectmen were still the supervisors of all the schools. Moreover, many of these parishes became towns, and, in general, the school-district seemed to owe its genesis to the Church Society rather than to the town. By the school-law of 1766 further subdivision of the towns into school-districts was encouraged. The substitution of district for town-authority was completed in 1798, and henceforth the town as an educational unit was entirely superseded by the School Society. Supervision was transferred from the selectmen to specially-appointed officers, and the free high schools, which had been by law maintained in New Haven and in the other county towns, were no longer required.

The first backward step up this long-descending track was taken in 1838, by the creation of a supreme authority over the educational system of the State. With some fluctuations of fortune, the centralizing influences have increased in strength from that day to this. A statute of 1866 allowed any town to abolish its districts and to revert to the original plan of managing the schools as town-institutions. (See "Revised Statutes of Connecticut"; and "Public Schools in Connecticut," by Henry E. Sawyer, A. M., published in *Education* for Sept.-Oct., 1883.)

than the one wrought by the introduction of railways. Not every town discovered the evils as well as the advantages of railway-influence so quickly as New Haven did. The first cars that ran in the city were on the Hartford Road in the spring of 1839. In 1848, both the Canal Railway, as far as Plainville, and the New York and New Haven Railway were opened to the public, the former in January, the latter in December. It was expected that the Canal Road would be speedily completed to Springfield, Mass., and citizens of New Haven who were inclined to be Micawberish expected something to turn up that would be very big indeed. Over the bed of the ill-starred Canal wealth would at last begin to roll into New Haven. But the New Haven and Hartford R. R. Co. had no mind to allow a parallel line, and it fought its rival over every inch of ground, and with every weapon that the arsenals of the law could furnish. The Hartford Road made common cause with the owner of a bit of farmland which was included in the Canal Road's "lay-out" at Simsbury. This man could "Neither be bought nor scared" out of his comparatively valueless possession, which was generally known as "The Peddler's Lot." The final result was that the Canal Road never reached Springfield, and was almost fatally crippled at the start. Indignation at New Haven was at white heat, and, as usual at such times, Mr. Charles B. Lines came to the front in the City-Meeting, December 22, 1849, with nine long and fiery resolutions. The flame of anti-monopolistic feeling in these resolutions burns brightly enough to shed no little light in our own day. ". . . . A railroad monopoly would be more odious than the steamboat monopoly from which some of our citizens have suffered so much. Therefore,

"*Resolved*, That the recent attempt by the New Haven and Hartford Company to stop this important public work at the very moment of its completion, after nearly a million and a half of dollars had been expended upon it, and when only one hundred rods remained to be finished, not less than the

stealthy manner in which the attempt was made, is an act of cunning and high-handed oppression, of doubtful legality, unworthy of honorable men, disgraceful to a corporation, and from the effects of which we appeal to the Legislature for relief."

Mr. Lines, always running a-tilt against the champions of evil, turned from rumselling and corporate selfishness to break a lance, or, more literally, to shoot bullets against the slave-power in Kansas. Times had changed since the day when a City-Meeting resolved to prevent the foundation of an "Abolitionist" college in New Haven. Meetings were held in the North Church to raise money and buy rifles for free-soil emigrants¹ to Kansas, and Mr. Lines became one of the leaders of a New Haven company which settled the county and town of Waubonsie.²

THE NEEDS OF THE POOR.

The day had now come when the moral sense of the community was shocked by the housing of criminals, paupers,

¹ Rev. Henry Ward Beecher gave them a parting address in the North Church, March 22, 1856.

² The community, therefore, was inevitably sundered to the very bottom by the Kansas quarrel. On the one hand, subscriptions were openly solicited for the purchase of "Kansas rifles," and on the other the *Register* spoke of 30,000 Connecticut Democrats ready to take up arms, if need be, to maintain the rights of the South. In the Presidential election of 1856, the town polled a large vote, out of which Fremont secured a small majority. In the following year, the Republican leaders imitated the ancient custom of the town, and opened an epistolary fire directly upon President Buchanan. A large assembly of citizens, in Brewster's Hall (July, 1857), addressed to the Chief Executive a memorial embodying their views of his duty to Kansas. Buchanan replied to them under date of August 15, 1857, and the memorialists rejoined September 22. The rejoinder was signed by many well-known men, among others by Rev. Drs. Nath'l W. Taylor and Leonard Bacon, Pres. Woolsey, Gov. Dutton, Mayor Skinner, Gen. Wm. H. Russell, Charles Ives, Eli Blake, James F. Babcock, and the Sillimans. The whole correspondence exhibited the points of the controversy in clear and vigorous rhetoric, attracted wide attention, and contributed largely to the formation of public opinion.

and lunatics under one roof. The Rev. S. W. S. Dutton forcibly impressed upon the Town-Meeting of November 20, 1849, the disgrace of such an usage. A committee, consisting of Messrs. Dutton, Wm. H. Ellis, Oliver Smith, Chas. B. Lines, and Prof. Benj. Silliman, was appointed to "Devise provision for the insane, disabled, and dependent poor, whom our laws consign to the Workhouse." Mr. Lines moved that the selectmen should be instructed to "Remove immediately to the Insane Retreat at Hartford the insane persons now confined in the Almshouse." The motion was approved, and the removals were made forthwith. One year later (November 26, 1850), the committee reported that the old house had no conveniences nor sanitary advantages, and that the refractory could be confined only in small dungeons underneath the chapel. The committee recommended the erection of a new Almshouse for the exclusive use of the "Virtuous Poor," and the town accepted their counsel. It was the moral and material renovation of this period, rather than any sectarian feeling, which led the city to give to the Methodists, in 1848, five thousand dollars on condition that they would move their church-edifice away from the Green. The newly-developed solicitude for the city's beauty was curiously exemplified in the following ordinance: "Resolved, that that part of the Green now occupied by the Methodist Episcopal Society shall not be occupied by the students of any institution, or by any other individuals as a play-ground for playing ball or any other game of amusement."

THE CITY-MEETING.—CHARTER OF 1857.

The services which the water in the Canal had occasionally rendered in extinguishing fires probably emphasized the idea, in 1850, of a contract with the New Haven Water Company for a sufficient supply of water at all times for such purposes. This led to negotiations in 1852 for the purchase of the water-works by the city. A vote in 1852 to buy the water-works

was immediately succeeded by a counter-agitation, which was successful in the next year. The water-supply was abandoned to the care of the private projectors, but the subject was not laid away to rest before 1856, and ended in successful lawsuits against the city. The City-Meetings held to decide the matter were tumultuous, and were open to suspicions of chicanery. The tellers were unable to count the votes, and the Mayor was unable to preserve order.

Such disorders turned the public attention toward additional reforms in the government. In 1853, the city was divided into four wards, and the ward organization was still further perfected in 1857, when the four wards were replaced by six. But the centre of discussion was the cumbersome institution of the City-Meeting. It was plain that the size of the city rendered government by such a democratic assembly difficult, if not impracticable. Yet so great was the distrust of the few by the many, that the City-Meeting in 1849 forbade the appropriation by the Common Council of more than one hundred dollars without the approval of a City-Meeting called for that purpose.

There was good sense enough in the city to repeal the law shortly afterward, but it was a sign of rapid progress that, in the spring of 1854, the following motion prevailed in City-Meeting: "Resolved, that the Mayor, Aldermen, and Common Council be requested to digest a constitution or plan of government for the city of New Haven to be submitted to the citizens, by which all the powers now vested in the municipal corporation, styled 'The Mayor, Aldermen, Common Council, and Freemen,' shall be vested in a representative body, or bodies, to be chosen by electors residing in the city of New Haven; and that the same be prepared and submitted in season to be passed upon in City-Meeting, and, if approved, to be carried to the Legislature for its sanction."

The motion was the germ of a new charter which received legislative sanction in 1857. The Mayor and Common

Council were no longer fettered, as they had been, by the City-Meeting,¹ and the duties of the Council were materially increased. Among the various propositions for reform, the plan of abolishing the two-headed system of Town and City-Government did not escape consideration. Both town and city, the former leading the way, appointed committees in 1852 to confer together upon the feasibility of uniting the two jurisdictions under one administration. The only result of the conference was, perhaps, the discontinuance of the separate Town-Meeting for the election of town-officers. This alteration was adopted November 12, 1855. Henceforth town-officers were elected by districts, at voting-places designated by the selectmen. The practical effect was to make town and city voting-places the same so far as the city extended.

- TOWN-OFFICERS.

The Town-Agent, measured by his present duties and powers, is a modern growth upon the ancient trunk of town-government. But though the special importance of the office is of recent date, its beginnings can be traced far back in the town's history. The general power to sue for the town was bestowed upon the townsmen in December, 1700. Even before that time the oversight of the poor had been enrolled among their responsibilities. Throughout the eighteenth century the townsmen, as a body, performed such offices, or delegated the labor to some of their own number. In the first years of the nineteenth century, the town at its annual meeting usually divided the Town-Agency between two of the selectmen, and, for the first time, bestowed upon each the title "Town-Agent." For example, in 1800 the First Selectman, Jeremiah Atwater, was appointed an agent to sue

¹The provisions were: "Within 60 days from the passage of a bye-law the Mayor *may* call, and, upon written request of 7 Common Councilmen and of 20 other freemen, he *shall* call a City-Meeting to approve or reject said bye-law." But from this date the City-Meeting slumbered.

and to be sued for the town, while Thomas Punderson, the Second Selectman, was chosen the Town-Agent to take care of the poor. The usage varied; sometimes the First Selectman was not a Town-Agent, and sometimes the Board of Selectmen, as a body, was Town-Agent. Subsequently the Board of Selectmen appointed as Town-Agent one of their own number, usually the one who was also named First Selectman.

Political complications caused each party to adopt, in 1878, the custom of designating upon the town-ticket the candidate for Town-Agent, thus ensuring a direct election by the people. This is a device intended to render the office more popular in its character, and also more secure to the party in power. The law of the State seems to give the Board of Selectmen a choice in the matter; but the present incumbent of the office and his party-friends have refused to permit the board to vote, alleging that the popular election is sufficient. Since 1848 the Town-Agent has received a larger compensation than any other town-officer. Since that time, also, the great increase in the foreign-born population has added largely to his responsibilities. The annual distribution of considerable sums for what is called "Outdoor Relief" is virtually under his control. These facts have given the Town-Agent a certain hold upon a large body of voters, and have made him an influential factor in town-politics.

The Town-Clerk, after 1847, earned two hundred dollars per annum, an increase of one hundred per cent. upon his previous compensation. The salary of the First Selectman was raised in 1848 to eight hundred dollars,¹ while the Mayor

¹In December, 1812, the selectmen were first authorized to draw pay for the time devoted to the public service. Down to the time of the Civil War, the selectmen cared for all the highways throughout the town, yet Captain Beecher, through the greater part of his sixteen years of service, received but five hundred dollars a year, and furnished his own horse and wagon. His predecessor, Squire Mix, furnished the same, and obtained only a dollar a day.

and City Clerk, six years later, were drawing but five hundred dollars each. With the approach of war-times, salaries rapidly rose, until they attained more nearly to the modern standard. In 1860, the Mayor and City Clerk respectively obtained one thousand, and eight hundred dollars.

CITY-IMPROVEMENT.—POLICE AND FIRE DEPARTMENTS.

In this year the first steps were taken toward a city-sewerage system. The attention of the authorities was forcibly arrested by a suit which Samuel Peck brought against the city for damages on account of municipal neglect to provide sewers. The city could previously boast of a few small sewers, but there was no adequate provision for drainage; and not until ten years after this, during Mayor Lewis's first administration, was the sewerage system made thorough and complete. The spirit displayed in the Common Council in 1861, over the construction of the George-street sewer, may explain some of the hindrances to prompt and effective action.

It was ordered that, in accepting bids for building the sewer, "No contract should be made with any person not a citizen of New Haven, and that the whole work, so far as practicable, should be in the hands of New Haven citizens." Councilman Healey tried to add a provision that each laborer employed should be paid at least one dollar a day.

From the time of the introduction of railway traffic and competition (in 1848) until the breaking out of the war was a period of active expansion. Increasing business demanded a more practical administration of public affairs. Hence came those attempts which have been recounted to divide, define, and restrict official functions, to simplify and improve antiquated methods. Yet progress was, after all, exceedingly slow. The forward step was taken painfully and, as in the case of the city-sewerage, with tedious delay. No straw shows more plainly the adverse direction of the prevalent

wind than the fact that, until 1861, horses and cows were pastured in the streets within the city-limits without much efficient hindrance from the authorities. But in that year the energy of one man, James F. Babcock, caused the adoption of a stringent by-law which was finally successful in abating the nuisance. Three or four years earlier it had been a recognized custom to entrust scavenger-duty in the gutters to swine, and the constables who served orders for the demolition of pig-pens within the city-limits are said to have seriously endangered their chances for re-election thereby. Mr. Babcock might not have been so successful in his crusade against vagrant cattle, had not the same year of 1861 witnessed the replacement of the old Department of the Watch by a more modern Police Department. This reform, and the transformation of the Fire Department, were the two most important municipal changes that immediately preceded the war. The City Government and the Legislature concurred in 1861 concerning the organization of a new police force, under a board of six Police Commissioners, with terms of three years each. In June, 1862, Chief-of-Police Pond made his first annual report. The police cost the city that year ten thousand dollars. Chief Pond objected to the Legislature's restriction of the number of policemen to twenty, and it seems that the obstacle was soon removed.

The Fire Department was remodeled at the same time and upon the same plan. A board of six Fire Commissioners was created, and the Chief Engineer and his subordinates placed under its control. The new companies were, of course, paid for their services. The former volunteer companies had become centres of political influence, not always of the better sort, and in some cases they even wielded a degree of social power. They were disbanded in the summer of 1861, and in June, 1862, the commissioners entered upon their duties.

In connection with the development of the Fire Department, mention may be made of a remarkable petition which was presented to the Common Council in 1865 by Henry

Peck, Theodore D. Woolsey, *et al.*¹ The petitioners besought that a mutual city-insurance system might be adopted whereby every building within the city-limits should be insured by the city. The property-owners were to be "Taxed at an amount not to exceed in any instance what was paid to the insurance companies." The request was supported by elaborate calculations of the profits of insurance companies which might thus be saved to the citizens.

The petition was referred to the Fire Department Committee of the Common Council, who reported favorably upon it, alleging that 12½ per cent. upon a total valuation would cover all losses and leave a profit to the insurers. The danger of a great fire in the city was not regarded as imminent enough to render the scheme impracticable. The Common Council, after delay, instructed the committee to apply to the Legislature for an act authorizing the city to become its own insurer, but stipulated that no such act should take effect until it had been ratified by a City-Meeting. Nothing more is heard of the proposal. This was the most noteworthy spurt of socialism in the whole course of New Haven's municipal career. Nothing could be more directly opposed to the general tenor of the political philosophy of the community.

IN THE CIVIL WAR.

When the war-cloud of 1861 began to hide from view all matters of municipal and local interest, New Haven, as in 1776 and 1812, contained a strong conservative party opposed to bold measures and desiring pacific discussion. A petition from New Haven was forwarded to Congress, in 1860, asking for peace-legislation, in order to satisfy the border slave-States. When the echoes of the guns fired upon Fort Sumter reached New Haven, the *Register* said, "Henceforth these States pass into two Republics instead of one."

¹ The late Hon. William W. Boardman is said to have been chiefly responsible for the project.

After Bull Run there was much ill-suppressed feeling upon both sides in the city, and some of the more outspoken friends of the South were kept under surveillance. On the other hand, there was prompt support of Lincoln's administration by the more loyal portion of the population. Volunteers speedily offered themselves, and meetings of the citizens chose committees to procure supplies and forward the work of enlistment.¹ Persons securing recruits were paid by the citizens' committee three dollars for each recruit. The city appropriated money for bounties, and for the support of families of volunteers.

In the spring of 1861, a Home Guard was formed with about four hundred members, some of whom afterward saw service at the front. In 1862, the call for 300,000 volunteers aroused earnest effort in New Haven. A bounty of one hundred and seventy-five dollars was offered. The first Town-Meeting to take official cognizance of the necessities of enlistment was held on the 5th of August, 1862. Resolutions offered by the "National Committee" were adopted, beginning "Whereas, the President of the United States has called for 300,000 volunteers to aid in putting down a causeless war," and enabling the treasurer to borrow \$75,000 for the payment of bounties. The issue of town-bonds to the value of \$180,000 was also authorized. But the enlistments were not numerous enough, and, in State and nation, men began to speak of a "Draft." New Haven's quota was 662. Up to September 1 there had been 319 enlistments. Resolutions offered in the September Town-Meeting to facilitate the coming draft were opposed by Mr. James Gallagher, and were rejected.

Partisan feeling became so violent that it was deemed best to send a committee from New Haven to Washington to

¹See Crofut & Morris's *Military and Civil History of Connecticut during the War of 1861-65*. The first citizens' mass-meeting to consider the perilous state of the country was held in Brewster's Hall in 1861, on the historic date of the 19th of April.

request the arrest and confinement of all persons discouraging the enlistments. In the summer of 1863, the draft came, and, for a short period, New Haven was threatened with riot. The same party-violence that shed blood in the streets of New York during those dreadful July days appeared in New Haven also, but was overawed by the firmness of the authorities. On the 23d of July, the Town-Meeting passed by-laws to relieve the harsher features of the draft. The principal amelioration was in the vote that the town would hereafter purchase exemption for any conscript whose family necessities required his presence at home. In January, 1864, the selectmen were authorized to pay three hundred dollars to set free any citizen from enrollment. The town was generous with money during this year, and voted large sums for the purposes of the war.

No picture of official action can do justice to the share that New Haven as a whole took in these troublous times. The reactionary and even disloyal element left its impress necessarily upon the record of municipal effort, and yet New Haven was liberal with money and supplies, and the stream of contribution ceased only with the close of hostilities. To-day, the town counts high upon its roll of fame the honored names of such heroes as Theodore Winthrop and Alfred H. Terry.

RECENT CHARTERS.

The charter of 1869 marks a culminating point in New Haven's constitutional development. In size, spirit, and organization it began to be in reality a modern American city. Prior to that time it was a more or less thriving, overgrown village. Between 1850 and 1880 the city's population increased threefold, its grand list eightfold. With the formation of a paid fire department and of a police force worthy of the name in 1861-62, the municipality put forth signs of maturing strength, and commenced to reach upward and outward for a wider sweep.

Old forms of administration were outgrown and outworn, while experience gradually demonstrated the full range of municipal rights and duties. The charter of 1869, as usual, extended the sphere of the City Council's activities, but its most important provisions affected the judiciary.

The Recorder's Court was amended out of existence. In its place, and in place of the old-fashioned Justice's Court which had up to this time been the Police Court of the city, was substituted "The City Court of New Haven." Jurisdiction, therefore, was granted to it in both civil and criminal cases. The sole power of choosing the two judges of the new court was lodged in the General Assembly. As before, the City Attorney was to be the appointee of the court, but he no longer performed the duties of legal adviser to the city. That service was transferred to the corporation counsel, henceforth the best remunerated officer in the city government. The annual city-elections were hereafter to be held on the first Monday in October, and the municipal and calendar years were made coterminous. At the same time the city extended its boundaries by annexing the Fair Haven peninsula between Mill and Quinnipiac Rivers—an act which was consummated on the 5th of July, 1870. The town replaced its loss, eleven years later, by the annexation of territory to the eastward, whereby it gained completer control over the waters of its harbor.

The growth of the city necessitated a readjustment of the ward system. Ten wards were created in 1874, and the number was increased in 1877 to twelve. It was a slight counterbalance to these advances that, in 1873, New Haven unwillingly lost its honors as a capital, while Hartford regained the position that it had held in the 17th century.

The fifth and latest city-charter, that of 1881, has placed the city election upon the first Tuesday in December. The hope was that thus the quadrennial excitements of national party strife might be excluded from local elections. The charter of 1881 was intended also to improve the arrange-

ment of the various departments, especially by ensuring equal representation of the two political parties upon the Boards of Commissioners. The previous influence of unscrupulous partisanship in departmental administration made the need of some remedial effort seem urgent.

CONSERVATIVE INFLUENCES IN THE COMMUNITY.

The gradual growth of municipal power has exhibited in succession many slowly-shifting phases. Though changes must be, yet, through them all, come glimpses of a typical, fundamental conservatism. For nearly a quarter of a millennium the town and region of New Haven have preserved a local character, a well-defined individuality, separate from those of other old colonial centres.

Its political affiliations have strengthened rather than diminished its exclusiveness. In 1639, it received at the hands of Davenport and Eaton the impression of an ultra political and religious conservatism, of ambitious commercial enterprise, and of zeal for education. Under the heat of adverse fortune the vision of commerce melted away, but the belief in the destiny of New Haven as a port for traffic, though intermittent, endured.

It seemed on the point of realization at the beginning of this century. That hope faded; yet the city has kept a stronger grip upon commercial life than many of its quondam rivals along the New England coast, and it occupies to-day a respectable rank among the national harbors.

Connecticut's laws, in 1664, could abolish the official but not the popular conservatism. Davenport's church was still "The famous Church of New Haven," the stronghold of purest orthodoxy, proud of its early distinction as one of the few New England churches framed on the apostolic model, with a complete presbytery within itself. The course of the Church, the real core of the town, is more significant of the local feeling in the ancient day than the quiet development

of the secular government. It is not surprising, therefore, to find Davenport's church a stickler for pure Congregationalism long after the more radical brethren of Connecticut and Massachusetts had leaned more and more toward the Presbyterian or "Parish way." Hooker's church, at Hartford, was thus split in 1669.

The New Haven Church was once again on the conservative, orthodox side during the quarrelsome days of the Saybrook Platform (1708), and although the New Haven pastor, Pierpont, was a master-builder of that platform, his church sent no delegates to the synod and held aloof from its conclusions.

In the great awakening of 1741, the shibboleths had changed, and the Saybrook Platform now meant Orthodoxy, while the "New Lights" were Calvinist and Radical Reformers. The New Haven Church, in 1742, therefore, ranged itself for the first time under the Saybrook banner. The progressive minority rejected this action as "Contrary to the known fundamental principle and practise of said church time out of mind, which has always denied any juridical or decisive authority under Christ, vested in any particular persons or class, over any particular Congregational Church."¹

So the first division in the religious community was proclaimed in the name, not of new truth, but of conservative traditions. The tendency of New Haven's ecclesiastical thought and custom has steadily retained its primitive character. It has been slow-moving, soon solidified, tenacious of past modes and traditions, backward in admitting change or in recognizing new movements. Society in general, both lay and clerical, has moved along slowly and ponderously in the rear rank, gaining perhaps in wide outlook and the judicious adaptation of means to ends, but possibly losing also in early fortune and in enthusiasm.

Some light has now been cast upon the causes which have

¹ Trumbull, II. 342.

made Yale College so conservative; yet it should not be forgotten that the institution has also reacted upon its environment as a promoter of permanence. It is not necessary to dwell upon the events of 1744, when the college made war upon Locke's essay upon "Toleration" and expelled two students for attending a Separatist meeting in a private house. The events were the fruits of a bitter and extraordinary controversy. But Yale has brought to New Haven a scholastic atmosphere unfavorable to a normal political and social development, and a population which has cared everything for the administration of the college, little or nothing for that in the City Hall. All these peculiar influences were particularly potent while the town was small, and they have increased with the city, though not proportionally.

Until a recent day, the best interests of the city have suffered because so many of its most intelligent residents were men who looked upon the affairs of the community as foreign to their world; who may have been profoundly interested in Roman politics of the time of Cæsar, or even in national politics of their own day, but who overlooked the civic structure which immediately contained and concerned them. There are numbers of people who have made New Haven their home in order to facilitate the education of their children, or in order to enjoy for themselves the privileges and sentiments of a university neighborhood. Such motives do not frequently underlie an active participation in the duties of good, energetic citizenship. Still it must not be forgotten that this relation of a life of "slipperèd ease" to the duties of a citizen involves but one aspect of the town's common life. Where New Haven, as a university town, has lost in one direction, it has gained a thousandfold in many others. In its political development, the Town-State is only one among many; through its identification with Yale the community has exerted an educational influence unique and far-reaching.

In the political world, also, New Haven's long unbroken,

slowly-changing party majorities have illustrated her claim to a large share in the inherited title of Connecticut, "The Land of Steady Habits." In 1800, as in 1770, it was the cities and trading centres of the State that held back the more radical country-districts. New Haven, like the major part of New England, passed unmoved through the national awakening of the West and South in 1808-16. The final overthrow of Federalism was achieved by confounding it with Congregationalism and attacking it—first, as a denomination, secondly, as a political party. The town remained, indeed, for twenty years under Whig domination. The old conservatism had been mostly broken down, the new conservatism had not yet arrived; but the anti-slavery sentiment, which had been so pronounced in the era of the Revolution, was counteracted by the multiplication of commercial relations, and found a feebler and feebler utterance after the narcotic compromises had weakened the moral strength of the whole country. With the beginning of railway connections, in 1848, came the crowds of Irish and other foreign laborers, and the political balance slowly, steadily indicated the growing preponderance of the untrained voters.

The rivalry between New Haven and Hartford means much more than commercial competition between two urban populations. It is the contention of regions rather than of cities. It is traceable through the whole history of the State back to the charter-quarrel of 1662-64, when one colony was pitted against the other. Waymarks of the struggle that ensued for supremacy within the colony are recognized in the accession of New Haven to the honors of a capital town in 1701, and in the acrimonious disputes over the final settlement of Yale at New Haven in 1717;¹ afterward, common knowledge recalls the unceasing competition between the cities, terminating, perhaps, in the "Single-Capital" contest of 1873. That dependence of the former New Haven Colony

¹The two cities were also among the active competitors, in 1822, for the possession of the future Trinity College.

upon New York, which geographical location necessitated, was further encouraged by these successive animosities. If a line be drawn diagonally across the State from the north-west corner to the mouth of the Connecticut River, the towns and cities to the west of that line are found to rest upon New York as an economic and social basis, just as those upon the east side derive their inspiration from Boston. Of the former of these tracts New Haven is the capital; of the latter, Hartford. This division of influences should be borne in mind when we read that, in the Revolution, New Haven and Fairfield Counties contained many Tories, while the eastern part of the State was almost unanimously patriotic; that a Windham County mob forced the New Haven stamp-distributor to resign in 1765; and that, one hundred years later, it was, as usual, the Hartford end of the State, the eastern counties, which held the State firmly for Nation with a big "N," and neutralized by steady and large majorities the conservative, oligarchical, pseudo-democratic tendencies of Southwestern Connecticut.

VOTERS OF NEW HAVEN CITY

By Wards .. The Court of Common Council ..

Elect { Mayor.
Treasurer.
City Clerk.
Auditor.
Sheriff.

COURT OF COMMON COUNCIL conjointly Corporation Counsel.

Asst. City Clerk.
144 Jurors of the City Court.
3 Members each for Boards of Compensation.
Any Number of Special Constables.
Needed Number of Weighers, Measurers, Surveyors, and Inspectors.
One or more Inspectors of Gas Meters.
Water "
Sealer of Weights and Measures.
3 Supervisors of Steam Boilers.
Janitors. Bath-house Keepers.

COMMISSIONERS OF PUBLIC WORKS elect Supts. of Streets, Sewers, and Public Parks.
City Engineer, and all Employees on Roads, Bridges, Sewers, and Parks.

COMMISSIONERS OF POLICE elect Chief of Police—appoints Supervisor of Vehicles.
All Members of Police Department.

COMMISSIONERS OF THE FIRE DEPARTMENT elect Chief Engineer and Assistants.
Fire Marshal
Supt. of Fire Alarm Telegraph, and all Officers and Men of the Department.

THE MAYOR

Names { And Court of C. C. confirms { The Coroner.
And Aldermen confirm { 3 Commissioners Municipal Bond Sinking Fund.
Sewerage "
3 Commissioners of Public Buildings.
" East Rock Park.
2 Members of Board of Public Health.
6 Members of Board of Public Health.
Nominates—to the Aldermen their Standing Committees on { Lamps—chooses Clerk and Inspector.
Buildings.
Licenses.
Numbering Streets.

The Mayor and the President of the Board of Councilmen nominate to the Court of Common Council, its

Joint Nominating Committee, which nominates the Joint Standing Committees on { Annual Reports. Appropriations.
Auditing. Bath Houses. Building Lines.
Claims.
Commercial and Manufacturing Interests.
Fire Department. Nominations.
Ordinances. Printing.
Railroads and Bridges.
Retrenchment, Reform, and Abuses.
Sewers. Squares. Streets. Water.

{ 36 Councilmen elect { 2 Commissioners of Finance.
1 Clerk.
1 Page.
4 Commissioners of Finance.
" Public Works.
" Police.
" Fire Department.
6
6
6
1 Page.

Board of Public Health—elects Health Officer and Assistants.
Supervisors of Steam Boilers—elect Inspector.
Sealer of Weights and Measures may name, and Court of Common Council—appoint Assistant Sealers.
Harbor Commissioners—elect Inspector and Clerk.
Various Boards, in general, elect their own Clerks.
Citizen-Donors of East Rock Park elect, and the Mayor confirms—3 Park Commissioners.

THE LEGISLATURE

Elects { 6 Harbor Commissioners. { Clerk of City Court.
The Judge of the City Court—appoints { Asst. Clerk of City Court.
" " " { City Attorney.
" " " {
City Attorney appoints, and the Judge confirms—Asst. City Attorney.

VOTERS OF NEW HAVEN TOWN, including City,

- | | | |
|---------------------------|---|------------------------------------|
| Elect, at large..... | } | 7 Selectmen. |
| | | Town Agent. |
| | | Town Clerk. |
| | | Tax Collector. |
| | | Treasurer. |
| | | Registrar of Vital Statistics. |
| | | 2 Town Auditors. |
| | | 2 Registrars of Voters. |
| | | 3 Sealers of Weights and Measures. |
| | | 5 Assessors. |
| | | 5 Members of Board of Relief. |
| | | 5 Managers of Town Deposit Fund. |
| | | 5 Pound-keepers. |
| | | 5 Haywards. |
| | | 6 Grand Jurors. |
| | | 7 Constables. |
| | | 7 Surveyors of Highways. |
| | | 7 Fence-viewers. |
| | | 7 Gaugers and Inspectors. |
| 9 Packers. | | |
| 9 Weighers. | | |
| 56 Justices of the Peace. | | |

Voters of New Haven School District elect—9 Members of Board of Education.

Board of Education makes all School appointments.

Selectmen choose—Clerk.

Heads of Departments choose—Clerks and Assistants.

- | | | |
|-----------------------|---|---------------------------------|
| Two Years' Term for | } | Mayor. |
| | | City Clerk. |
| | | Auditor. |
| | | Sheriff. |
| | | Aldermen. |
| | | 4 Commissioners of Finance. |
| | | Corporation Counsel. |
| | | Sealer of Weights and Measures. |
| | | Officers of the City Court. |
| | | Coroner. |
| Three Years' Term for | } | Commissioners of Public Health. |
| | | “ “ “ Works. |
| | | “ “ Police. |
| | | “ “ Fire Department. |
| | | Board of Education. |
| | | Supervisors of Steam Boilers. |
| Harbor Commissioners. | | |

By City Charter, the Town Tax Collector's Department has common jurisdiction over Town and City. The same person is, customarily, Town and City Treasurer.

The Mayor is President of the Boards of Aldermen and Finance, and ex-officio Chairman of the Commissions of Public Health, Works, Police, Fire Department, and of the Park Commission.

Removal of Commissioners is possible only by a two-thirds vote of the Aldermen, except that the Mayor may remove for cause any Park Commissioner chosen by the citizen donors.

The City's supply of gas and water is controlled by private companies. New Haven has, by vote, refused to deprive the Water Company of its monopoly.

II.

THE PRESENT MUNICIPAL ADMINISTRATION.

“To the end it may be a government of lawes, and not of men.”
—*Massachusetts “Body of Liberties,”* 1641.

The spirit of moderation which has generally been dominant in New Haven has ensured to the municipality a constitutional development that is, at least, continuous. There has been no succession of brand-new city charters of diverse patterns, such as have been bestowed upon New York.

On the contrary, the first charter has afforded a kernel to all the others, and reform has been sought by amendment rather than by substitution. Efforts to condense and simplify have stopped short of the limits that might have been attained. The praiseworthy tendency to hold firmly to the past lends a line along which future development, if healthy, must take place. Every analysis of existing forms should give due weight to this municipal growth by cell-formation.

THE SCHOOL DISTRICT.

Besides the town fabric, New Haven Township contains school-district, city, and borough organizations.¹ As a school district, the greater part of the town² is under the control of nine men who compose the Board of Education.

¹The borough of Fair Haven East is a minor municipality whose operations are foreign to this inquiry. However, in order to complete the view of the town's official structure, it may be said that the borough elects annually, on the second Monday in May, six burgesses, three assessors, a clerk, bailiff, treasurer, collector, and a warden.

²New Haven School District includes all the township excepting Westville, and a small district at South End.

Members of the board serve without salary for three years, and three are chosen yearly. They are elected neither upon city nor town tickets, but a special election-day is devoted to them. Their powers are large. The board appoints a Secretary, a Superintendent of Schools, and all the teachers and assistants in all the schools. The position of the Board of Education in the school district is similar to that which the Board of Selectmen holds in the town. It manages the district's affairs, and is amenable only to the voters of the district in school-meeting assembled. In this meeting, comprising usually but a handful of people, the amount of the annual taxation for school purposes is determined upon the basis of the estimates made by the board. In the tax bills the school tax is reckoned by itself, but its collection is entrusted, with the usual formalities, to the common financial officers. The Board of Education maintains committees upon finance, schools, and school buildings, and may be said to unite administrative with legislative functions. The majority of those who have directed New Haven's educational progress has wrought with singleness of purpose for the good of the schools, and has extended over them the care that only ability, interest, and long experience could provide. Under their oversight the district has obtained remarkably efficient schools and good school buildings, without accumulating any considerable indebtedness. Although the danger that party-spirit would dictate the election of unworthy men to the board has been possible rather than probable, yet the exigencies of popular elections have occasionally supplied the board with factious and fractious members.

The Superintendent, who is the board's chief subordinate, finds his intimate relations with his superiors and with the schools sources of perplexity. If he establishes a cordial understanding between himself and the board, and exerts himself to improve the administration of the schools, the cry of "One-man-power" is raised. Promotions among the teachers are hampered by resort to political influence and by

claims for locality-representation. The latter result of our practical politics has produced some absurd phenomena in New Haven. In the summer of 1885, the Superintendent and the majority of the board agreed to call a teacher from a neighboring city to preside over one of the New Haven grammar schools.

Politicians, small-minded men, and even reputable newspapers, raised a windy protest against "Inviting an outsider to come and live on New Haven taxpayers." This folly might be deemed exceptional, if it had not occurred in the same community that, twenty years ago, favored the employment of "New Haven laborers only" upon a sewer. Such disadvantages naturally attend a democratic supremacy, and must be endured. One improvement in the existing condition of affairs seems practicable, and that is the lengthening of terms of membership upon the Board of Education. There is no reason why men who are qualified to serve in this capacity should not be elected for six years instead of three.

Greater permanence in school government would be a positive advantage. Above all things, the Superintendent should feel assured of a steady supporting influence for as long a time as possible.¹ His tenure of office is determined by the board, and has of late been fixed at two years; but in 1886 the board saw fit to elect, by a unanimous vote, a Superintendent for one year only. This was a move backward, and plainly in opposition to the better tendencies of our municipal life. An uncertain tenure will either divert or paralyze administrative energy. The man who is fit to be elected at all to a subordinate executive office, is fit to stay

¹ An oft-mooted point in the administration of the schools of the district is the extent to which classical instruction should be contained in the curriculum of the High School. The question is not a new one. The school included a Preparatory Collegiate Department from 1859 to 1867. The onslaught upon the school in 1866 led to the abolition of the Preparatory Department, but that course was re-introduced in September, 1877. Again, from year to year, the argument gathers force that the community should not pay for the special education of a few.

elected. A faithful Superintendent could work untrammelled, if he were chosen either for six years or during good behavior, subject to removal, under a long notice, by a two-thirds vote of the board.

THE TOWN GOVERNMENT.

The government of the town of New Haven is the parent trunk upon which all the other local organizations have grown. Every year the electors of New Haven choose incumbents for the time-honored offices of sealers, assessors, pound-keepers, haywards, grand jurors, constables, surveyors of highways, fence-viewers, gaugers and inspectors, packers, weighers, justices of the peace, selectmen, members of board of relief, managers of town deposit fund, registrars of voters, auditors, a town clerk, tax collector, treasurer, town agent, and registrar of vital statistics. These officers, numbering in all 151, rule a town three-fourths of whose territory are within city limits. Their authority extends over city and country alike unless, in the former case, the city charter has provided other channels of administration. Apart from the officers connected with the Treasury and Tax Department, the most important town trusts are those of the selectmen and town agent.

The powers of these and the other functionaries are, in general, such as are customarily possessed by town officers. But the existence of the city intensifies the responsibilities of the selectmen, and the town agent holds what politicians consider a strategic position. The town agent is the financial representative of the board of selectmen, and, as such, practically controls the distribution of "Outdoor Relief." His tenure of office by popular choice is not strictly according to law, which supposes him to be elected by his colleagues upon the board. So long as the selectmen acquiesce in the selection made by people at the polls, there will be no trouble, but, should the board ever reject the officer so selected, there would be an unpleasant collision between law and custom.

Furthermore, the town agent, who holds his office by reason of an election in Town-Meeting, is virtually, if not legally, responsible directly to the voters in Town-Meeting assembled. Such a responsibility might work no ill in a quiet country town, but a town which contains a city is in different circumstances. A Town-Meeting of two hundred voters will know how such a trust is administered; a Town-Meeting of thirteen thousand voters will never know.

It is not intended to imply that the town agency in New Haven has been mismanaged. Under existing circumstances it is almost inevitable that some duties of the office should be shirked, but, for the present, it is sufficient to assert that the principle rather than the practice is at fault. When the town agent was appointed by the selectmen as a body, and was plainly accountable to them, he was under the control of men necessarily familiar with the business of his office, and able to remove him if he should be incompetent or unsatisfactory. In case of a dispute between the majority of the board and a town agent, the latter can now assert against his colleagues the authority of a separate mandate from the people. Such an argument might be made both powerful and pernicious. There is a principle of government which must, sooner or later, win acceptance — viz.: “Subordinate administrative officers should be appointed, not elected.” The town agent is, by the nature of his duties, subordinate to the selectmen, and no worthy reason demands his elevation. The town agent himself does not touch a cent of the money that is distributed. To every applicant he can give no more than an order upon the town treasury. This is better than the arrangement in some of our cities, where the town agent hands the money directly to the one who seeks relief. Hartford publishes annually a list of the names of those who have obtained money from the town agent, and the sum paid is placed opposite to each name. Such a detailed publication is so eminently proper and useful that no false sentiment should prevent the adoption of the custom by the town of New Haven in its town agent’s report.

THE TOWN-MEETING.

The ultimate fact in the town government is the annual Town-Meeting, the ancient General Court for the town, the folk-moot of all the voters resident in the Republic of New Haven. At one time it elects the town's officers; and, at another day, as a business-meeting, it hears the reports of the town's overseers, it authorizes or sanctions expenditures, it reviews the estimates of proportion, and determines the annual town-tax for seventy-five thousand people. Besides the dignity with which it is endowed by actual service, it is ennobled by the glory of antiquity and by the charm of historic associations. This most venerable institution in the community appears to-day in the guise of a gathering of a few citizens who do the work of as many thousands. The few individuals who are or have been officially interested in the government of the town meet together, talk over matters in a friendly way, decide what the rate of taxation for the coming year shall be, and adjourn. If others are present, it is generally as spectators rather than as participants. Only the few understand the subjects which are under discussion. Even if Demos should be present in greater force, he would almost inevitably obey the voice of some well-informed and influential member of the town government of his own party. But citizens of all parties and of all shades of respectability ignore the Town-Meeting and School-Meeting alike. Not one-seventieth part of the citizens of the town has attended an annual Town-Meeting; they hardly know when it is held.

The newspapers give its transactions a scant notice, which some of their subscribers probably read. The actual governing force of the town is, therefore, an oligarchy in the bosom of a slumbering democracy. But the town is well governed. The town government carries too little spoil to attract those unreliable politicians who infest the City Council. If the ruling junta should venture upon too

lavish a use of the town's money, an irresistible check would appear at once.

Any twenty citizens could force the selectmen to summon the town together, and the apparent oligarchy would doubtless go down before the awakened people. The possibility of such a folk-moot will be sufficient to avert from school district and town the danger of dishonesty, if not of unwisdom.

CONSOLIDATION.

The proposal to abolish the dual system of town and city government, and to substitute in its place a single administration for the whole territory, is now becoming familiar to every one. Several other cities in New England have the same combination of jurisdictions, and the same problem has been discussed there also.

Agitation of the subject in New Haven circles dates as far back as 1852. The abortive attempt at that period has been already noticed. The good feeling between town and city was not then disturbed, and the first sign of a rupture did not appear until June, 1865, when a Town-Meeting expressed strong resentment against recent action by the city government. A protest was placed upon the records against objectionable amendments to the city charter, then pending in the Legislature, which threatened to augment the power of the city at the undue expense of the town. In 1870, the greater part of the eastern portion of the township was subjected to the city government, but, eleven years later, the loss was replaced by the union with the town of the western and more important half of the town of East Haven, including the borough of Fair Haven and all the lands bordering the eastern side of New Haven harbor. The consent of the inhabitants of that district and of East Haven Town could be gained for the annexation only under the condition that the junction should be with the town, and not with the city. No little opposition has been excited, therefore, by petitions from

the city to the Legislature in 1883, and again in 1884 and 1885, to secure "The consolidation of the governments of the City of New Haven, the Town of New Haven, and the Borough of Fair Haven East."

The ordinary city-voter probably deems it to be plainly absurd that he should help to support two separate governments in one community. It seems reasonable to him that one set of officers should do all the public business. In the majority of the one hundred and fifty-two offices on the town ticket the average voter has but little interest. In the party conventions the Board of Selectmen and the Board of Relief are partitioned in the ratios of four to three and three to two, usually in favor of the Democrats, without expectation of a contest. The auditorships, and the registrarships of voters are evenly divided between the parties. For the remaining town-offices, one hundred and thirty-eight in all, each political camp presents its candidates, indeed, but neither convention cares to remain in session for their nomination. Each convention delegates the selection of the host of sealers, weighers, viewers, etc., to its chairman, or to a committee, and adjourns. Then a few gentlemen meet around a table and arrange the rest of the ticket as seemeth best to them. The citizen possibly learns the names of his party's candidates upon the town-ticket by a hasty glance at the morning paper, or at the printed slip which is given him at the polls. Thus the composition of the town's government for another year is determined.

Under these circumstances there is nothing surprising in the impression that the town-government is a luxury rather than a necessity. It has been contended, therefore, that the interests of economy, and prompt, impartial administration, demand the rule of the whole township by one government—that the city-government should be the one preserved; and that the burdens of taxation in the outlying township could be made commensurate with the privileges enjoyed. It is complained that the proceeds of town-taxes, which come chiefly

from the pockets of the city, are expended mainly upon the outlying portions of the township. Over the conduct of that expenditure the city-government has no control. It is asserted that the city's money ought to be used in the improvement of the streets of the city rather than of the suburbs. Another assertion is that the care of the poor is too important a trust to be administered by the town-agent and selectmen. The independent jurisdiction of the Town-Meeting is the greatest stumbling-block, and it is claimed that, since a common power succeeds in collecting town and city taxes, a common power might also manage the imposition of taxes. Mayor Lewis declares, "The plan of laying taxes and making appropriations in Town-Meetings like ours has never, since the Dark Ages, been tried by any community of 75,000 inhabitants. Boston discarded it when she numbered but little more than 40,000, and when her taxes were but little more than half what our Town-Meeting now annually votes."

To this presentation of the case there are weighty objections and eager objectors. So long as any part of the township remains outside the city-limits, the whole town-organization is essential, and if either government is abolished, the city must be merged in the town. There are constitutional reasons why town-officers must be retained.

Article V, Section 5, of the State Constitution reads: "The Selectmen and Town-Clerk of the several towns shall decide on the qualifications of electors at such times and in such manner as may be prescribed by law."

Also Article X, Section 2: "Each town shall annually elect Selectmen, and such officers of local police as the laws may prescribe."

These obstacles are small in size, but great in authority. The town-government cannot be directly abolished. If the city-limits should be extended so that the territory of town and city should be everywhere co-extensive and coterminous, and so that the town-boundaries should become also the city-boundaries, it is evident that the one city-government would

practically enjoy single sway ; but it will be a long time before the city can thus grow apace. About one-quarter of the township and about one-eighteenth of its population now lie outside the city. Against every proposal to extend the city it is, and will be, urged that a large proportion of this outlying territory is farming land, unfit for share in urban police, fire, gas, and street privileges, and unable to bear the burden of urban taxation.

There would always be a tendency on the part of the city to tax the suburban districts as heavily as possible, and rascally politicians would discover a fine quarry for jobs in new portions of the city. It is asserted that no adjustment of the city-taxation is possible which would not make the rates upon farm-lands higher than at present, without conferring a single benefit in return. There is already some farm-land within the city, but the border districts of the city bear, with the central portions of the same, the uniform rate of $19\frac{1}{2}$ mills. If a large outlying tract were united with the city on condition of taxation proportional to benefits, some considerable part of the present city might reasonably call out for justice. The city of Burlington, Vt., includes some agricultural territory, and the assessors, in making up the grand list, reckon the farms at a figure which prevents excessive taxation. But the population and territory of New Haven Town and City differ much in quantity, quality, and situation from those of Burlington.

The certainty of a tempered breeze upon the shorn lamb would be much less assured in New Haven, and, indeed, the feasibility of proper "tempering" would be less practicable. Only about six hundred people dwell upon the farm-districts of Burlington, and it seems improbable that the compact portion of the city will seek extension in their direction.

It will be seen that neither party pleads without a reason. The city is the taxpayer of the town, and has a right to demand economy. The town-government, on the other hand, is rooted in the fundamental law of the State, and,

while it exists as at present, it averts even the danger of undue taxation from suburban districts. Two principles which seem to me almost axiomatic would, if properly heeded, settle the dispute.

1. No city should extend farther than it is built up.

2. A city needs room for growth. Remembering that a city exists for business purposes, there can be no good reason for even pretending to put policemen, pavements, and gas mains in the middle of a sand-plain. When the outlying districts are crowded with inhabitants, the people will, of themselves, demand admission to city-privileges.

Secondly, there can be no more favorable conditions for expansion than where a parent town is the rind covering and surrounding the city at the core. The city can then spread out its skirts without infringing upon the rights of another town. Every dollar which the city-taxpayer expends for the improvement of the outlying township helps to ensure the growth of the city and of its traffic, and the contentment of its inhabitants.

No city can exist without a suburban belt of partly rural dwellers who live by means of the city, but are unable to shoulder its burdens. If the city reaches out to include this belt, no amount of adjustment will prevent the formation of a new girdle outside the new boundaries. At present, the most practicable improvement seems to me to be a consolidation of functions, rather than of jurisdictions. So far as possible, the same man should hold the similar offices of both town and city. The principal objection to the existing Town-Meeting might be obviated if the care of the poor, of roads and bridges, was entrusted to municipal boards, subject, indeed, to the mayor, but containing elected representatives of the suburban districts. The expenditures of such departments could, by the aid of the grand list, be apportioned between city and suburbs. Alterations of such a nature might possibly produce satisfactory results, always providing that the outlying township, so long as it remained rural, should not be subjected to

the City Council. The structure of the city-government is not yet so sound that a suburban population would care for shelter under it at the price of additional mills on the dollar.

THE CITY-GOVERNMENT.

There is an historic propriety, if no other, in choosing town-officers upon party-tickets, for the town is a miniature republic, a mirror of the State, a State-atom. But the city is an economic, and not a political unit. It is a business corporation, endowed for business purposes, and it bears the least intrinsic resemblance to the ancient city, which was, indeed, a State. When the true essence and meaning of the modern city shall be generally comprehended, there will be a wondrous reformation in city-administrations. A mayor will then be chosen as a railway corporation chooses its superintendent—for good character and business ability—and there will be no more attention paid to his views about the tariff, or States' rights, than to his opinions concerning predestination and original sin. But, like most of our cities, New Haven has been governed, since Jackson's day, with prime reference to political partisanship. Here and there a member of the city-government commands more than a party-fealty, and is universally recognized as deserving office by reason of ability and integrity. But, in general, the voters of the city hear and obey the party-whip in matters purely municipal, and offices are shared at each election with every reference to long purses, to popularity with the "Boys," to the claims of clique and party service. The partisan qualification is deemed as necessary in one camp as in the other.

The city is gradually advancing upon the same road over which its neighbors, New York and Brooklyn, have already traveled. Saloons are becoming the seed-beds of official enterprise, and the whiskey-vendor is a growing factor in political calculations. For some time the machine of the corrupt, selfish, and irresponsible "Boss" has been grinding

effectually. The factors of the problem, both for him and for ourselves, must be clearly apprehended.

First, what may be expected of the voters?

The dominant elements furnish many obstacles to any scheme for better government that includes universal suffrage. Criticism must be based, to a certain extent, on the supposition that the popular majority can be depended upon to choose good rather than evil. But the ideal municipal structure, if it could be erected to-day in New Haven, would, unquestionably, soon be wrenched out of shape, because it must perforce rest upon some foundation of ignorance and foolish partisan prejudice. It is equally true that the intents and motives of the mass of the people are good and true, and worthy, in the long run, of confident trust. Sooner or later, honest men, without regard to party, profession, birth, or education, stand together and strike the evil down. But, until the moment of righteous indignation comes, the demagogues and selfseekers of either party are likely to muster the most voters. How shall the city live during the intervals when the public conscience is inactive?

Is it better to attempt continuous regulation by a system of checks, divided powers and responsibilities, and external interferences, or to give each sphere of government its normal freedom of action, leaving to the people the responsibility of approval and condemnation? It seems to me that the latter course is the wiser. The reasonable safeguards of public inspection and of minority representation need not be discarded, but, in general, every legislative or executive organ of government should have an undivided allegiance, simple functions, and should be within easy reach of the freemen at the polls. The verdict of the people, tardy, ill-formed, and unjust as it may be, is properly conclusive in all our legislation and administration. However disappointing the actual daily conditions and results of popular election may prove to be, it is certain that every political act, be it good or ill in itself, contributes unceasingly to the popular education, and the trend

of popular education is, as yet, upward, not downward. Public opinion can be conquered by public opinion. Every allowance being made for the difficulties that will inevitably retard the realization of theory, the principal problem of our municipal life is ready for analysis.

THE CITY JUDICIARY.

At the outset it appears that the city government is patterned closely upon the old English plan, and bears, with its legislative charter, executive head, bicameral council, and separate judiciary, the usual resemblance to the American type of government, whether national, provincial, or local. But here at once the observer stumbles upon a relic of ancient usage in the practical separation of the city judiciary from the electors of the locality. Constables, justices of the peace, and a sheriff are elected by the citizens, but the city courts derive existence directly from the Legislature. From the beginning the State Legislature has been a prominent agent in New Haven's history. The retention of power over the judiciary is a part of the same jealousy of civic action that caused the Legislature to hold the mayor in office at its own pleasure until 1826, and to elect probate judges until 1851. There is no longer any fear that city officers will set up monarchical forms of government and subvert the liberties of the State, but the power of the Legislature over the City Court is now exerted in order that the Republican party of the city may find more ample representation in its government. The mode of selecting judges for New Haven is this: the New Haven County delegation to the dominant party in the Legislature assembles in caucus and nominates two of the same political faith to be, respectively, judge and assistant judge of the New Haven City Court. Their choice is adopted by their party, and the nominations are duly ratified, often by a strict party vote. Inasmuch as the Legislature is usually Republican and the city of New Haven

is unfailingly Democratic, these usages amount to a reservation of judicial offices from the "hungry and thirsty" local majority, and the maintenance of a certain control by the Republican country towns over the Democratic city. During the present session of the Legislature (March, 1885) this argument was put forward in answer to a Democratic plea for representation upon the City Court Bench: "The Democrats possess all the other offices in New Haven. It's only fair that the Republicans should have the City Court." Each party accepted the statement as a conclusive reason for political action.

It would be gratifying to find the subject discussed upon a higher plane, and the incumbents of the offices who had done well continued from term to term without regard to party affiliations. But, in the present condition of political morals, the existing arrangements are probably the most practicable that could be made. It goes without saying that country districts are, as a rule, more deserving of political power than are cities. The method of selecting the judiciary is everywhere a mooted question, but it seems to me that the State authority should designate every judge of a rank higher than justice of the peace. If the city judges were locally elected upon the general party ticket, the successful candidates would often be under obligations to elements in the community who are the chief source and cause of the criminal class—an unseemly position for a judge.

The civil jurisdiction of the City Court includes all causes, both at law and in equity, whereto any of the parties reside in said city, except suits affecting land outside the city. When the value involved exceeds \$100, a defendant residing outside the city may appeal to higher courts, and when the value involved exceeds \$500, an appeal may be taken by any of the parties. The City Court has jurisdiction of all cases of summary process within the city, and the power to issue search-warrants. Its terms begin on the first Monday of each month. The regular sessions continue through the next two days, and include also the last week-day of each month.

The criminal jurisdiction of the court maintains, within the town of New Haven, the same powers which justices of the peace usually possess ; it includes the cognizance of crimes whose penalties do not exceed a two-hundred-dollar fine, or six months' imprisonment, or both. Appeals may be allowed except upon convictions for drunkenness, profane cursing, and Sabbath-breaking. Daily sessions are held on week-days, and on Sundays if the city attorney requests it. The salaries of the two judges are \$1,500 and \$900 respectively, but in addition there are fees for each of \$5 per day for each day of the civil session, and also of \$2 for every hearing upon complaint for a commitment to the Connecticut Industrial School for Girls. The judge has the sole right of appointing a city attorney at a salary of \$2,500, and an assistant city attorney at a salary of \$900 is appointed by the city attorney, subject to the approval of the judge. The judge also appoints a clerk of the court and an assistant clerk at salaries of \$1,000 and \$200 per annum respectively. Both the clerk and the attorney are further provided for by fees. Therefore, the judge controls, directly or indirectly, all appointments in his court, his own assistant alone excepted, involving salaries aggregating \$4,600 aside from fees.

To sum up, the city judiciary is amenable to the State Legislature, and has no legal responsibility to the people of New Haven, who are represented in it only by the sheriff and by jurymen. The court has both civil and criminal jurisdiction, subject to appeals to the County and Superior Courts. The two judges are selected in a party caucus, and are generally local politicians, but the character of the bench has been good notwithstanding. The chief judge wields practically all the patronage of the court. The salaries to different officers of the court amount to \$7,000, any or all of which may be raised, but not diminished, by the City Council.¹

¹ The receipts of the court in fines and costs are less than they were formerly. In 1875, the total amount of cash received was \$18,633.64, of which the city treasury obtained \$10,768.60. In 1884, the estimated income from the City Court was \$5,000.

THE CITY EXECUTIVE.

The structure of the city judiciary is clearly defined and simply planned. Defects in its operation can be easily traced to the culpable officer. But the city executive possesses no such merits. As a separate department it can hardly be said to exist. The Court of Common Council is the supreme authority in the city government. Some of the most important executive branches depend upon it, and owe no responsibility to the mayor. There exists, consequently, a variety of accountabilities.

The commissioners of public works, of police, and of fire, are the choice of the aldermen alone. The boards of compensation, the various sealers, supervisors, and inspectors, result from the joint action of the City Council. The commissioners of public buildings and of public health are the creatures, officially, of the mayor plus the consenting aldermen. The coroner acknowledges a similar genesis, the Court of Common Council being substituted in the place of the aldermen. The Park Commission is produced by the most intricate process of all.

Two of them are chosen in the same manner as the commissioners of public buildings and public health. Three are first elected by citizen donors to the East Rock Park, the votes being cast in proportion to the amount contributed, on a basis of one vote for every gift of \$100 in money or two acres of land. The elections must be ratified by the mayor. These three citizen commissioners form a close corporation, electing their own successors, but always subject to the approval of the mayor. Furthermore, the mayor may remove any such citizen commissioner for cause, and, in case of failure to elect a successor, he may appoint to the vacancy. Moreover, several executive officers who are elected by the whole town, such as the tax collector and the Board of Education, have unabridged authority throughout the city. Finally the city elects at large a sheriff and a mayor. Here

are seven different sources of executive power, and four of them are double. Only the mayor and sheriff in the city executive are directly responsible to the people. The most vital parts of the administration feel the sway of the City Council only.

The city government is emphatically a government of commissions. This will be apparent when the actual functions of the mayoralty are examined. The mayor serves the city for two years at a salary of \$3,000 per annum. The great majority of the list of powers expressly delegated to him by charter are those of a conservator of the peace. He is the chief sheriff, and reaches the height of his powers when, under great stress, he makes requisition for the militia of the city. His appointing power, as we have already seen, is limited, and is practically absolute only in respect to the citizen park commissioners, but even then only under certain conditions.

As chairman of the different boards, the mayor wields a more direct influence upon the governmental action. He can preside, with a casting vote, in the Board of Aldermen, and likewise in the joint convention of the Common Council, which can be called in case the separate boards fail to make the necessary elections. He has merely a delaying veto, the majority vote in each board being sufficient to overrule his objection. The mayor is also *ex-officio* member and chairman of the Board of Public Health, with only the casting vote. He is *ex-officio* member and chairman of the Boards of Public Works, of Fire, and of Police, but is deprived of his usual casting vote when the question concerns the selection of voting-places in the city or town, by the police commissioners, and the election or dismissal of any employee by any of the boards. The mayor is also an active member of the Park Commission.

Finally, the mayor exerts his greatest actual power in the department of finance. He is an active member and a presiding officer of the Board of Finance, which is one of the

most important wheels in the city machinery. Here the mayor may make himself really felt in determining the amount of appropriations and loans, the rate of taxation, in examining accounts of officers, in allowing and counter-signing tax liens, claims, and orders.

Thus it seems that the mayor's chief duties which afford employment are his very limited appointing power, and his oversight and share of the management of the city's financial affairs. His legal inability to dissolve a tie in the commissions over a proposed election or dismissal directly removes from him responsibility for the conduct of the various departments, and constitutes a readiness to read the Riot Act under possible provocation his chief personal obligation. By virtue of the mayor's power as guardian of the public peace he is vested, through the city's ordinances, with a number of police duties of a minor sort. He may restrict the use of steam whistles, offer rewards for the arrest of criminals, give advice to subordinate officers, designate horse-car stands, and recommend licenses to venders, but, in the majority of such functions, the assent of the aldermen is requisite. The aldermen, indeed, are empowered to override the mayor's possible refusal to allow the city clerk to license a street peddler. Thus it will be seen that New Haven has not as yet adopted the modern theory of centralizing all the executive powers and obligations upon one single head. When compared with a city like Brooklyn, whose mayor is a despot, and, on the other hand, with one like San Francisco, whose mayor is largely ornamental, New Haven resembles the latter rather than the former. At any rate, it is on the San Francisco side of a middle line.

THE CITY LEGISLATURE.

The mainspring of the urban administration is not in the mayoralty. We must search for it elsewhere. Only through the consultative and legislative machinery of the City Council

some of the most important executive powers are made practically operative. Omitting reference to the sheriff, a judicial rather than an executive officer, and deferring consideration of all commissions for the present, we are confronted first by the question, "How was the existing equilibrium, or lack thereof, attained?"

The present position of New Haven's Court of Common Council is the reasonable result of the municipal development of a century. History has already shown the extreme caution with which the freemen of the city have bestowed enlarged powers upon any authority not wholly their own representative. It has been observed how, at every turn, quick jealousy, both in State and city, hedged in the monarchical mayoralty. Consent of the freemen themselves, in City-Meeting assembled, was necessary to ratify actions of the mayor and Council. Not until 1854 was a remedy sought for this state of things. When the City-Meeting disappeared, the mantle of its supremacy naturally fell upon its nearest representative, the City Council, composed of delegates of the people. So, when the increase of wealth and numbers necessitated an expansion of the administration, and a new co-ordination of departments, the Council was consistently endowed with full control, and with the originating authority.

The twelve wards of the city choose sixty men, of whom thirty-six are called "Councilmen," and twenty-four, "Aldermen." These two boards together form the Court of Common Council. Of each board the presidents of the Police, Public Works, Public Health, and Fire Commissions are *ex-officio* members, with every right except that of voting. By city ordinance the aldermen meet regularly on the first Monday of every month, and the councilmen on the second Monday; but the mayor may convene them whenever he deems it expedient. Each board elects a president, and the president of the Board of Aldermen is the vice-mayor of the city. The city clerk is the clerk of the same board. In either branch a majority is a quorum. Attendance may be made

compulsory, upon warrant issued by the mayor or president to the sheriff of the county or the city, whenever such warrant is requested by the members of the board in attendance. No measure can be put to final vote in one board on the same day when it passed the other, except by unanimous consent. A proposed enactment may be referred to the suitable commissioners as though they were a standing committee, and a majority vote can pass ordinances over the mayor's veto. Elections within the council must be by ballot. Presiding officers of the council, or of its committees, are competent to compel witnesses to attend and testify. The Board of Aldermen has standing committees upon buildings, lamps, licenses, and numbering streets. There are joint standing committees of the Common Council upon appropriations, auditing, building lines, claims, the fire department, nominations, ordinances, printing, railroads and bridges, sewers, streets, squares, and water. The Common Council, by ordinance, may also appoint a committee to manage any sinking fund that may be established, and a joint committee of assessment, which performs the functions of a Board of Compensation. The charter provides that no vote, unless by unanimous consent, shall be taken in either branch upon a measure that has not been examined and reported upon by the proper committee or Board of Commissioners.

The Common Council alone controls the finances and can borrow money. It can appropriate funds, and order taxation, and the charter places some checks upon this right. Not more than six thousand dollars can be devoted yearly to the necessities of the Park, and fifteen hundred dollars is the limit put upon expenditure for any public celebration. Most important of all is the provision that no appropriation for any object shall exceed the estimate by more than one hundred dollars, unless by a vote of five-sixths of each board. Publication of the proceedings and votes can be insured by any member of the court. The principal joint committee is the Board of Finance, chosen by the Common Council from among its own members, and comprising also the mayor.

The mode of determining taxation is substantially as follows. In November of each year the Board of Finance prepares an estimate of the necessary expenditure of the city for the year ensuing, of its liabilities and resources, and of the necessary rate of taxation. The calculated expenditure must be specific, classified under the proper heads and departments. The report forthwith is submitted to the Common Council and published in the newspapers. Before the first of January, the Common Council shall have revised the estimates, levied taxes upon the last completed grand list of the town, and shall have specified all the items of appropriation. The charter forbids that the total annual appropriation shall exceed the estimated income for that year, and that any officer shall make any payment or incur any liability in excess of the amount appropriated by the council to any object. All special taxes must be laid in a similar manner. Whenever a tax has been duly laid the proper rate-bill is prepared and signed by a committee of four aldermen, with the mayor, and then delivered, with a warrant for the collection of the specified tax, to the collector of the city. The charter, which generally sins by omission rather than by commission, nowhere gives the mayor the right to veto parts of appropriation bills, and there is no clause limiting the possible indebtedness of the city. The tax for city expenses alone is now about nine dollars *per capita*, or eleven dollars on the thousand. This rate is probably nearly double the actual cost on the thousand upon a full valuation in either New York or Philadelphia.

LEGISLATIVE CONTROL OVER THE COMMISSIONS.

Turning now to the confirming and appointing powers of the Common Council, we shall discover the legislative branch trenching upon the proper prerogatives of the executive, and granting to its own creatures the usage of the moneys which itself has appropriated by taxation. The old style of city government, which was modeled upon the ancient pattern of

the London municipality, accorded to the unpaid committees of the City Council the executive disposition of the sums which the whole council had appropriated. In other words, "The individual members spent the money which the whole body voted." New Haven's present plan offers these three variations from the usual custom: The aldermen alone choose the Commissions of Public Works, Police, and Fire; with the exception of the mayor, as hereinbefore stated, no member of the city government is eligible; and it is intended that the commissions shall be non-partisan. There are six members of each commission, who serve for three years. Two commissioners for each board are annually chosen in January. The provision for securing non-partisan commissions is that each alderman shall have but one vote, and that the two persons receiving the highest equal or unequal numbers of ballots shall be declared elected. Ordinarily, this must secure a commission evenly balanced between the two parties.

Further restrictions upon membership are: 1. That no one shall be a member of more than one commission at the same time; 2. That no member shall enter into any contract to do work for the city; 3. That no member shall receive any employment under the commissions; and 4. That no police commissioner shall be engaged as principal, agent, or employee in the manufacture or sale of intoxicating liquors. If a vacancy occurs, the charter provides that only a member of the same political party as the outgoing commissioner shall be eligible to succeed him. The Commission of Public Works is forbidden to begin any operation other than ordinary repairs until the task has been authorized by vote of the Common Council. Such is the genesis of these three commissions, which demand a high degree of executive ability on the part of their officers, which form the bulk of the municipal administration, and which absorb two-thirds of the total annual expenditure. The actual expenditure of these departments in 1883 and the estimated expense of the same for 1884 are thus compared:

	1883.	1884.
Public Works, . . .	\$199,344.71	\$233,735.00
Police,	108,400.00	106,325.00
Fire,	82,275.00	80,925.00
Health,	6,300.00	7,400.00
	<hr/> \$396,319.71	<hr/> \$428,385.00
Harbor Department, . . .	250.00	200.00
Sundries,	218,313.00	224,880.00
	<hr/> \$614,882.71	<hr/> \$653,465.00
Total of City,		

Without reckoning the wages paid to ordinary labor, and without reckoning fees, a little more than two hundred thousand dollars is annually paid by the city in salaries. Of this sum fourteen thousand and seven hundred dollars are paid in accordance with charter stipulations, and to officers chosen outside of the Common Council, excepting in the latter respect the corporation counsel and the assistant city clerk. The residue is disposed of directly by vote of the Common Council, or of one of the four commissions. In the item of salaries there might profitably be some retrenchment, and the charter itself creates the most expensive sinecure in the city government. The corporation counsel receives five hundred dollars a year more than the mayor obtains, but does very little to earn his wage. A better economy would direct the city to consult an ordinary lawyer and pay the fee on the few occasions when a legal opinion is needed. The city ought not to maintain a prize for the New Haven Bar Association.

Finally, the confirming power of the council together, or of the aldermen alone, is, of course, confined to those few officials who are subject to the mayor's nomination, the coroner, the three commissioners of public buildings, the six commissioners of public health, and two park commissioners. These commissions, however important in duties, are comparatively weak in authority. The park commissioners are limited to a six-thousand-dollar appropriation for the East Rock Park. The thirteen other inclosures in different parts of the city are cared for by the Board of Public Works.

The commissioners of public buildings can only submit

recommendations to the Board of Aldermen. All the afore-said appointees combined do not control appropriations of more than fifteen thousand dollars. The restrictions upon membership in these commissions are, in general, similar to those previously described. All the commissions are unpaid, but these last-named differ from the former in that there is no endeavor to render them non-partisan.

Excluding the Park Commission, which is entirely unique in structure, all the city commissions enjoy yet another common feature. Removal of any commissioner is at the discretion of the Board of Aldermen alone. Although the mayor nominates seventeen different commissioners, the only officers in the whole city government who are in this way amenable to him are, in the first place, as it seems, a coroner, and secondly, three park commissioners, whom, in all probability, he did not nominate, and whom he may only conditionally remove. The charter-law regulating removals and tenure of office is that city officers chosen by electors shall hold office through their term, or until a successor is chosen and sworn, but that in case of resignation, death, removal, or incapacity of an officer, the Court of Common Council shall order a special election.

A subsequent section provides that all persons holding any office created by law by virtue of an election or appointment, may be removed by the body having the power to appoint them. In general, "Appointees and employees shall be removable at the pleasure of the person or body having the right to employ or appoint them."¹ But, in order to preclude the possibility of a dispute between the appointing power of the mayor and the confirming power of the aldermen, the responsibility of the five commissions was thus asserted:

"Any member of said boards shall be subject to removal by the Board of Aldermen for cause, upon charges made in writing by any member of either Board of the Court of Common Council, provided said charges are found to be sustained

¹Sections 17 and 58.

by a two-thirds vote of the Board of Aldermen.”¹ The numerous public servants who are, or may be, elected by the Court of Common Council, acting conjointly, play for the most part a minor *rôle* in the municipal economy.²

No matter what laws and theories may affirm, the body which elects and removes is the dominant authority. Therefore it is fair to say that the city executive owes directly a divided allegiance—the mayor to the people, but the commissions to the Common Council first of all. In the Common Council the Board of Aldermen obtains the lion’s share, and thus practically becomes the truest centre of the municipal activity in all branches except the judicial. In other words, the law-making, tax-laying power can dictate not only *how* money shall be spent, but also *who* shall spend it. If the executive departments of the National Government were managed by commissions of six men each, elected by the Senate, or by the House of Representatives, or both, without the possibility of any interference by the President, the state of affairs would be outwardly parallel. The idea suggests such possibilities of non-performance of duty, of political engineering and scandal, of the most nebulous of Star Routes, that the explanation of the common degeneracy of cities under our forms of government seems to leap to the surface.

The commission appointed by Governor Hartranft, of Pennsylvania, to study the problems of municipal govern-

¹ Section 36, *ad finem*.

² The number of town-officers elected by ballot, including the Board of Education, reaches one hundred and sixty. The city government contains two hundred and fifty-two individuals who annually draw a stated salary, but only sixty-five of the city’s officials are chosen directly by popular suffrage. Therefore four hundred and twelve persons perform the more prominent functions of municipal life in school-district, town, and city. Two hundred and twenty-five of them are elected by the people. An estimate of the entire number of men employed in any capacity, principal or subordinate, occasionally or continuously, in the local public service, places the sum at twelve hundred. About one in every fifty-eight of the people of New Haven is guarding the common interests of the municipal bodies politic, and is encamped upon the common pocket-book.

ment in that State reported in 1877 as follows: "The heads of departments appointed by the councils are merely the agents of committees, not only in the administration of trusts supposed to be committed to departments, and in the appointment of subordinate officers, but in the payment of bills and current expenses not embraced in special contracts, thus affording opportunity for, if not inviting, corrupt combinations between the two branches of the city government. This condition of things exists only in city governments, and is found neither in State nor Nation." New Haven cannot be classed with the cities that are discussed in this report. There has been no scandalous misuse of the public funds, and the commissions are not quite the same as committees of the council. There is, however, one exception to the general authority of the commissions. The street-lamps of the city have never been placed under the care of the Public Works' Department, but are under the sole supervision of an aldermanic standing committee. This committee manages the entire lamp account, and chooses the lamp inspector. No valid reason appears for the retention of the old usage in this single instance. It seems to be merely a sop thrown to the Board of Aldermen.

CONDUCT OF COMMISSIONS.

The political equilibrium maintained in the commissions supplies a check upon some kinds of possible misconduct. But the evils appertaining to the system have been pushed beneath the surface, not eradicated. The probe of examination reveals the confusion that attends an intermingling of responsibilities.

Of course King Caucus rules; the Democratic aldermen determining one-half the membership of the Public Works, Fire, and Police Commissions, the Republican members naming as absolutely the other half. The history of the Police Commission during the winter of 1885 is one of the best

practical commentaries that can be offered upon the whole system. Near the beginning of the year the chief of police was removed by death.

This is the most important office within the gift of the police commissioners, both by reason of the salary and of the influence involved. It is the chief of police who, among other duties, issues licenses for billiard tables, bowling alleys, public exhibitions, and public conveyances, and who receives information from his force of all violations of city laws and ordinances. These facts, added to a realizing sense of the activity which an energetic and right-minded chief can impart to the police force in general, stimulate the liquor-selling and drinking interests of the city to take a vigorous interest in the choice of this officer. Therefore it was not surprising that when the half-dozen commissioners met for election, the three Democrats and the three Republicans were found to entertain totally diverse ideals of the coming incumbent.

The commission first assembled to fill the vacancy January 8th, 1885. The remarks of Democratic Commissioner Catlin, himself his party's nominee for the chieftainship, struck the key-note of the struggle as it seemed to him and to his friends. He said that the "Board [sc. of Commissioners], as constituted, consisted of three Democrats and three Republicans. The officers of the force stood about 8 to 3. Elect a Republican for chief, and the force would have a preponderance of Republicans among its head officers."¹ He could not, therefore, vote for a Republican candidate, and he hoped that the Republicans would see things as he did. Republican Commissioner Sheldon contended that politics had nothing to do with the matter.

Mr. Catlin replied that he desired fairness. "He thought that as good a man could be got on the Democratic side as on the Republican."

After this explanation of the prime motives for the bestowal

¹ Report in *Journal and Courier*, January 9th.

of municipal responsibilities the voting began, and resulted in a tie. There the question hung while the presiding mayor looked helplessly on. Candidates were proposed who would ensure a business-like, non-partisan, and law-supporting administration of the police force, but no agreement was reached, and there seemed to be some justification for the advertising squib in the newspapers, "Wanted—a Chief of Police for New Haven. Nobody who is fit for the place need apply." During the deadlock, the terms of two commissioners ended, and the aldermen chose their successors, but the contest remained unaltered. Meanwhile, the captain of the police force was acting chief, and perhaps, if strict ideas of Municipal-Service Reform could prevail, the captain ought to stand in line of promotion to the permanent chieftainship.

Finally, during the third week in July, the prolonged contest was ended. The commissioners were, in a sense, compelled to elect a Democratic fellow-commissioner, who was too good a man to be chosen in the first place. A few days later the Democratic aldermen met to select a commissioner to succeed the new chief. They exemplified their fitness to control the city executive by falling straightway into a violent quarrel over the claims of German Democrats to representation upon the commission. One City Father, of Teutonic extraction, was enraged because he had been told that no Dutchman could have the place, and that, if he didn't like it, he could lump it. The supporters of the non-German candidate, having the advantage of numbers, deprecated the raising of a race-issue. Upon such a plane an important executive appointment was discussed, and made.

We can see now out of what material the aldermen construct their commissions; and we can also see how the present system lacks order, directness, and free motion. The executive is hampered. The legislative branch does nothing to clear away obstacles. So far as elections like the foregoing are concerned, the idea of non-partisanship in the commissions becomes farcical.

Here is a so-called non-partisan commission which protracts a partisan deadlock through seven months. Yet, without the balance of parties in the commission, the state of affairs under the existing supremacy of the aldermen would be worse. The question reduces itself to a dilemma, illustrative of the disordered system of government: if the non-partisan boards are maintained, the administration is likely to be clogged, and there are unseemly disputes and delays; if the non-partisan feature is abandoned, and the present source of election retained, the administration is likely to fall into the hands of less competent, and possibly less honest, officers.

It must be conceded, moreover, that the determination of a so-called non-partisan board is, in very many cases, not the agreement of the board's united wisdom, but is the resultant compromise of the conflicting party interests that are represented in the board; it is apt to be a temporary makeshift, not a permanent solution. Non-partisan commissions are, in themselves, confessions that party government in cities is a failure, and that politics should be removed from municipal matters. These commissions seek to redeem the failure by balancing one party against another so evenly that neither of them can do anything without corrupting or overpowering the other. Is it thought that a dog does not chew his bone properly? Put three dogs at one end of the bone and three more at the other end; then the non-partisan commission will proceed at once to arrange matters. The method is clumsy, if not dangerous.

During the winter of 1885, a demonstration was made before the State Legislative Committee on cities and boroughs in favor of the election of non-partisan commissions on a general ticket by the voters at large, no elector being allowed to cast a ballot for more than half the membership of each commission. Some advantages appear in this plan. The commissions would directly represent the people, and the fatal entanglement with the City Council would be removed. But there are insurmountable objections. All co-ordination

and dependence in the municipal executive would be destroyed, and the city would be provided with so many more mayors. "Subordinate administrative officers should be appointed, not elected."

EXECUTIVE ORGANIZATION.

The course of municipal development in our principal cities has been toward the consolidation of the Executive Department. New Haven, though a small city, has now in its charter the same provisions which proved disastrous to its larger neighbors, and which impelled them to recast their system of government. Their experience has emphasized the truth of this principle :

"The popular branch should tell *how* the money of the community shall be spent, but should not tell *who* shall superintend the spending." The officers of administration should be closely connected with the body of taxpayers—whose work those officers do—and not with a legislative body, which should be freed from every inducement to warp the laws for selfish purposes. System and uniform action in the administration can be secured only by the strong hand of a single superior.

The mayor, therefore, should appoint the heads of departments, and the mayor and his heads of departments should have the control of all their subordinates. The mayor is the servant and representative of the people, and he should be responsible to his employers for every branch of the municipal service, from city engineer to lamp cleaner. The people can fasten responsibility upon a mayor ; it is difficult to trace it in a crowd of common councilmen. A representative body which wields executive power affords an inviting opportunity for log-rolling, dickering, and partisan management ; at least some of its members are always comparatively unknown men, who can traffic in the public welfare under the shadow of obscurity. The mayor must act in the full light of public opinion. He is a character known and read of all men ; if

such an officer is allowed to pursue evil courses without hindrance, it must be because the majority of his constituency is no better than himself.

A mayor who is directly responsible for the local administration is by no means free from check and rein. Public opinion presses hard upon him, and "The People" to the mayor does not mean a little knot of party-workers, as it does to the alderman. The mayor's position makes him sensitive to the blame or approval of a wide and large constituency, the real people. The public opinion of the counting-house, the press, and the pulpit is the most terrible of critics, and the most inexorable of judges. The mere consciousness of this tribunal is often enough to strengthen the moral backbone of a weak man, and to elevate an average citizen into an ideal public officer. Executive officials, from mayor to President, are illustrations of this. Furthermore, the courts of law are always open, and the right of impeachment should be a recognized privilege and a vigorous possibility. The practical freedom from the judiciary which the executive enjoys is impolitic, and is the great defect in what may be called "The Brooklyn Idea" of city government. A bad mayor may do nothing which can bring him under the criminal jurisdiction of the courts. Public opinion is the hand that threatens him, but it may have no weapon with which to strike until the far-off election-day. Moreover, we are such fools that we make a fetich out of a party-name and abase ourselves before a shadow. Party-ties are so strong that, in Brooklyn's last city election, a very small change of votes would have defeated the admirable mayor, Low, and elected an unknown and untried competitor.¹

ADMINISTRATIVE COURTS.

It is just that the appointing power should also possess the right to suspend or remove. If, however, the whole Execu-

¹ Written in the summer of 1885.

tive Department rests in the hand of the mayor, a bad mayor may do much to destroy the good that his predecessor created, and yet may not become liable to ordinary process of law. It seems to me that the continued success of a reformed municipal service may be more thoroughly assured by the introduction of administrative courts. These courts are well known in Europe, and there is nothing in their constitution or functions which is in any manner repugnant to our customs and institutions. Administrative courts exist for the examination and settlement of all official differences between members of the administration, and for adjudication between officers and the non-official world in disputes that affect administration solely. Complaints against public servants are brought before these courts, and a judicial inquiry is at once set on foot. Incompetent or untrustworthy officers are called to answer for their derelictions before the administrative court, and an adverse verdict is ground and sufficient motive for the culprit's dismissal.¹

If powers like these could be conferred upon our city and county judiciaries, or, better still, upon a separate system of municipal administrative courts, with the right of appeal to the higher tribunals, and if, within proper limits, removals or interferences with the course of promotion could be based only upon the decisions of such courts, a long stride would have been taken toward a model municipal service. The proposed court, if judiciously constituted, would powerfully support a good government, or restrain a bad one. No objection could then be urged against the plan of appointments by the mayor. The tenure of office would sooner or later depend largely upon good behavior, and the idea might, at least, begin to penetrate the mind of the citizen that the

¹ In German cities a "Complaint-Book" (Beschwoerdebuch) is kept under the inspection of the authorities, and any one who discovers instances of official incapacity or injustice describes in that book his grievance. The complaints are examined and, if necessary, investigated by the officers of the administrative court, and the faults, if there be any, are punished.

mayoralty also is an office which demands a good administrator, and not a politician, and which, when once well filled, should retain its occupant as long as possible.

FREQUENT ELECTIONS.

There is already a tendency in the New Haven municipality toward lengthening terms of service. In the early history of the city a public officer remained at his post until death removed him. With the rise of the Jacksonian Democracy annual changes became more frequent. The reaction has been small and slow. In 1860, some daring spirits broached the idea that a two-years' term for the mayor would not endanger the popular liberties. That suggestion finally found favor, and now all the principal commissioners serve for three years. In town and city there are now in all forty-three officers who serve for three years. Perhaps the existing tendency may be carried still further without harm. If the mayor could have at least a three-years' term, and the subordinate members of the administration a much longer term, the city would profit by the increased experience and security of its servants. Professional politicians are the gainers by frequent elections.

THE BOARD OF COUNCILMEN.

Why is it that, in city and nation alike, the Legislature incurs distrust? Why is it that in most of our cities the legislative branch contains so many men unfit for public trusts? The great majority of New Haven's councilmen undoubtedly desire to promote the city's best interests, but at the same time many of them are not men who can form an exalted idea of the city's best interests. If the Court of Common Council should lose its powers of patronage, of appointment, of political coercion, membership in it would be less inviting to the small politician, and more so to the better sort of citizen.

It is difficult to see what would be lost if the Board of Councilmen should be abolished, and if the City Council should consist of aldermen alone. There is and has been no respectable reason for the existence of the lower council, except the fact that it helped complete the analogy between the city, State, and National governments. The argument which Washington used to justify the division of the National Congress into two houses is adduced as a support for the bicameral council—viz.: the assurance of dignified and calm consideration. But undue haste in legislation may be prevented by requiring an interval between the proposal and the passage of an ordinance, and by publishing the proposition in the newspapers during that interval. It has been found, also, that if any potent interests demand hurried law-making, the mere existence of two branches in the council is a very small obstacle.

Moreover, there is no federative principle that seeks preservation in a city. Two chambers should imply two constituencies. A second chamber might explain its existence if it were chosen by a body of taxpayers. But the aldermen are as completely representative of the people and of the wards as the councilmen are. It is time that the complete distinction in essence between a corporate government and a nation should be admitted on all sides.

The fact that New Haven was once an isolated community with aspirations toward independence does not affect the consideration of the present city government and its needs. As Mr. Simon Sterne has clearly pointed out, the modern city is a corporation, charged with the administration of property, and, properly, so far as its internal operations are concerned, it has no political functions whatever. The administration of a city government should therefore be executed with ideas and methods similar to those which other corporations find advantageous. Nobody can say that the boards of aldermen and of councilmen contain very different material, either in respect to age or wisdom. The lower

board is merely an additional house of refuge for the ambitious aspirant and the corner-grocery politician. No healthy corporation would retain in its service two organs when one could do all the allotted work as well.

Let the Board of Councilmen, therefore, be evolved out of existence. Then if, in addition to the aldermen from wards, there were chosen aldermen-at-large in numbers proportioned to population, perhaps one to every full ten thousand, allowance being made for minority representation, the New Haven Council would count to-day thirty-one members—a good working number for a city legislature.

The charter of the city wisely provides that the presidents of the various commissions in the city government shall be entitled to seats in either branch of the council, with every privilege except that of voting. It would be no more than an expansion of the same idea if all ex-mayors who had been elected by the people, and who had served honorably throughout their terms, should be entitled to membership in the Board of Aldermen. The honor might include the right to vote, and might cease in case of removal from the city or of election to another office. Most of the incumbents of the mayoralty attain that height after having served the city in less important trusts. That the city should lose the benefit of their ripest judgment and experience is faulty economy and poor politics. The reasons that support the retirement of ex-Presidents to the Senate for life also favor the theory that ex-mayors should continue to aid the city which has honored them. There are additional arguments in the case of the mayor. Membership in the Board of Aldermen would convey now no social distinction. It would be a continuation of public work rather than the bestowal of a public reward.

THE CHOICE OF ALDERMEN.

However, it seems to me that still better results could be attained by a still more radical change, by a change in the

mode of election. In many quarters the opinion gains ground that ward representation is corrupting and belittling, and that aldermen ought to be elected on a general ticket by the people at large.

New Haven has completed its first century of city-life, and for only thirty-two years of that time have wards existed. In the earlier day the best men in the city were honored by the name of alderman. It is not always so now. The plea that an alderman should be able to champion the "Local interests" of a ward is a strong argument against electing aldermen by wards. What broad-minded and upright man will care to sit in the City Council, knowing that he is expected to secure as large a slice as possible of the public funds for improvements in his locality—jobs which will bring money into his ward and into the pockets of the clique that worked for his nomination? How can any but the small-minded man set himself to represent or to uphold the alleged "Interests" of a few square feet of ground?¹

¹ That species of city councilman whose highest idea of achievement for the public good is to keep his band of local workers "solid," to assist the more importunate of them to jobs at repaving streets—in his own ward, if possible—and to vote taxes that better men must pay, has become an object so familiar as to be almost unnoticed.

An exceptionally fine specimen of the performances of these Solons is preserved in Baltimore, a city whose municipal government is deplorably bad. During Mayor Latrobe's first administration, a certain district was represented in the City Council by a nonentity whose only claim to political preferment was his affiliation with the controlling clique. This councilman, being unable to secure a sewer, or freshly painted street-signs for his district, cast about him for some other means of vindicating his fitness for public trust and his reputation of watchfulness for the needs of his locality. One day the political magnates of the neighborhood were holding sweet converse in their customary headquarters, the corner grocery. A bright idea flashed upon the intellect of the councilman. He observed that every district in the city except his own had an avenue. Such injustice should be redressed, and he solemnly consecrated himself, amid the plaudits of his comrades, to the work of securing an avenue for his suffering district.

The party decided that Choptank street, which extends across the district, should be the future avenue; but with what name should it be

The ward-workers of either party can nominate a mediocre man for aldermanic honors, confident that their neighbors will not bolt the ticket, because their man is the regular nominee, even if there is no worse reason. The rest of the city knows very little about the ward or its candidates, and can have no voice in their election, at any rate; and so the ward elects a bad alderman. If, on the other hand, the city convention which nominates a mayor should, in a similar way, nominate aldermen, there would be a better chance of securing aldermen whose mental and moral calibre would be as good as that of the mayor. If the whole city were to be the constituency of each alderman, the candidates would be more closely scrutinized by both the press and the people. The best citizens would be more likely to desire aldermanic honor if it were the gift of the whole community, and not of a comparatively insignificant group in that community.

The root of the whole matter is in the primaries. Unless

christened? Some member of the company, with more intelligence than the rest, waggishly and maliciously proposed that Choptank street should become Collington avenue, in honor of the renowned English admiral, Lord Collington. Seeing that the proposal was favorably received, he narrated the services and many exploits of Lord Collington, who had, forsooth, crowned a long and illustrious career by commanding the fleet which brought to Maryland its first settlers at St. Mary's. Yet this noble mariner's name was not preserved in a single street or alley of the whole city of Baltimore. The story was greedily swallowed, and the councilman was unanimously advised to rescue Admiral Collington from the oblivion into which he had undeservedly fallen. In due time a bill was offered in the Board of Councilmen changing Choptank street—in its course through that district only—to Collington avenue, and the wondrous history of the name was recited.

Playing with the names of streets is recognized as a prerogative of Baltimore councilmen, and such bills pass as if by an act of personal courtesy. There is nothing to show that bill and story were objected to in either branch of the City Council. But in the mayor's office there was some one who knew a little history.

Mayor Latrobe sent to the council a message exposing the absurdity of the Collington anecdote, and berating the honorable gentlemen for their disregard of everybody's convenience excepting their own, *but His Honor signed the bill.*

the better elements in each party attend and control the primaries, reform-movements will always limp. To elect a good mayor and leave the City Council and the primaries in their present status is only to whitewash the same old sepulchre.¹ If aldermen are chosen by wards, the primaries determine who the candidates shall be. If the aldermen are chosen upon a general ticket, the primaries can elect only delegates to the nominating convention. It must be that the latter distribution of powers is incomparably the safer.

The first and last need of New Haven's government is one which it shares in common with all institutions—the need of intelligent and conscientious discussion. Children in the schools should be familiarized with the working of the different governments under which they live; but that instruction is only a small part of the requisite political education.

The press, the bar, the pulpit, and the private citizen should actively teach and preach upon the subject, and disseminate the doctrines that local taxation furnishes problems as pressing as those of the national tariff; that a high standard of morality is as essential for the City Hall as for the Church; and that the choice of clear-headed and honest men of business for municipal offices is as vital a matter as the election of Democrat or Republican to the Presidency. Then, perchance, one might obtain a little clearer vision of that better age of municipal government to which the gliding years are leading us, wherein the local machinery shall move almost unaffected by political influences and revolutions; wherein men grow gray in faithful public service without fear of removal; wherein the right of municipal suffrage is

¹ A recent writer has suggested that one way to improve primaries is to improve the surroundings of primaries. They are too often held in or near some low groggery—in rooms where the more decent citizens would dislike to go. Of course, this does not excuse the decent citizen, who ought to go, and to help secure for his party a more respectable cradle. A city ordinance might compel every ward or district to provide a ward-hall free to all parties, suitable for public meetings, remote from saloons—a place where every voter might be glad to go.

proportioned to the burden of taxation that is borne;¹ and wherein every organ and every officer of the municipality feels an actual responsibility not only to superior organs and officers and to the people, but, more immediately, to the courts of the community; "To the end," as the old Puritans phrased it, "it may be a government of lawes and not of men."

¹ Is this doctrine thought undemocratic? There can be no better Democratic authority than the following: "Municipal officers, having no power over persons, but only that of applying the proceeds of taxes, ought to be elected by those alone who contribute to such payments."—*Albert Gallatin* (1833).

XI-XII

THE LAND SYSTEM OF THE NEW
ENGLAND COLONIES.

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

FOURTH SERIES

XI-XII

The Land System of the New England
Colonies

BY MELVILLE EGLESTON

BALTIMORE
N. MURRAY, PUBLICATION AGENT, JOHNS HOPKINS UNIVERSITY
November and December, 1886

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PREFATORY NOTE.

The following monograph was originally printed in the year 1880. Of the copies then issued some found their way at once into the larger public libraries, while others were placed in the hands of persons believed to be interested in the subject treated of. The number of these copies, however, all told, was quite small, and it was suggested some time ago by the editor of this series of "Johns Hopkins University Studies" that the results of the writer's investigations were not accessible to many to whom they might be useful, and that they were of sufficient interest to warrant their publication in the series named.

The opportunity courteously offered by him of reaching in this manner a greater number of persons interested in studies of the kind was gladly accepted, and the treatise is now reprinted, without any change whatever from the original form.

The author has deemed it important to make this explanatory statement, for nothing but the facts which have been mentioned could excuse, or even account for, the absence of reference to the numerous and valuable studies in the history of local institutions which have been published in this country during the past six years.

M. E.

NEW YORK, *November 1, 1886.*

THE LAND SYSTEM OF THE NEW ENGLAND COLONIES.

The laws of a State are the reflection of the economical and social condition of the people, while their form and spirit indicate the mental and moral status of those by whom the laws are made. They are thus among the most valuable and trustworthy sources of historical information which we possess. Especially is this the case where the people are themselves legislators. Yet the history of American legislation has not received the attentive study which it deserves, and which will surely some day be given to it. I have here subjected to examination a small portion of this interesting field. The close connection between the institution of land in any community and its political and social history is now well understood, and the importance of such an investigation as I have here undertaken will, I think, be recognized, however successful or unsuccessful the writer may be in his treatment of it.

I have endeavored to trace the origin and early history of our existing land system—a system than which none has yet been devised better suited to the conditions of any people. A complete presentation of the subject might well contain a fuller account of the laws of alienation and succession *ab intestato* than has been given; but it seemed best for several reasons to consider them separately in another place. Enough has been given, however, for the present purpose, and the land system of New England was mainly determined by the legislation and customs here described.

In explaining the process by which the soil of New England was distributed among the occupants, I have followed what seemed to be the natural order, stating first the origin of rights in the land, and then describing successively each link in the chain of title, grants from the Crown, grants from the Great Council, colonial grants, and finally the division of lands among the members of the land communities. Local ordinances and recognized customs have been treated as important parts of the system.

I.

ORIGINAL SOURCES OF TITLE.

1.—RIGHT OF THE CROWN.

In the New England colonies all titles to landed property were derived originally from an actual or constructive grant of the English Crown. The title of the Crown itself was based upon that union of discovery and possession which, in the opinion of English jurists, could alone give a valid title to a new country. Mere transient discovery indeed amounted to nothing unless followed in a reasonable time by occupation more or less permanent under the sanction of the State.¹ But these conditions, it was held, had been fulfilled by the discovery of the coasts of America by the Cabots in the years 1497–8, and the subsequent visit of Sir Humphrey Gilbert in 1583, when he formally took possession of the country under letters-patent. Long as was the interval, it was in the eyes of England not too long, and that nation always based and maintained her claims to possessions in America upon the grounds here given.²

The rights of the Crown were not merely those of the head of a State, or of the feudal lord paramount. The King was the

¹ 3 Kent Comm. 380, n.

² *Ibid.*, and Thurlowe, State Papers.

immediate owner and lord of the soil, and exercised unlimited power in the disposition of it. He made grants which could not be made under English law, as, for instance, when he authorized the proprietaries of Maryland and other colonies to erect manors, "anything in the Statute of '*Quia emptores*' to the contrary notwithstanding."¹ He claimed also the right to establish local governments, and conferred powers of legislation upon his grantees, whether these were colonists in America or groups of courtiers in England. The rights of private ownership and royal prerogative were in him too closely combined to be readily distinguished.

2.—RIGHT OF THE ABORIGINES.

But although it was the theory of the British Government and of the colonists that the absolute, ultimate title to land was in the sovereign, that title was subject to a right of occupancy in the Indians. This natural right of the natives was entitled to protection; but the sole right of acquiring it by purchase or by actual conquest was in the Crown or its grantees, and the natives had no right to dispose of it to any other.²

The colonial governments uniformly acted upon these principles, so that, although individuals were disposed to deal less liberally with the natives, and even such a man as Cotton Mather deemed it unnecessary to recognize in any way their title,³ the rights which the theory of the Government left to them received, as a rule, the protection required.

In Maine, owing to peculiar circumstances, the title conveyed by Indian deeds assumed especial importance, and a high degree of authority was accorded to such evidences of property. At about the time of the English Revolution, the colony of Massachusetts was striving vigorously to extend

Hazard, State Papers, I. 160, 327, 442, etc.

² 3 Kent, 379, etc.

³ Magn. I. 72.

its boundaries, and, in order to weaken its enemy Gorges and render him unpopular, the colonial government supported the theory that the native right must be superior to that conferred by such an extensive patent as his. Purchases from the Indians, which in consequence became frequent and of great extent, were regularly upheld by the local courts.¹ When Massachusetts in 1716 appointed commissioners to record claims to lands, these Indian deeds were revived with other claims, and thus gained a standing as legal titles. The Government, however, became alarmed at their extent, and in 1731 passed an act forbidding all purchases from the natives without license of the Legislature, and declaring all deeds taken without such license to be null and void.²

This enactment was merely an extension to new territory of a policy already generally adopted in New England. Massachusetts herself had in 1633 passed a restrictive law applying to the territory then held by her.³ Plymouth had done the same in 1643,⁴ and Connecticut made similar regulations at an early date.⁵

That these laws were enforced is abundantly shown by the constant formal authorization of purchases,⁶ as well as by the recorded cases of refusal to confirm purchases made without authority.⁷ A grant of land, indeed, carried with it the right to extinguish the Indian title as of course, and no special authorization was needed. Yet even then, if the conditions of the grant were not fulfilled, the Government claimed the acquired title, if the planters had purchased.⁸

Not only was the necessity of acquiring the Indian title uniformly recognized, but in some cases, especially when be-

¹ Sullivan, Land Titles, 43.

² Acts and Res. of Mass. Bay.

³ Mass. Rec., I. 112.

⁴ Plym. Rec., Winslow's letter in Hazard, II. 531.

⁵ Conn. Col. Rec., I. 214, 364, 402.

⁶ Mass. Rec., II. 82, III. 225, etc.; Conn. Rec. I. 151, 418, 420, etc.

⁷ *Ibid.* IV. 427, 430, 440, etc.

⁸ *Ibid.* IV., Pt. II. 529.

yond the boundaries of an acknowledged local government, the colonists would seek no other titles, contenting themselves with that derived from the natives, without confirmation or authority from any other source. Roger Williams even took the ground that the planters could have no just title except what they derived from the Indians, in consequence of which heresy he was summoned before the court, and was also condemned by a council of ministers.¹ But in the settlement of Rhode Island his principles were strictly followed, and it is possible that no grant would have been sought there, except at the hands of the actual possessors of the soil, had not some formal authorization of their acts of self-government been found essential to safety. Parliamentary and royal grants were then obtained.

Connecticut was settled and its government organized without any charter or grant, and the lands were purchased by the planters from the Indians as they had need of them. Mr. Trumbull says, "The settlers of the river towns had not—before or after the agreement with Mr. Fenwick—any right of jurisdiction, except such as grew out of occupation, purchase from the native proprietors, or (in the case of the Pequot territory) of conquest." Their policy seems to have been to dispose as quietly and as cheaply as possible of the claims of such as challenged their title, into the exact nature of which they were not disposed to provoke too close an investigation.² But the General Court, as early as 1638, was given the sole power to "dispose of lands undisposed of," and regularly exercised the power.³

The titles to land in Nantucket and Martha's Vineyard originally were derived merely from Indian deeds, although the islands were soon placed under the jurisdiction of Massachusetts by the Congress of the United Colonies, and in 1692 were regularly incorporated by royal charter into the province

¹ Arnold, *Hist. of R. I.*, I. 279.

² Conn. Rec., I. 569.

³ *Ibid.* 25, etc.

of Massachusetts Bay.¹ Titles from the Crown were also acquired through the Earl of Stirling.

A careful examination of the records will satisfy a candid inquirer that there is no ground for materially modifying the statement of Chancellor Kent that "the people of all the New England Colonies settled their towns upon the basis of a title procured by fair purchase from the Indians with the consent of Government, except in the few instances of lands acquired by conquest after a war deemed to have been just and necessary."² Even where the title had been regularly acquired by purchase, the General Court of Massachusetts spoke of the native right as one "which cannot in strict justice be utterly extinct," and refused to dispossess the Indians, although it gave compensation in other lands to the town interested.³

II.

ROYAL GRANTS.

No fruitful attempts at colonization were made under the letters-patent granted to Gilbert, and after his death to his half-brother, Raleigh. But the zealous persistence of the latter, and the remarkable success of English merchants engaged in trading to distant lands—especially in connection with the operations of the famous Muscovy Company—prepared the minds of men for an enterprise in another quarter which promised great results, and, indeed, secured them, although not in the precise way expected. Gosnold's expedition in 1602, under the auspices of the Earl of Southampton, of which glowing reports were made by him and his companions on their return, was the immediate forerunner of a movement which resulted in the procurement of a charter,

¹ Sullivan, 38, 55.

² 3 Kent Comm. 391.

³ Mass. Rec., IV. Pt. II. 49.

and the subsequent colonization of the coasts of America under the encouragement of its provisions.¹

THE CHARTER OF 1606.²

The letters-patent issued in 1606 to Sir Thomas Gates and others granted to them the territories of America between 34° and 45° of north latitude, or from Cape Fear to Halifax, together with all islands within one hundred miles of their shores. The patentees were to divide themselves into two distinct companies, one of which, afterward called the London Company, was to have an exclusive right from 34° to 38° north, while the other, the Western, or Plymouth Company, was to have control between 41° and 45° north. The intermediate space was open to colonization by either. The London Company was dissolved by *quo warranto* in 1624. But it was not until 1635 that the Plymouth Company ceased to exist, and even then the surrender of its charter was voluntary.³

THE CHARTER OF 1620.⁴

Before any successful attempt at settlement had been made by the Plymouth Company, it was, with some changes of membership, made a separate body politic and corporate, under the name and style of "*The Council established at Plymouth, in the County of Devon, for the planting, ordering, ruling, and governing of New England in America.*"⁵ The charter of 1620 granted to the new corporation certain territories, to be called New England, extending between 40° and 48° north latitude, and from sea to sea; to be held "as of the manor of East Greenwich in free and common socage." It gave

¹ Graham, Col. Hist. of the U. S., I. 44, etc.

² The Charter is in Hazard, State Papers, I. 50.

³ Palfrey, Hist. of New England, I. 81-2, Hazard.

⁴ Hazard, I. 103.

⁵ Palfrey, Hist. of N. E., I. 192.

also rights of legislation and government; yet nothing came of any attempts to exercise these rights, for deep hostility to the patent was soon manifested, and from this, together with other causes, the difficulties of the situation became so great that the company in 1635 surrendered its charter to the King.¹ It did not, however, do this until after making a number of grants, which, from ignorance or carelessness as to previous conveyances, and the want of accurate knowledge of the geography of the country, were, in the words of Sullivan, "but a course of confusion."² Among these grants, about which there has been so much dispute, were some of importance, from the fact that through these is traced the title to a great part of the soil of New England. These grants will, therefore, be more particularly described hereafter.³

GRANT TO GORGES.

Another royal grant was made in 1639 to Sir Ferdinando Gorges,⁴ conveying a tract of land called the Province of Maine, lying between the Piscataqua and the Kennebec, and extending inland one hundred and twenty miles, from which the whole State of which it is a part has taken its name. All necessary powers of government were included in the grant, and its tenure was in free and common socage. But this grant was at an early date assailed by settlers, and indirectly by the government of Massachusetts Bay, which, in order to weaken its enemy, supported the theory that the native right was paramount to such an extensive patent. Titles from the natives were produced and were strongly upheld, and it is said by Sullivan that what was not taken from Gorges' patent by other means, was generally swallowed up by Indian deeds.⁵

¹ Graham, Col. Hist., I. 183.

² Land Titles, 36.

³ See p. 15, *post et seq.*

⁴ Sullivan's Land Titles, 42.

⁵ *Ibid.* 43.

Eventually, in 1677, the province was sold by the grandson of Gorges to Lieutenant-Governor Usher for the use of the Colony of Massachusetts Bay.¹

“*The Incorporation of Providence Plantations, in the Narraganset Bay in New England,*” received its charter from the Parliamentary Government of England in 1644. Its charter from the King was granted in 1663.² The grant of lands covered substantially the territory of the present State of Rhode Island, which had already been occupied by settlers under a government established by themselves.

“*The Governor and Company of the English Colony of Connecticut, in New England in America,*” were incorporated by royal charter in 1662.³ The territory granted comprised what is now the State of Connecticut, and also a part of New York. Parts of it were already in the hands of settlers belonging to the Connecticut and other plantations.

The royal province of New Hampshire was constituted in 1680, the chief justices in England having decided that the title and jurisdiction were in the Crown, subject, however, to the vested rights of John Mason in the soil—a reservation which rendered land titles in that province for many years uncertain.⁴ The territory subsequently reverted to the jurisdiction of Massachusetts for a short time, but from 1692 it remained a separate province.⁵ It included, as was claimed, the territory now known as Vermont. Grants both to individuals and towns were made by the governments successively in power.

The country called *Sagadahock*, lying between the Penobscot and the St. Croix, the possession of which had been long contested by the English and French, was, by the charter of 1692, placed under the jurisdiction of Massachusetts, and

¹ Willis, *Hist. of Portland*, 239, and Hutchinson.

² Arnold, *History of R. I.*, I. 114, 284.

³ Trumbull, *Hist. of Conn.*, I. 259.

⁴ See documents printed in Belknap's *Hist. of N. H.*, I. Appendix.

⁵ Graham, *Col. Hist.*, I. 244-5.

that province had authority to grant the lands. But if the King did not consent to a grant within two years after it was made, it became void. By the same charter the Province of Maine (lying between the Piscataqua and Sagadahock) was incorporated with the Province of Massachusetts Bay.¹

The rights to land conveyed by these royal grants were in all cases substantially the same. The tenure was, as of the manor of East Greenwich, in free and common socage, and not *in capite* or by knight service; the conditions, fealty, and the payment for rent of one-fifth part of the gold and silver ore.

The effect of the provisions relating to tenure has been generally, and in some cases strangely, misunderstood. But to discuss the subject fully here would require too much space. It must suffice to say that the tenure was not more favorable than, and not different from, that established by grants of lands in England of that period, and even of much earlier date.² The words "as of the manor of East Greenwich" were used, not with reference to the customs of that manor, or of the County of Kent (gavelkind, etc.), but simply to negative the otherwise necessary inference that the grant was to be held *in capite*, or, to speak more accurately, *ut de corona*,³ which would have carried with it some disadvantages under the feudal law. The words "not *in capite*" add nothing to the substance. The tenure, however, was undoubtedly as favorable to the grantees as it could well be made.

¹ Sullivan, Land Titles, 45, 55; Maine Hist. Coll., I. 239.

² I have met with several grants of the kind made by Queen Elizabeth, one as early as 1560. Madox, Hist. of the Exchequer, I. 621. History of Surrey, M. & B., I. 356, 357.

³ Lowe's Case, Bacon's Works, IV. 238, etc.

III.

GRANTS OF THE COUNCIL FOR NEW ENGLAND.

The title to land in New England is traced through the Great Council for New England, which in 1620 became seized of the whole territory, and at the time of surrendering its charter, in 1635, had already granted a great part of its lands, and taken steps for a division of the remainder among its leading members.¹ But the division was not perfected, and the ungranted lands again came into the possession of the Crown.

The confused and careless way in which the grants of the council were made has been already spoken of. The subject is exceedingly complicated, and entire accuracy could only be attained, if at all, by a long and tedious investigation. But for the present purpose, fortunately, such accuracy is not necessary, as only a few of these grants are of importance either in tracing the title or illustrating the tenure of lands.

Disregarding the grants that were forfeited or abandoned, those which failed to obtain judicial support, those which were substantially confirmations of previous grants, or which covered too little territory to be described here, we find six grants which deserve particular mention. These are :

1. In 1621, a grant to John Pierce, said to have been for the benefit of the Pilgrim colonists.² This was rather in the nature of an agreement to convey than an actual grant of definite territory.³

2. In 1628, a grant to Sir Henry Roswell and others of the territory afterward known as that of Massachusetts Bay, which will be more fully described elsewhere.⁴ This grant

¹ Lowe's Case, Bacon's Works, IV. 238, etc.

² This is the common theory. But the language of the charter, and of a deposition by Samuel Welles, published in *Maine Hist. Soc. Coll.*; I. 38, make it doubtful, and tend to show that the settlement under it was on the coast of Maine.

³ Haven, *Grants under the Great Council*, etc.

⁴ Sullivan, *Land Titles*, 48.

was followed two months later by a royal charter confirming it and granting powers of government.¹ Under an interpretation afterward held incorrect, parts of New Hampshire and Maine were comprised within its limits.

3. In 1628, a grant to William Bradford and his associates of territory intended for a fishery of the Colony of New Plymouth, extending fifteen miles on each side of the Kennebec, and up the river to Cobbiseecontee.² This tract was conveyed to the freemen of the colony in 1640, and by them in 1661 sold to Tyng and others for £500. It was afterward known as the "Kennebec Purchase."³

4. In 1629–30, a grant to Wm. Bradford and his associates of the territory afterward known as that of the Colony of New Plymouth; and also of the territory on the Kennebec, already granted in 1628.⁴

5. In 1630, a grant to Beauchamp and others, called the Muscougus grant, of a territory thirty miles square on Penobscot Bay and River. This was afterward known as the "Waldo Patent," and is still held by the heirs or assigns of the grantees.⁵

6. In 1632, a grant to R. Aldworth and G. Elbridge of the Pemaquid tract of 12,000 acres, and 100 more for every person transported within seven years. This is still held under title from their assigns.⁶

In 1629, a large tract was granted to John Mason between the Merrimac and the Piscataqua, afterward known as New Hampshire. A tract called Mariana, extending from the Naumkeag River (Salem) to the Merrimac, had been previously granted to him.⁷ Lands throughout this territory were

¹ Mass. Rec., I. 3, etc.

² Gardiner, Hist. of Kennebec Purchase, in Maine Hist. Coll., II. 275, etc.

³ Gardiner, Hist. of Kennebec Purchase, in Maine Hist. Coll., II. 276. Sullivan, Land Titles, 40 (where the latter date is given 1655).

⁴ Plymouth Col. Rec.

⁵ Sullivan, Land Titles, 44.

⁶ *Ibid.*

⁷ Belknap, Hist. of N. H., III. App.

settled and granted without regard to Mason's asserted rights ; but the controversies about them played a great part in the political and social history of the colonies for a long time. These controversies were not settled until 1746, when Mason's representative finally conveyed his remaining rights to twelve persons, sometimes spoken of as the Masonian proprietors. The proprietors quit-claimed on easy terms to settlers, and made grants for towns without claiming any quit-rent, and often without fees.¹ Mason's heirs, through one Allen, made claims as late as 1790, but the matter was practically disposed of long before that time.²

A few other grants have been sustained, but they do not seem to have affected the prevailing systems of tenure. This, indeed, is true also of some of the grants enumerated above ; but they have been noticed here merely as the sources of title to extensive tracts.

The lands in New England which had not been alienated at the time of the surrender of the company's rights in 1635, are included in grants of the Crown already mentioned.³

IV.

COLONIAL GRANTS.

GENERAL PROVISIONS.

The territory under the jurisdiction of Massachusetts Bay included not only the original grant to the company, but also, during the more important part of their history, the territories of Maine, under its various names, and of Plymouth. The colony also claimed for a time the southern part of New Hampshire, and exercised powers of government there. It made itself felt for a long time in Rhode Island, and gave to the emigrants of Connecticut their first authority

¹ Belknap, II. 205.

² *Ibid.* III. 14 ; N. H. Rep. 31.

³ See page 13, *ante*.

to form a settlement. Nor was this all. Owing to the ample privileges of the charter, the intelligence and the prosperity of the people, its land system was developed more fully, and at an earlier date, than those of the other colonies. Superior numbers, wealth and power secured for its legislation and established usages in this, as in other matters, a marked influence upon the law and customs of all New England, so that the land systems of the other colonies, as they were successively developed, took substantially the form of that of Massachusetts Bay.

In addition to all this, it must be remembered that a great part of New England was settled directly by emigrants from the Bay, and in other cases the planters were men who had at least remained long enough in that colony to become acquainted with its institutions, and to learn to look upon them as natural and necessary under the new and strange conditions of the country.

For our purpose, therefore, a careful examination of Massachusetts laws and customs is by far the most important and useful; while in regard to other colonies it will be necessary to notice only those points in which their systems differ from that which may properly be considered the typical system of New England.

Following this line of inquiry with sufficient care, we may hope to gain a clear idea of the body of rules relating to land which prevailed in this part of our country, guiding its settlement, and deeply influencing its civilization.

ORDERS OF THE COMPANY IN ENGLAND.

On the 5th of March, 1629, a committee was appointed to consider a method of dividing lands so as to "avoid all contention twixt the adventurers." The subject was debated by the company a few days afterward, and referred to a new committee.¹ The plan finally adopted was as follows:²

Mass. Rec., I. 30, 34.

²*Ibid.* I. 42, 43, 44, 363.

1. Each adventurer (or shareholder) of £50 in the common stock was to have two hundred acres, and holders of other amounts in the same proportion.

2. Every adventurer might, personally, or by his servant, request the Government to allot him land. If this was not done within ten days, he might occupy any land not already improved, not exceeding one-half of his share.

3. But if the town plat was made, and known publicly, no one was to build elsewhere (except in Massachusetts Bay, under direction). And if his lot in the town plat was not assigned him within ten days after application, he might build anywhere within the plat, and improve half an acre for each £50 of stock, unless otherwise directed as to quantity by the Government.

4. Adventurers who went, or sent others at their own charge, were to have fifty acres for each person transported. Persons other than adventurers going at their own charge, with families, were to have fifty acres for the master of the family, and such further portion, "according to their charge and quality," as the Governor and council might determine, unless otherwise agreed.

5. Conveyances under seal were to be made by the company to such as desired it.

6. If a settler disliked a place taken by him under Section 2, he might choose within the allotment whenever dividend was made.¹

In the case of colonists who were not adventurers in the common stock, the company held it fit that "they should hold and inherit their lands by services to be done on certain days in the year," as a good means "to enjoy their lands from being held *in capite*, and to support the plantation in general and in particular."²

¹ The dividend here referred to may indicate an intended general distribution by lot to all the adventurers. See letter to Endicott in 1629, Mass. Rec., I. 391.

² Letter to Endicott, May 28, 1629, Mass. Rec., I. 405.

There was a reason for making a distinction between the adventurers and others, for the common stock bore at first all the public charges, fortifications, support of the ministry, etc. This form of tenure, however, does not seem to have been established.¹

Up to this point the regulations might have been those of any trading company, made with a view to the careful management of the common property. But the request made in a letter to Endicott, the company's agent in America, that he would "accommodate such as wish to have their lands together," shows already some consideration of the social needs of the settlers.²

Another order was made for the benefit of the stockholders when, owing to losses, it became necessary to reduce the amount of the joint stock by two-thirds; it was then agreed that the old adventurers should have in compensation "a double portion of land, according to the first portion of two hundred acres, for £50."³ Later, when an increase of stock was needed for general purposes of the colony, it was ordered that land should be allotted at the same rate, according to the sums subscribed.⁴

Whether intended or not, the result was that grants under these provisions could not well in any case be large enough to form great estates and so interfere with the natural growth of settlements. There was no temptation as yet to hold lands with a view to an advance in price; no way of making a grant profitable, except by "improving" the lands granted. And it was long before this ceased to be true.

The restrictions as to the place of settlement were wise precautions against such a state of things as gave so much trouble to the Dutch of New Netherland, where, for a time, this point was neglected.

¹ Young, *Chronicles of Mass. Bay*, 187.

² *Mass. Rec.*, I, 399.

³ *Ibid.* 64.

⁴ *Ibid.* 68.

ORDERS AFTER THE COMING OF WINTHROP.

It is quite possible that up to the time of the transfer of the company to America, a division of the land was contemplated which would have entirely frustrated the purpose of these judicious rules, and perhaps have caused the failure of the whole enterprise.¹ But, fortunately, the rules had been for some time in force when Winthrop came to the Bay, and the wisdom of their spirit had already become evident to those engaged in the establishment of the new State. The general division was not made, and the rules were observed by the new Government. Before the transfer of the company to Massachusetts Bay in 1630, grants were probably made by the company's representative in America in accordance with his instructions,² but afterward all grants were made by the General Court, and were generally made upon petition.³

At first, all islands were reserved and appropriated to the public benefit, to be let and disposed of by the Governor and assistants,⁴ and, accordingly, many leases of islands were made, both to towns and individuals.⁵ But at a later day they were granted like other lands. All swamps containing about one hundred acres were to lie in common.⁶ But with these exceptions all lands were available for grants, either to plantations or individuals.

The estate granted was generally a fee without reservation. But in a very few cases grants were made for life, or other term, and upon payment of rent.⁷

Before making a grant, the court appointed a committee to view the desired land and report as to its suitableness.⁸ The

¹ Mass. Rec., I. 391.

² *Ibid.* 391, 405.

³ *Ibid. passim.*

⁴ *Ibid.* I. 89.

⁵ *Ibid.* 94, 104, 115, etc.

⁶ *Ibid.* I. 111.

⁷ As in the case of some of the islands just mentioned.

⁸ Mass. Rec. ; Conn. Rec. *passim* ; but not when the grant was to an individual. Yet see Conn. Rec., I. 359.

order for a grant sometimes gave the intended boundaries,¹ but it usually only indicated the locality, and but rarely (except when made to an individual) mentioned the quantity of land.²

The order for a grant sometimes named a committee to lay it out,³ otherwise such a committee was subsequently appointed at the request of the grantee.⁴ The latter course was more usual, and the committee, after "laying out" the grant, submitted their report to the court, whose confirmation of it was essential.⁵ But committees did not always do their duty. In 1634, it was found necessary to appoint a general committee to set out the bounds of towns not yet set out, or in dispute;⁶ and in the grant made for Sudbury, in 1656, it was provided that the grant should be void if the committee named did not make return to the next court of election.⁷

Care, too, was taken that the bounds thus granted should be well surveyed, and the lines preserved. In 1641, it was ordered that every town should set out its bounds within a twelvemonth after they were granted;⁸ and in a case of gross neglect by a town, the court upheld the title of one who had in good faith laid out a farm within the limits of the grant.⁹

The committees were expected to take cognizance of the usual provision that the land should not be laid out "to the prejudice of other grants"; and in grants to individuals, the description was often "where he may find it without prejudice

¹ As in Endicott's and Cradock's. Mass. Rec., I. 97, 141.

² Mass. Rec.; Conn. Rec.

³ Dummer's grant, Mass. Rec., I. 141.

⁴ As in Endicott's; *ibid.* II. 259.

⁵ *Ibid. passim.*

⁶ *Ibid.* I. 125.

⁷ *Ibid.* IV. 264.

⁸ *Ibid.* I. 319. In 1647, towns were also required to perambulate their bounds every three years. Mass. Rec., II. 210. In Connecticut it was to be done every year. Conn. Rec., I. 513.

⁹ Mass. Rec., IV. 368.

to any plantation, made or to be made.”¹ Yet it will be noticed that grantees had but a very limited range of choice, and that grants were for some time confined to the immediate vicinity of Massachusetts Bay. And when settlements were authorized beyond Cape Ann on the eastern coast, it was probably with a definite purpose of anticipating the threatened movements of the French in that quarter; perhaps, also, of Englishmen, who were strangers to the undertaking of the Bay colonists.²

All these provisions relating to land grants sufficiently indicate the watchful care that was exercised by the Government. The purpose, evidently, was not to make individual settlers rich in lands, nor even simply to dispose of land to those who would actually occupy and cultivate it all. But the resources of the company were to be used in building up a compact State of freeholders, covering a territory ample for the requirements of comfortable living, and nothing more. No inducement, no excuse, was to be given for a loose, an isolated mode of settlement, which would have enfeebled the political development of the colony, and left it at the mercy of its enemies, or, at best, dependent upon the protection of England for its very existence.

V.

COLONIAL GRANTS—(CONTINUED).

GRANTS TO PRIVATE PERSONS.

Although the leading provisions relating to this subject have already been given as applying to all grants of public lands, the grants made to individual settlers during the first period of the colony's existence merit attentive examination. We will first consider the *extent* of grants, as a thing deeply affecting the whole question of land tenure.

¹ Mass. Rec. *passim*. The Johnson grant was exceptional: III. 189.

² Winthrop, *New England Hist.*, I. 99.

The first grant to a private person appearing in the records of Massachusetts Bay is one of 600 acres to Winthrop, in 1631, and it is the only entry for that year. In 1632, there were six grants, averaging 148 acres each; in 1633, one grant only of 50 acres. In 1634, the number rose to nine, including one of 1,000 acres to Haynes. The average, however, was only 383 acres. A large tract was granted in 1635 to Cradock (formerly Governor), extending "a mile from the riverside in all places"; and there were two other grants of 500 acres each, besides that of Taylor's Island. In 1636, there was a grant of 1,000 acres to Saltonstall. In 1637, Dudley received 1,000 acres, and there were two or three small grants besides. In 1638, there were fourteen grants, including one of 1,500 acres, which brought the average up to 372 acres for the year.

At this time a committee was appointed to report on all applications for lands, and in 1639 there were twenty-three grants, averaging 360 acres each. But after this time the number of grants is much smaller. The wants of the leading men had been provided for, and all others were referred to the towns. Thus in 1640 there were but five grants, and the same number in 1641. In 1642 and 1643, there were three each; in 1644, one; in 1645, two; in 1646 and 1647, none. But in 1648 there were five—three of them, however, in the Pequot country—in 1649, again five; and in 1650 there were two large grants. One of these was to the executors of Isaac Johnson, 3,200 acres, in consideration of his large "adventure in the stock." The other, of 3,000 acres, to Saltonstall, was in lieu of a former grant. In 1651, 1652 and 1653, there were three grants each year; in 1655 there was but one; in 1656 there were six. Thus, during a period of twenty-five years, there were little more than one hundred grants, the largest being those to Isaac Johnson's representatives (3,200 acres), Mr. Nowell's (2,000 acres),¹ Mr. Salton-

¹ Even this was ordered to be laid out "in two or three farms." Mass. Rec., IV. 282.

stall's (3,200 acres in all), Mrs. Winthrop's (3,000 acres),¹ and Governor Cradock's tract. John Winthrop received 3,000 acres in the Pequot country. Very few of the others received above 500 acres, and most of the grants were not more than one-half so large as that.²

It will be noticed that these grants were made to the men most prominent in the history of the company and of the colony—many of them magistrates and clergymen. In many cases they are expressly said to be in consideration of the "adventure" of the grantees or their ancestors, and we may safely assume that most of them were so.

But after the first few years we find a new class of grants, made in consideration of services rendered to the colony, moneys disbursed for it,³ or else in encouragement of undertakings likely to be beneficial to it. So, at a very early date, we find that the grant to Mr. Eaton, a teacher, is on condition that "he continue his employment with us for life."⁴ E. Rawson's is on condition that "he go on in the business of powder."⁵ In 1641, Stephen Day received a grant, "being the first that set upon printing."⁶ Goodman Stowe's, in 1642, was "for writing the laws."⁷ A large grant was made in 1645 to the owners of iron works for mining;⁸ and in 1648, one was made to J. Winthrop, Jr., on condition of his establishing salt works on Massachusetts Bay.⁹ In 1651,

¹ This was made at a time when large voluntary contributions were made by towns and individuals to relieve the Governor's financial embarrassment, caused by the unfaithfulness of his bailiff. Winthrop, N. E. Hist., II. 3, Savage's note.

² The statements in regard to the grants of each year are made from a careful examination of the colonial records for the whole period, and are believed to be accurate.

³ Mass. Rec., III. 413.

⁴ *Ibid.* I. 262.

⁵ *Ibid.* I. 263.

⁶ *Ibid.* I. 344.

⁷ *Ibid.* II. 14.

⁸ *Ibid.* II. 125.

⁹ *Ibid.* II. 243; Conn. Rec., I. 410.

Governor Endicott received one, on condition that he set up copper works.¹ Others received large grants for services in arranging the relations of settlers to the eastward,² and in the Pequot War,³ etc. Of these was Mr. Nowell's grant, already mentioned; and there were a number of grants of this class, from 300 acres to 500 acres, given for ordinary civil services of different persons.

For some grants no cause or consideration is assigned, but it is fair to assume that these, like others, were either for services rendered, or, in the earliest years of the colony, for shares in the "adventure."

In the particulars mentioned, the early land systems of the other colonies were in substantial agreement with that of Massachusetts, except that in some (*e. g.*, in Connecticut) there was greater freedom in regard to place of settlement. In the territory now known as Maine, the large grants from the Crown, and from the council at Plymouth, made an apparent exception to the rule of small holdings which prevailed elsewhere. Yet these large estates were not the result of the institutions of the country, but, on the contrary, were looked upon with disfavor by the people of the colonies, and with difficulty maintained among them. The transplanted feudalism of Gorges found no nourishment in the alien atmosphere of his own settlements, and many grantees would gladly have seen the breaking up of their estates. But the scarcity of settlers, and the confused state of titles, prevented the sale of lands. The great grants of Maine were doubtless an injury to the province, and hindered its development, but they have probably had no other effect upon the prevailing land system than to obstruct its natural working in the territory covered by them, which was in consequence to a great extent left waste.

A careful husbanding of vast agricultural and other resources

¹ Mass. Rec., III. 256.

² *Ibid.* III. 339.

³ Conn. Rec., I. 70, 208, 408.

in the interest of the whole commonwealth; a methodical occupation of its territory, involving great restraint upon the individual wills of settlers, with a view to the greatest safety and prosperity of all; an avoidance of even the beginnings of great accumulations of landed property, are the clearly marked features of the early system of grants to private persons, and the same things will again appear in examining the history of grants to communities.

VI.

COLONIAL GRANTS—(CONTINUED).

GRANTS TO COMMUNITIES.

It has been shown that, during the earlier years of the colonies, grants to individuals were small in number and in extent, and were made either on the ground of interest in the stock of the company, or of services rendered to it. But by far the greater part of the land disposed of was granted to communities of settlers, who were sometimes members of some existing community, sometimes men who had never lived in the country, grouped together from various causes. The formation and development of these communities constitute one of the most important chapters in the history of the political and social institutions of New England.

To what extent the formation of land communities in the colonies was connected with the existence of similar institutions in ancient times in England and on the Continent, is an interesting question. The studies of Maine, Maurer, Nasse and Laveleye, have shown that the village community is probably a primitive Aryan institution, and the researches of Nasse especially have shown how much of it has survived in English law and in English life. It is possible that at the beginning of the seventeenth century some features of the earlier land system no longer in actual existence were yet

known to the people of the west of England, by tradition or otherwise, and certainly some traces of the ancient system were familiar to all even then.¹

Old habits of thought survived, too, in the customs of the manor and the burgh, and especially in the parish; and, doubtless, similar economical conditions tended to produce similar social institutions.

It is not possible to adequately consider the subject in this place, nor, indeed, has it as yet been sufficiently investigated. But the resemblance between the land communities of New England and those of the Old World is certainly too striking to be overlooked.

“In the true village community,” says Maine, “the village itself is an assemblage of houses, contained, indeed, within narrow limits, but composed of separate dwellings, each jealously guarded from the intrusion of a neighbor. The village lands are no longer the collective property of the community; the arable lands have been divided between the various households; the pasture lands have been partially divided; only the waste remains in common.”² This would be recognized, by any one acquainted with the early history of our towns, as a very good description of them. Some other remarkable correspondences will be noticed in the course of this essay; but whatever may be thought of their importance, the consciously provisional nature of the land community in this country must not be lost sight of.

The immediate cause of the formation of these communities is more easily discovered. When men came in ship-loads from the mother country, large grants of land were called for, and those who had been neighbors in England naturally wished to be together in their new homes.³ Emigrants from

¹Nasse, über die Mittelälterliche Feld-gemeinschaft in England, and see evidence cited by Maine in his “Village Communities.”

²Early History of Institutions, 81.

³Mass. Rec., I. 399. The Dorchester church was formed in England. Weymouth people came from England with their minister. Winthrop, N. E., I. 163.

the older settlements, too, were often kept together in a body from the same fact of former neighborhood, and often formed a genuine colony of some older plantation.¹ The importance of local church relations, and the need of mutual protection, were always strongly felt, and the sentiments of the whole body of colonists favored the settlement of the country by "plantations."

Efficient measures were taken to secure good organization and good management at the outset. In the oldest settlements the leading members of the Government were leaders also in their respective towns, and general legislation for a time was not needed. But the principles of the founders of the colonies required that new plantations should be managed in strict subordination to the interests of the whole, and this they accomplished by the aid of various provisions connected with the grants.

To this end, in addition to the measures already mentioned, committees were named to take charge of the allotment of lands and the admission of inhabitants, thus insuring conformity to the policy of the Government. So, in 1634, Winthrop, Humphrey and Endicott were ordered "to divide the lands at Ipswich to particular persons as in equity they shall think meet."² When the settlement of Hampton was authorized, it was ordered that nothing should be done without allowance of a commission consisting of Messrs. Bradstreet, Winthrop, Jr., and Rawson.³ The same thing was done in the cases of Sudbury,⁴ Nashaway⁵ and other plantations,⁶ and it became the general practice. That it was not always done, may be due to the fact that the court was careful not to authorize new plantations unless they were to be in a measure

¹ Thus Winslow was a Dorchester colony; Woodstock was settled by men from Roxbury, etc.

² Mass. Rec., I. 136.

³ *Ibid.* 236.

⁴ *Ibid.* I. 271.

⁵ Mass. Rec., II. 136.

⁶ Sometimes in Conn.; see Conn. Rec., I. 414; 71, etc.

under the influence of men in whom confidence could be placed, and commonly acted upon their application. When such leadership of the undertaking was secured, the court was ready to give its sanction and its aid.

The earliest settlements in Massachusetts Bay had, so far as appears in the records, no formal authorization. They were so near to each other that all questions could be disposed of by common agreement or the word of the magistrate; but they soon crystallized into a number of separate communities.

In 1633, reports that the French were attempting the colonization of the coast to the eastward excited apprehension, and it was decided that a plantation should be begun at Agawam (Ipswich), "lest an enemy, finding it void, should possess and take it from us."¹ Two months later, John Winthrop, Jr., with twelve others, went there to begin the settlement,² and the General Court then ordered that no others should go there without its leave.³ The next year a committee of the court was authorized to allot lands within four miles of the village.⁴ This was the first plantation in New England made under the auspices of any colonial authority.

A year later (1634) the pressure for land began to be felt at the Bay, and the colonization of the interior and the remoter seacoast began—a movement which, although stronger at some times than at others, was thenceforth practically continuous.

The inhabitants of Newtown (Cambridge) were the first to complain for the want of land, and, obtaining leave of the court to seek some convenient place, they sent men to Agawam and Merrimack to report.⁵ Some also went to visit the

¹ Winthrop, N. E., I. 99.

² *Ibid.* 101.

³ Mass. Rec., I. 103.

⁴ See *ante*, 29.

⁵ Mass. Rec., I. 119; Winthrop, I. 132.

Connecticut River, and at the next court they asked leave to remove thither. The subject was long and earnestly debated, but the adverse vote of the assistants for the time prevented the giving of the desired authority.¹

The next year some of the leading men of Ipswich were allowed to form a plantation at Newbury,² and a company of twenty-one families from England, with their minister, was authorized to form a plantation at Weymouth, where there was already a small settlement.³

The state of affairs in England was rapidly growing worse, and immigration to this country was in consequence greatly increased. Grants were made for plantations at several places, not far from existing settlements. But the time had come for the occupation of more distant points, and preparations were made for emigration on a large scale from the plantations of the coast.

In urging their request for permission to remove, the petitioners had set forth the fruitfulness and commodiousness of the region, and the danger of leaving it to be possessed by others, Dutch or English.⁴ The latter was a strategic reason, which doubtless had its weight (as in the course of the settlement of Ipswich).⁵ But the principal attraction was, without doubt, the prospect of abundant provision for cattle in the great meadows of the central valley. The colonists had much live stock. Wood says, in 1634, that they had "1,500 head of cattle, besides 4,000 goats, and swine innumerable."⁶ Lechford also speaks of the "good store of cattle,"⁷ and it appears that the transportation of cattle, horses, etc., with Winthrop cost £12,000.⁸ The neat cattle carried to New

¹ Winthrop, I. 140.

² *Ibid.* I. 160 ; Mass. Rec., I. 146.

³ *Ibid.* I. 163.

⁴ *Ibid.* 140.

⁵ *Ante* 30.

⁶ New England's Prospect, 54.

⁷ *Plaine Dealing.*

⁸ Josselyn, *Two Voyages to New England*, 132.

Plymouth in 1624 throve and increased exceedingly,¹ and in 1642 there were already 1,000 sheep.² It is evident, therefore, that live stock was very abundant, and in our climate a supply of hay as well as pasturage is so essential that Wood, in describing towns, always mentions that they "have hay-ground"; but we know now that his accounts of unlimited sources of supply were exaggerated. We cannot be surprised, therefore, to find that the course of settlement follows the line of wide alluvial valleys, especially those of the Connecticut and its tributaries. Rich meadows were the main object of the emigrant's desires, and this accounts for the order of settlement of different places. It explains, too, why the orders for grants frequently directed³ (and seem always to have implied) that the tract granted was to comprise both upland (including timber) and meadow, thus supplying all the wants of the community. This practice was followed by the plantations in allotting lands and regulating their use.

The extent of grants made to communities is a point of interest, both because the lands thus came into the hands of a definite number of persons; and were also for the most part soon divided among them, and also because of the political subdivisions which were based upon them.

As to the extent of grants, we have seen that at Ipswich the lands were to extend four miles from the town. There were other cases where tracts of eight miles square were granted—*e. g.*, Groton,⁴ Mendon,⁵ and the grant on the Saco River for Newbury⁶—and a ten miles' square was offered to Captain Hawthorne and others proposing to make a settlement forty or fifty miles west of Springfield. On the other

¹ Josselyn, *Two Voyages to New England*, 146.

² *New England's First Fruits*, 39. Winthrop, I. 160. The Dorchester colonists lost near £2,000 worth of cattle the first winter in Conn. Winthrop, I. 184.

³ *Mass. Rec.*, I. 156.

⁴ *Ibid.* III. 388.

⁵ *Ibid.* IV. 445.

⁶ *Ibid.* 402.

hand, some of the oldest towns were quite small; but in general a tract six miles square, or its equivalent, was thought of the best size for a plantation. As to its relation to the number of planters, we find, in the case of Groton, that a committee of the General Court thought that the tract was large enough for sixty families, which would have given them over one square mile each.¹ But the report of the same committee shows that this was not looked upon as the permanent limit of population, and we are told by Winthrop that "a principal motive which led the court to grant * * such vast bounds was that when the towns should be increased by their children and servants growing up, etc., they might have place to erect villages where they might be planted, and so the land improved to the more common benefit."²

Many villages grew up within the limits of the older plantations, and eventually became separate towns. Thus Charlestown originally (until 1641) included what afterward became the towns of Malden, Stoneham, Woburn, Burlington, Somerville, West Cambridge, Medford, and part of Cambridge.³ Many plantations received additional grants for the express purpose of enabling them to form new villages. Thus, in 1639, land was granted to Salem for a new village⁴ (afterward Wenham), and the next year Shawshin (Billerica) was granted to Cambridge for the same purpose.⁵ Dedham also received additions which became Wrentham and Medfield.⁶ And so in other places. In 1683, a tract in the interior eight miles square was granted to Roxbury, which when settled received the name of Woodstock (Conn.).⁷ The granting to towns of tracts at a distance for settlement subsequently became a common practice. The settling of a

¹ Mass. Rec., IV. 9.

² Winthrop, N. E., II. 254.

³ Brook's Hist. of Medford, 2.

⁴ Mass. Rec., I. 279.

⁵ *Ibid.* 330.

⁶ Annals of Dedham.

⁷ Ellis's Hist. of Roxbury, 72.

new plantation was a very important matter, and was formally resolved upon and prepared for by the mother town. The Scituate people who settled Barnstable, when expecting to go to Sippecan, "prayed for direction in electing committees for setting down the township."¹ The land was sometimes sold by the proprietors in the old town to the settlers. Thus, Dedham in 1661, in voting to settle what was afterward Wrentham, grants six hundred acres to the settlers, and afterward gives up all claim to them, for which they are to pay £160, in instalments.² Roxbury, in settling Woodstock, voted that if thirty men should go they should have one-half of it, in one square, at their selection, and £500 to assist them, to be laid out in public buildings. The other inhabitants were to have the rest.³

It was important that when a tract of land was granted, either to an individual or for a new plantation, it should be speedily occupied, as the making of still other grants might depend upon it. But it would seem that some neglected to improve their grants, for in 1634 it was ordered that if any large grant was not improved within three years, the court might dispose of it.⁴ In the case of plantations, it was generally made a condition that a certain number of families (commonly twenty) should be settled within a given time (usually from one to three years), so that a ministry might be supported. Sometimes, also, it was stipulated that settlement should begin within a certain time.⁵

It was necessary that unfriendly settlers should be excluded from the new plantations, and also that existing settlements should not be unnecessarily weakened. So it was ordered, in 1635, that none should go to the new plantation

¹ Letter of Rev. Mr. Lothrop, in Freeman, Cape Cod, II. 275.

² Annals of Dedham.

³ Ellis's Roxbury, *loc. cit.*

⁴ Mass. Rec., I. 114. Mr. Dudley, however, had a grant of 1,000 acres, "without limit to time of improvement." *Ibid.* 206.

⁵ Mass. Rec., Conn. Rec.

at Marblehead without leave of court or of two magistrates;¹ and the following year the same powers were conferred upon the majority of the magistrates with reference to all new plantations.²

But the Government went further, and aided the settlement of new plantations more actively, and, when important to the colony, by extraordinary acts and measures. So, when settlement was authorized at Newbury, an advance post, it was resolved that the court should have power to see that it received a sufficient number to make a town.³

Again, when Concord was settled, the magistrates were authorized to impress carts, etc., for those who had goods to be carried thither;⁴ and at Hampton men were so impressed to build a house forthwith.⁵

The new plantations were exempted from the payment of public charges for a variable number of years up to six or even more, in the more remote and hazardous situations.⁶

The interests of individuals were often made subordinate to those of plantations, as those were to the colonies.⁷ A house built without leave from the town, if prejudicial, might be demolished and the persons removed.⁸ Private lands might be taken for the purposes of the settlement, but the rights of grantees were protected, and provision was made for compensation in case of damage.⁹

¹ Mass. Rec., I. 147.

² *Ibid.* I. 167. A settlement at Hampton was first authorized.

³ *Ibid.* 146.

⁴ *Ibid.* 157, 182.

⁵ *Ibid.* 167.

⁶ *Ibid.* *passim*. Saco River Settlement, IV. 424.

⁷ *Ibid.* I. 147; II. 48.

⁸ *Ibid.* I. 168.

⁹ *Ibid.* I. 68, 147.

VII.

LAND COMMUNITIES.

COMMONERS AND NON-COMMONERS.

The last stage in the process of distribution is that in which lands pass from the community to its individual members, involving the dissolution of the community itself, or its transformation into a political community.

“In Swiss villages,” says Laveleye, “the Beisassen, or simple residents, frequently have no share in the ‘Allmends.’ The Beisassen have often complained of this distinction, which has given rise to violent struggles between the reformers, who demand equal rights for all, and the conservatives, who endeavor to maintain the old exclusion. * * * Generally, arrangements have been adopted securing certain rights to the mere residents.”¹ We have here, in a few words, the history of the land communities of our own colonial period, wherever the inevitable collision of hostile interests has not been prevented by some happy combination of circumstances.

The distinction between “commoners” and “non-commoners” was very early made, and these names themselves were in general use. But the term “proprietor” was also employed with the same meaning as “commoner,” and soon came to be considered the proper legal term; and we find now in our towns the records of the owners of common lands always under the name of “proprietors’ records.” The “commoners” were originally those to whom the General Court had made a grant of land in common for settlement, very often, as we have seen, without giving the grantees entire, unfettered control. They formed, as has been held, a *quasi*-corporation, having the powers of other corporations for certain specified purposes.² The right of a commoner

¹ *La Propriété Primitive*, 23.

² 3 Verm. Rep. 553. Mass. Rep.

might be conveyed or inherited like other real estate, and one who thus became entitled to a right was not necessarily an inhabitant, nor was he necessarily entitled to vote in the town-meetings, when township privileges had been conferred upon the inhabitants of a plantation. On the other hand, it by no means followed that because a man was entitled to a vote in the town, he was also entitled to a voice in the control of the common lands, or that he had any right to them whatever. The land community and the political community were distinct bodies, capable of dealing with other persons and bodies, and with each other as separate juristic persons.¹

Thus we find votes of the town according rights to the "proprietors," or even making engagements with them.

The proprietors, too, might make grants to the town as to any other parties, as in the case of Ipswich (Mass.), where they granted the "cow commons," north of the river, comprising 3,244 acres, to the inhabitants of the town (which probably included all the commoners), to be improved.² The same proprietors, in 1788, granted to the town their whole interest in the commons, to help pay debts incurred in the Revolution.³

But, although the distinction between the two bodies is well marked and generally observed, in practice they were sometimes blended, and the strictness with which they were at any time kept apart depends upon a variety of circumstances.

In plantations where the inhabitants were all commoners, or where there were few who were not such, the distinction was commonly disregarded at first. The two bodies were

¹ This is the case in many Teutonic village-communities, the result of a long course of changes in the original system. See v. Maurer, *Gesch. d. Dorfverf.* II. 247, etc. Especially in Switzerland, *ibid.* p. 253. Comp. Laveleye, *loc. cit.*

² Felt, *Hist. of Ipswich, etc.*, 14.

³ *Ibid.* 161. The tract called the Town Common was granted to the town of Cambridge (Mass.) by the proprietors, to lie undivided, etc., forever. Proprietors' Records in Holmes's *Hist. of Cambridge*, 35.

substantially identical, and acted as one. At the meetings of the freemen, matters relating both to the land rights of the community and to the local government of the plantations were settled, and the same records served for the town and for the proprietors. So, for instance, in Groton, settled in 1655, there were no separate meetings of the proprietors prior to 1713.¹ But as the number of non-commoners became considerable, the original settlers multiplying, and newcomers streaming in, the commoners found it necessary to look after their rights. In the town of Hampton (N. H.), where three years after the settlement (1641) persons who were not freemen were present at the town meetings, as appears by the records, it was voted in 1662 that “no man be considered an inhabitant, or act in town affairs, * * * but he that hath one share at least of commonage, according to the first division.”²

In 1700, it was voted that no one should vote unless a freeholder; and “none to vote to dispose of lands, unless he is a commoner,” etc.³ Thus, by this simple contrivance, the necessity of two organizations was for a time avoided. But this was not long deemed sufficient, and separate meetings of the “proprietors” and of the town became the rule, and were held so long as any common lands remained. Separate records of these proprietors’ meetings are very generally found in the older towns, where they form legal evidence of title.

In some of the towns, the need of protecting the rights of commoners was strongly felt almost from the beginning. This was especially the case in the oldest plantations, which were most directly affected by the stream of immigration from England. In Watertown (Mass.), even in 1635, it was voted, “In consideration there be too many inhabitants in the town, and the town thereby in danger to be ruined,

¹ Butler, Hist. of Groton.

² Records of the town of Hampton.

³ *Ibid.*

that no forrainers coming into the town, or any family arising among ourselves, shall have any benefit, either of commonage or of land undivided, but what they shall purchase, except they buy a man's right wholly in the town."¹ In 1660, it was said in Ipswich that "the common lands are overburdened by dwelling-houses. No house henceforth erected is to have any right to commonage, or to the common lands, without express leave." And this order was confirmed by the General Court.²

The distinctive rights of the proprietors were in general fully acknowledged by the town. At Haverhill, in 1702, the town refused to act on a petition, "because not directed to the proprietors of lands, but to the town, many of whom have no power to vote in the disposal of lands."³

At Wenham, when the power of the commoners to divide lands was questioned, the town confirmed it, and granted the lands to those who had drawn them.⁴ But the rights of the respective parties were not always so clearly understood, and it is certain that some had honest doubts upon the subject, and in some cases opinions prevailed which were actually wrong. It may⁵ be conjectured that the readiness of the towns to recognize the rights of the commoners depended very much upon the relative strength of the commoners in the town meetings. Where the majority of the voters were commoners, although there might be discontent, and although that discontent might be loudly expressed, there would be no attempts to seize the power to control or dispose of the com-

¹ Bond, *Hist. of Watertown*, 995.

² Felt, *Hist. of Ipswich*, 16. *Mass. Rec.*

³ Chase, *Hist. of Haverhill*, 205.

⁴ Allen, *Hist. of Wenham*, 50.

⁵ The Selectmen of Roxbury were directed, in 1692, to consult authority and obtain their judgment concerning the right proprietors of common lands. "Some claimed that they belonged to the first proprietors, and not to the body at large." Ellis, *Hist. of Roxbury*, 72-3. And in Barnstable there were hot debates upon the same questions. Freeman, *Cape Cod*, II. 202-3.

mon lands. But there is abundant evidence that where the numbers of the non-commoners were sufficient, either alone or in combination with a fraction of the commoners, there was no lack of a disposition to get control, and to exercise that control for their own advantage; and this was done sometimes with little regard to legal rights.

In the same town of Haverhill, to which I have referred as an instance of clear recognition of the proper ownership of common land, there were long-continued troubles about that very point, and the non-commoners, after making to the commoners a proposition to share with them, which was refused, tried to exercise control, and to grant lands. As the commoners proceeded to make divisions of the commons, and continued to do so, the feeling became very bitter. In 1723, committees were chosen by both parties to make some agreement, and some small grants were made to the non-commoners to quiet them. But the troubles revived and the strife grew worse. Two sets of town officers were chosen, and the General Court had to decide between them. But the proprietors prevailed, and at length the opposition was given up.¹

But in other cases the proprietors did not fare so well. In Simsbury (Conn.), in 1719, the town, after reserving commonage, voted to sequester the rest to the town, and to grant it as the majority—not in numbers, but in ratable estate—should determine. This gave great offense, but the town made many grants. In 1723, a town-meeting was held which lasted for three successive days and nearly one whole night, and grants were made to the greater part of the inhabitants.

The proprietors appealed to the Legislature, but got no relief until the general law was passed some years later. After that they managed exclusively what lands were left, but it does not appear that they ever received any redress for the injuries inflicted by the action of the town.

¹ Chase, Hist. of Haverhill.

In the nature of things, there must have been contentions about these questions very generally in the towns of New England, although under some circumstances they were long postponed.¹ In the towns of the Connecticut Valley the subject of dividing the commons was not much agitated until the latter part of the 17th century. But the agitation continued with intervals for half a century or more. Jonathan Edwards, in a letter written in 1751, said there had been in Northampton for forty or fifty years "two parties, somewhat like the court and country parties of England, if I may compare small things with great. The first party embraced the great proprietors of land, and the parties concerned about land and other matters."²

In some cases the differences between the two parties were settled by committees from their own number,³ or by referees from other towns.⁴

But extreme measures and even the necessity of arbitration were commonly avoided by the good sense of both parties, and by the public spirit frequently shown by the proprietors. The reason for making grants of more territory than was needed for the immediate wants of the first settlers has already been stated,⁵ and it was, in most cases, well understood. The legal title was in the original planters, but there was in most cases a moral trust in favor of later comers, and, although sometimes only under pressure, the obligation was very generally recognized—at least so long as the commons exceeded the requirements of the commoners. There were two ways of satisfying the claims of non-commoners. The first was by increasing the number of commoners, and this was not infrequently done. The old records give evidence of the custom, mentioning, without comment, the admission of com-

¹ Phelps, *Hist. of Simsbury*, 80 *et seq.*

² Judd, *Hist. of Hadley, etc.*, 281. *Comp. Maine, Early Hist. of Inst.* 84.

³ See p. 40, *ante*.

⁴ As at Barnstable. See Freeman, *Hist. of Cape Cod*, II. 202.

⁵ *Ante*, 33.

moners.¹ And in some cases the number of commoners varied according to a fixed system.

But more usual was the granting of certain lands to newcomers without any accompanying rights to commonage. This was done either for individuals by name, or to all of a given class. At Barnstable four acres were voted to every widow.² Oftener still the newcomers were included with the commoners in a general division of lands to all the inhabitants, by which, however, no right to share in further divisions was conveyed. Thus at Eastham, in 1652, a division of common lands was made "to first settlers and newcomers."³ So, too, at Ipswich, as we have seen, a large tract was granted to the inhabitants, with the commoners, to be improved.⁴ In the towns of the Connecticut Valley, and some towns of the New Haven Colony, it seems to have been usual to make such division, the rights of the original settlers being sufficiently protected by the principle of the allotment, of which we shall speak.⁵

VIII.

LAND COMMUNITIES — (CONTINUED).

DIVISION OF COMMON LANDS.

In the allotment of lands in the different towns, several things were taken into consideration. For the simplicity of the rules adopted by Wenham (Mass.), with but one dissenting voice, "that all commoners should stand equally, both

¹ Felt, *Hist. of Ipswich*, 161; 144 new commoners were admitted there. Records of Hampton, etc. At Duxbury, in 1710, *the young men* were granted, on petition, half a share. Town Records, in Winsor, *Hist. of Duxbury*.

² Freeman, *Cape Cod*, II. 379.

³ *Ibid.*

⁴ Felt, *Ipswich*, 14.

⁵ Lambert, *Hist. of New Haven*, etc. Judd, *Hist. of Hadley*, etc.

as to quantity and quality,"¹ had but few imitators. Numbers were, of course, an essential element in the computation, but estate was of still more consequence and prominence, and was very generally made the principal basis of division.

The valuation of each man's estate was for this purpose made from the tax-list, according to the rates paid by him toward the public expenses. Thus, at Haverhill, in 1643, it was voted that "he that was worth £200, to have 20 acres to his house-lot * * * and so every one under that sum to have acres proportionable for his house-lot, together with meadow and common, and planting ground, proportionably."² At Ipswich, 1665, lands were divided among the commoners according to rates.³ So, too, at Dedham,⁴ where a somewhat complicated rule prevailed; in Hartford and the other Connecticut River towns;⁵ in the settlements along the Sound,⁶ and in many other places.

Where the town itself did not prescribe the mode of division, the committee having the division in charge would commonly favor those having estate, as we see in the case of the Boston committee, about whose election there was so much trouble in 1634. Winthrop says: "The inhabitants of Boston met to choose seven men who should divide the town lands among them. In their choice they left out Mr. Winthrop, Coddington and other of the chief men; only they chose one of the elders and a deacon, and the rest of the inferior sort, and Mr. Winthrop had the greater number before one of them by a voice or two. This they did as fearing that the richer men would give the poorer sort no great proportions of land, but would rather leave a great part at liberty for new comers and for commons, which Mr. Win-

¹ Allen, *Hist. of Wenham*, 2.

² Records of Haverhill, in Chase, *Hist. of H.* 56.

³ Felt, *Hist. of Ipswich*, 16.

⁴ *Annals of Dedham*, 82.

⁵ Judd, *Hist. of Hadley, etc.*

⁶ Lambert, *Hist. of New Haven, etc.*

throp had oft persuaded them to as best for the town." The elders were offended and Winthrop declined. But a new election was held, after a talk by Mr. Cotton, and Winthrop and other leading men were appointed to dispose of the lands as they should see fit. Winthrop says of their course that it "was partly to prevent the neglect of trades * * * and partly that there might be place to receive such as should come after; seeing it would be very prejudicial to the commonwealth if men should be forced to go far off for land, while others had much, and could make no use of it more than to please their eye with."¹ This account well illustrates both the spirit of the leaders, and the opposition sometimes found. But we have seen that at an early day it became the practice of the General Court to name committees to superintend the organization of new plantations, and one of their most important functions was the division of lands among the first settlers. In a few cases the Government fixed a maximum which no grant could exceed until a certain number had joined the community.² But the whole subject was generally left to the discretion of the committee. In this way conformity to the policy of the Government was insured.

The opposition to such a plan of division which might have been expected was prevented in great measure, partly by the evident reasonableness of the general principle that land should be given to those who could use it, and partly by the provisions made to guard against excessive inequality in the shares allotted to different persons.

At Springfield (Mass.) it was the original agreement (1636) that every inhabitant should have a convenient proportion of land for a house-lot, "as we shall see meete for every one's quality and estate." Then, further, "we shall observe this rule about dividing of planting ground and meadow, in all planting ground to regard chiefly persons who are most apt to use such ground. And in all meadow

¹ Winthrop, N. E., I. 152.

² Mass. Rec., IV. Part II. 500; V. 22.

and pasture, to regard chiefly cattle and estate, because estate is like to be improved in cattle, and such ground is aptest for their use. *And yet we agree*, that no person that is master of a lot, though he have not cattle, shall have less than 3 acres of planting ground, &c.”¹ In Northampton, allotments were to be to families, according to “names, estates and qualifications,” but every single man was to have 4 acres of meadow, besides the rest of his division, and every head of a family 6 acres.² In the division of Hadley lands, each proprietor received allotments according to a sum annexed to his name, called estate, varying from £50 to £200, and probably the result of amicable agreement. At another time, an estate of £150 was credited to each proprietor, perhaps in addition to his “rate.” In this town, although lands were divided according to each one’s real estate as it stood in the tax-list, we find that the head of a family *without real estate* drew on different occasions 50, 50 and 11 acres, respectively. In one, a £50 allotment was given to every householder, and £25 for each male minor above 16.

Although in this way “the wealthy man had as much on account of his slave as the poor man on his own account,” the poor man was well provided for, and we are told that, apart from the grants just mentioned, among the original proprietors of Hadley, the largest share was only four times greater than the smallest, and later five times greater; and that “the equity of divisions was never called in question.”³ In a division made at Ipswich in 1665, lands were divided according to rates in the proportion of 4, 6 and 8, thus giving the poorest one-half as much as the richest.⁴ The same pro-

¹ Records of Springfield, in Holland, Western Mass. I. 25.

² *Ibid.* I. 47.

Barnstable, by general consent, divided one-third to every house-lot equally; one-third to the number of names that are immovable—*i. e.*, to such as are married or 25 years of age—and the other one-third according to men’s estates. Freeman, Cape Cod, II. 256.

³ Holland, I. 33.

⁴ Felt, Hist. of Ipswich, 161.

portion was observed in some other towns, although sometimes the inequality was much greater, and the rates varied in different divisions even in the same town. The later divisions of woodland in the river towns were far more unequal than the earlier distributions of intervale.¹

Dedham (Mass.) had some additional special rules for allotment, and among them that servants should be referred to men's estates, and according to men's estates; that allotments should be "according to men's rank, quality, desert and usefulness, either in church or commonwealth. That men of useful trades may have material to improve the same, be encouraged and have land, as near home as may be convenient, and that husbandmen that have abilities to improve more than others, be considered."²

In this town (Dedham) a portion of land was always reserved for town, church and school, and reservations of land for school, church and ministry were usual in the towns, even if not required by the conditions of their grant.³

In making a grant for a plantation near Lake Quinsigamond, the court inserted the condition that in the allotment of lands, 200 or 300 acres, with meadow, should be reserved for the commonwealth.⁴ The precedent was followed in 1670 in the grant for a plantation south of Springfield and Westfield,⁵ in those for Squakeage⁶ and Lancaster,⁷ Dunstable,⁸ etc., and soon became the general practice.

In the first case cited, power was given to the committee of the court to settle tenants for lives, or for terms, paying a small rent. But nothing is usually said of such a plan in making the later reservations.⁹

¹ Judd, Hadley, etc., 30, 31.

² Annals of Dedham, 82.

³ Annals of Dedham; and see Freeman, Cape Cod, II. 202 (Barnstable); 379 (Eastham); 245 (Sandwich); and Lambert, New Haven, etc., 96, etc.

⁴ Mass. Rec., IV. Part II. 409.

⁵ *Ibid.* IV. Part II. 469.

⁶ *Ibid.* 529.

⁷ *Ibid.* 545 (1 sq. m. reserved). ⁸ *Ibid.* 571.

⁹ Leases of public or common lands, by colony or town, were not very common. But Duxbury seems to have leased extensively, especially meadows. Town Records, in Winsor, Hist. of Duxbury.

The case of the plantations along the Sound differed somewhat from that of other towns in New England. These did not occupy territory granted by any colonial or other government. The lands had been bought outright by the principal men, and were held in trust for the people, who, after contributing to pay expenses, drew lots in proportion to their contribution.¹

In the New Haven Colony, it was ordered "that every planter give in the names of the heads of the persons in his family (wherein his wife, together with himself and children, only are to be reckoned), with an estimate of his estate, according to which he will both pay his proportion in all rates and public charges, * * * and expect lands in all divisions, which shall be generally made to the planters."² In the first division the rate was 5 acres to £100, and 2½ acres for each person.³

In Guilford, it was agreed that "every one should pay his proportional part or share toward all the charges and expenses for purchasing, settling, surveying and carrying on the necessary public affairs of the plantations, and that all divisions of the land should be made in exact proportion to the sums they advanced and expended." Divisions were made accordingly. But even here no one could put in more than £500 without permission of the freemen.⁴

Milford, however, "sequestered" a belt of land around the town two miles wide, and divided lands from time to time among the inhabitants according to their estate in lists of different years. The number of proprietors was, therefore, variable, rising, *e. g.*, between 1686 and 1712 from 109 to 197. But a division of 1805 was based upon the list of 1686, the earlier number having been thus fixed upon.⁵

Divisions and grants of common lands could generally be

¹ Dwight, *Hist. of Conn.* 84.

² New Haven Col. Rec. 192.

³ *Ibid.*

⁴ Lambert, *New Haven, etc.*, 163.

⁵ *Ibid.* 96.

made by a majority vote, and the power was often delegated to selectmen or committees. But Milford required the consent of three-fourths of the inhabitants,¹ and in Eastham (Mass.) the action of the majority was restricted by provision that the grant, to be valid, should "be subjected to the negative of men chosen for that purpose, and shall be laid out and bounded on their approval."²

In addition to the division of lands among the proprietors or the inhabitants, the towns, like the colonial governments, sometimes made grants to individuals, especially to those whose services were or might be valuable. Thus Groton made grants to encourage the establishment of a mill;³ Haverhill did the same,⁴ as did many other towns. Lands were also sold occasionally for various purposes, as at Barnstable in 1691 (to raise money for the expenses of obtaining the Colony Charter),⁵ but this was never done to any great extent.

IX.

LAND COMMUNITIES.—(CONTINUED).

RESTRICTIONS UPON ALIENATION.

A very interesting feature in the early history of the institutions of New England is the care taken to preserve the original character of the community, and to control its membership. As the entire right of commoners might be assigned, and usually passed with a grant of land by a commoner, it was not enough for the town to retain the right of admitting freemen; it also needed to have control over sales of land made by its members, especially of house lots. This control has been very generally claimed and exercised by land com-

¹ Lambert, *New Haven, etc.*, 96.

² Freeman, *Cape Cod*, II. 376.

³ Butler, *Hist. of Groton*, 32.

⁴ Chase, *Haverhill*, 84.

⁵ Freeman, *Cape Cod*, II. 279.

munities, wherever found, and for similar reasons; and the resemblance in this respect between the institutions of communities so widely separated in time and place is very marked and worthy of notice.

In the village communities of Russia, a man may not sell his house and land to one who is a stranger to the "*mir*" without the consent of the inhabitants of the village, who have always the right of pre-emption.¹ Similar rules prevailed in Germany,² France³ and Ireland;⁴ and the right of the inhabitants of a village to reclaim land in case of sale to a stranger is, according to Laveleye, found everywhere.⁵

The land communities of New England formed no exception to this, but the rules which were adopted in them to effect the purpose, although similar in substance, were of varying degrees of strictness.

In Connecticut, a law of 1659 declares that "No inhabitant shall have power to make sale of his accommodation of house and lands until he have first propounded the sale thereof to the town where it is situate, and they refuse to accept of the sale tendered."⁶ Elsewhere the subject was left to the towns. The General Court of Massachusetts did, indeed, once raise the question whether towns could restrain individuals from sale of their lands or houses; but no action is recorded, and the proceedings of the towns were not interfered with.⁷ At Guilford (Conn.), no one could sell or alien his share, or any part of it, or purchase of another, unless by consent of the community.⁸ Watertown (Mass.), in 1638, made a provision

¹ Laveleye, *La Propriété Primitive*, 11.

² Maurer, "Das weit verbreitete Vorkaufsrecht der Dorfmarkgenossen," u. s. w.; see *Dorfverf.* I. 320.

³ See the *Coutume de Bayonne*, cited by Maurer in the same, 322. "Le voisin et habitant de la dite ville est préféré à l'étranger acheteur."

⁴ *Ancient Laws of Ireland*, cited in Maine, *Early Hist. of Institutions*, 109.

⁵ *La Propr. Prim.* 152.

⁶ *Conn. Rec.* I. 351.

⁷ *Mass. Rec.* I. 201.

⁸ Lambert, *New Haven, etc.*, 163.

“against selling town lots to forrainers,”¹ and Wenham, 1642, voted that “in case any wished to remove from the village, they were to offer their places for sale first to the plantation.”² Barnstable ordered the same, and further, “in case the plantation buy it not, then he shall provide a purchaser whom the town shall approve, and if the town do not provide a chapman in two months, he may then sell it to whom he will.”³ Billerica allowed the proprietor of a “10 acre privilege” to sell a “5 acre privilege,” and one who had not more than a “10 acre privilege” could not dispose of it, even to his children, unless the town had refused to make them a grant.⁴ Meadfield imposed the restriction for seven years only.⁵ The need of such legislation after some years was not felt as at first, and the restrictions eventually were everywhere disregarded.

COMMON FIELDS.

The proportion of land cultivated in common varied greatly at different periods and in different places. At first, common cultivation was on a much larger scale than it was at a later day. For, the practice being adopted as a matter of necessity in most cases,⁶ whenever the necessity ceased to be felt, the practice was no longer favored. They sometimes included nearly all the “improved” lands of the town, as at Simsbury (Conn.), where a committee of the General Court laid out two fields extending seven miles on each side of the river.⁷ In other cases, although they did not include all the lands, they yet included some lands in which all the people of the town were interested. It was to such fields that the

¹ Town Records, in Bond, *Hist. of Watertown*, 995.

² Allen, *Hist. of Wenham*, 26.

³ Freeman, *Cape Cod*, II. 254.

⁴ Farmer, *Hist. Memoir*, 8.

⁵ *Annals of Dedham*, 99.

⁶ “Necessity constraining the improvement of much land in common.” *Conn. Col. Rec.* I. 101.

⁷ See Phelps, *Simsbury*, 80.

laws of Connecticut and Massachusetts referred, giving authority over them to the townsmen or selectmen of the town, or, where there were none, to the major part of the freemen,¹ to order the manner of their improvement. Massachusetts afterward put the power over common meadows and pastures in the hands of the proprietors of the greatest part,² as she had done at first in case of cornfields.³ It is probable, however, that this law refers to groups of owners smaller in number than the whole body of commoners. Common fields of this sort were found in most of the towns. Sometimes they were formed from lack of the means to fence separately; sometimes from the difficulty of fencing, as on the extensive intervale-lands of the Connecticut, and often from mere considerations of convenience. In Milford (Conn.), the town lots were at first fenced in common, and soon after three large common fields were formed. Much of the land in that town was thus cultivated, and "field meetings" were held to manage the common property.⁴

Lands were even granted to be thrown together into a common field.⁵ They were sometimes meadow, sometimes pasture, and sometimes plowing land.⁶

Fences were maintained by each owner according to his share in the land enclosed. Sometimes gates or bridges were thus maintained instead of a portion of fence, and in Milford and Stratford lands were held upon condition of such service,⁷ the proper care of them being of importance to the whole town.

The bounds of lands lying in common were to be perambu-

¹ Mass. Rec. II. 49; Conn. Rec. I. 101, 214.

² *Ibid.* II. 195.

³ *Ibid.* 39.

⁴ Lambert, New Haven, etc., 96-97 (from Town Records, Lib. I. 87). See also Town Records of Stratford, Lib. I.

⁵ Bond, Watertown, 995.

⁶ Mass. Rec. II. 49.

⁷ Milford Town Records (in Lambert, New Haven, etc., 96). Stratford Town Records.

lated by the particular proprietors, and boundary marks (mere stones) to be carefully kept up.¹

A resemblance will be noticed between these smaller groups of cultivators in common and the alp and vineyard communities in Europe.²

HOME LOTS, ACRE RIGHTS, PITCHES.

Home Lots or House Lots.—The exact meaning of these terms in the earliest years of the colonies it is not easy to fix. They differed in size in different towns, and often in the same town. But sometimes they are all of the same or nearly the same size, and the difference only one of situation. At Barnstable they are said to have been from 6 to 12 acres, at Haverhill 5 to 22 acres, at Groton 10 to 20 acres, etc., etc. When they were of variable size in the same town, they were often proportioned to the “quality and estate” of the possessor, as at Springfield,³ Haverhill,⁴ and other places. Sometimes the right to choose a house lot was drawn for “according to estate,” as at Hadley.⁵

Whatever their size or the mode of allotment, the house lots were an important part of the New England system. They were laid out so as to form a village as the centre of a plantation, and thus ensure the security of one compact settlement and the various advantages of village life. A certain dignity attached to the original lots, and it was considered important to the community that they should not be abandoned or neglected, or even thrown together.

In Connecticut, to remedy and prevent so “great an abuse,” it was ordered that “all dwelling or mansion houses that are or shall be allowed in any plantation or town in this jurisdiction shall be upheld, repaired and maintained sufficient”;

¹ Conn. Rec. I. 513.

² Maurer, *Gesch. d. Dorfverf.* I. 27.

³ Holland, *Rec. of Springfield in West Mass.* I. 25.

⁴ Chase, Haverhill, 56. “He that was worth £200 to have 20 acres to his lot.”

⁵ Judd, Hadley, etc., 287.

also, that owners of lots not built upon are to build within twelve months after date.¹

Acre Rights or Lots.—This is an expression of entirely different nature, and merely indicates the share owned by any one in the common lands. Their value varied greatly in the different towns, but was, of course, a fixed quantity in each town. In Billerica, for instance, a 10-acre lot or right was equivalent to 113 acres of upland and 12 acres of meadow, and so on in exact proportion.² In Groton there were 60-acre, 20-acre, etc., rights, and there were 755 rights in all. A 60-acre right would have entitled the owner on complete partition to 3,242 acres of common lands.³

Pitches.—These were rights drawn in a division which entitled the drawer to lay out a lot of land in the commons wherever he might choose. The practice was common in the later history of the colonies, although not always judicially approved.

From the examination of our subject which has been made thus far, it appears that the exemption from feudal burdens in which we rejoice is not due to any merit of the colonists, for the free-socage tenure flows from the language of the grant, which, as we have seen, was not exceptional, even in England, at that day. The founders of the American colonies were not, in this respect, in advance of public sentiment in the mother country, as may be seen by reference to the journals of Parliament under James I.

But, apart from this, in every other respect the excellence of our land system is certainly due to the wisdom and patriotism of the leaders of the infant commonwealths—men who held their leadership by virtue of education, character and independent position.

The essential feature of the plan adopted in the settlement of the soil was that it was accomplished by organized col-

¹ Conn. Rec. I. 563.

² Farmer, Hist. Mem. 8.

³ Butler, Groton, 29.

onization, and that the unit of colonization was a small plantation, which, whether from tradition or inherited, instinctive prepossession—a survival, if you will—closely resembled the ancient village communities of the Old World.

The organization of these communities and the character of the members were mainly determined by committees chosen with care by the central authority. The persons who were to compose it were selected by that authority or its committees, so that the principles of the larger commonwealth were adopted in the new settlement and carried out in the further division of the soil. Great pains were taken to guard against excessive grants and the accumulation of large estates; and the perpetual maintenance of this division into small holdings was secured by the laws of succession, while the registry laws adopted at an early date tended to the same result by making the alienation of land by deed easy and simple. Freehold tenure was the universal rule.

In the division of the soil of New England among the settlers, our ancestors were guided by no visionary theories of equality. Land, however abundant, was to be given to those who could use it. Yet no great inequality was countenanced, and every one had enough. As a rule, all the land granted was soon occupied, except the parts reserved for a time as common. In the few instances where land was allowed by non-resident holders to lie unimproved, legislation was promptly brought to bear providing for its equitable taxation, and the threatened evil was thus prevented.¹ Many grants were also by their terms made forfeitable if not improved within a given time. Provision was made for the maintenance of the ministry in all grants to communities, and the plantations generally reserved lands for school purposes.²

¹ Mass. Rec. V. 375. A. & R. of Mass. Bay, II. 616, 941; III. 251.

² In New Hampshire the grants of the royal Governors reserved certain shares for public or pious uses. 10 Verm. Rep. 9. Malden was granted 1,000 acres for the use of the ministry forever; but this was exceptional. Mass. Rec., IV. Pt. II. 45.

Of scarcely less importance were the orders by which the planters were directed or encouraged to settle closely together, "for safety, Christian communion, schools, civility and other good ends."¹ The fruits of this policy are seen in the villages which form to-day so attractive and characteristic a feature of New England life.

In later days, as the settled portion of the colonies grew in extent, the forming of new plantations was sometimes left to the enterprise of leading men, and the order of the court then took a slightly different form from that which has been given.² But even then the purpose, conditions and exemptions of the grant are still carefully expressed in the usual terms. In New Hampshire, under the royal Governors, less care was exercised, and grants often remained unimproved for long periods. In Connecticut the action of the planters was less under the direction of the colonial authorities. Yet the general character of New England plantations was everywhere and at all periods substantially such as has been described in these pages.

Having seen how the public lands were settled and distributed among the colonists, it remains to mention briefly some of the rules of law which governed the ownership and transfer of land in the hands of private persons, and to show their adaptation to the general policy of the colonies, which has been here set forth.

The private law of real property in New England was, in the main, that of the mother country, so far as that applied to free-socage holdings. But two principles were adopted at an early day which, in the words of Chalmers, "not only mark the spirit of the people, but were, probably, the cause of most lasting consequences."³

The laws for the distribution of intestate estates in the colonies gave the same equal payment to all creditors, and

¹ Mass. Rec. V. 214.

² *E. g.* Mr. Thomson's grant. Mass. Rec. V. 408.

³ MS. in possession of Mass. Hist. Soc. (cited Acts and Res. of Mass. Bay, I. 107).

(except in Rhode Island) the same equal shares to all the children, save that the eldest son received a double share. This modified preference was, not quite ingenuously, described by some of the colonies' agents as "like that of England"; but the right of primogeniture in that country was a very different thing, and the colonial rule was probably of Mosaic origin. Just as the law in England had—and has to this day—its effect upon the voluntary distribution of property by will in the custom of making "eldest sons," so the more natural provisions of colonial law encouraged the equal division of property in this country among all the children of a testator.

Laws subjecting the lands of a debtor to levy and execution, and those making the heir or executor in effect a trustee for creditors, had much to do with the prosperity of the colonies.¹ To them, says Chalmers, "much of the populousness and the commerce of Massachusetts is owing."

The transfer of land, as has been said above, was greatly facilitated by laws passed at an early day providing for the registration of titles and the simplification of conveyances, and the law thus established was substantially that which prevails at the present time.

All these rules of law, it will be seen, harmonized with the general spirit of colonial legislation, and favored the perpetuation of that order of things which the founders of New England sought by their system of settlement to produce.

For their wisdom and foresight in all these regulations respecting the disposition of public lands, and in the private law of real property, a great debt is due to them; and the more closely the causes of the prosperous social and economical condition of New England are studied, the fuller will be our appreciation of the benefits which have inured to us as the result of the land system whose foundations were laid in the early days of colonial history.

¹ MS. in possession of Mass. Hist. Soc. (cited Acts and Res. of Mass. Bay, I. 107).

INDEX TO FOURTH VOLUME
OF
Johns Hopkins University Studies
IN
HISTORICAL AND POLITICAL SCIENCE.

A

Aborigines, right of to land, 551.
Acre rights in New England, 596, 597.
Adams, Charles F., Vice-President of Free-Soil Party, 429.
Adams, Herbert B., review of St. Clair Papers, 373.
Adams, John, asked advice as to form of government, 197.
Adams, John Q., eulogy on, in New Haven, 481.
Agrarian laws of the United States and Rome, 268.
Alaska, purchase of, 327, 330; discovery of, 328; Sumner on the purchase, 332.
Aldermen, choice of, in New Haven, 539.
Aldworth, R., land grant to, 560.
Andover, town-meeting refuses to empower general court to frame constitution, 204.
Andros', Sir Edmund, measures in Rhode Island, 91.
Anne Arundel County erected, 233; government perfected, 234.
Annapolis, beginning of, 230, 253.
Arnold, Wm., antagonism to Roger Williams, 83.
Atherton, Humphrey, land company formed by, 117.
Atwater, Jeremiah, selectman of New Haven, 489.

Austin, David, nomination of to town office, 450; appointed to committee of hospitality, 457; on the adornment of the Green, 461.

B

Baltimore City Council, a story of, 540.
Baltimore, Lord, colonial policy of, 226; Puritans' compromise with, 249; feudal conceptions of, 255.
Bancroft, Geo., on Rhode Island influence on the United States, 102; on Jefferson's anti-slavery proposal, 343.
Baptists in Rhode Island, 125.
Barber, Joseph, issues *The Columbian Register*, 469.
Barber, Capt., named for Governorship, 243.
Barnstable settled from Scituate, 578; lands for widows in, 586; restrictions of alienations, 594; house-lots, 596.
Beauchamp, land grant to, 560.
Beers, Isaac, nomination of for town office, 450; appointed on committee of hospitality, 457.
Behring, Capt., discovers Alaska, 328.
Beisassen, Laveleye on, 580.
Bennett, Edward, land grant to, 217.
Bennett, Richard, leaves Virginia,

- 222; settles in Maryland, 224; charged with instigating rebellion, 243.
- Bennett, Rev. Wm., Puritan preacher in Virginia, 217, 218.
- Benton on Louisiana Purchase, 317; on the authorship of the Ordinance, 362.
- Berkeley, Gov., "Concessions," 142; unfriendly treatment of the Puritans, 220, 222.
- Berkshire County, town-autonomy theory in, 206.
- Billerica, restrictions on land sale, 594; acre lots in, 597.
- Bishop, Samuel, election of, 450; municipal letter of, 465.
- Boroughs, Pennsylvania, by Wm. P. Holcomb, 131; beginnings of, 135; Thomas Madox on the antiquity of, 136; Stubbs on, 136; in New Jersey, 136; in Connecticut, 136; in Virginia, 137; in Maryland, 137; in Maine, 137; Toulmin Smith on, 162; legislation of this century, 170; offices, 173; council, 174; finance, 175.
- Bounties, military, 389.
- Bradford, Wm., land grant to, 560.
- Bradstreet, Simon, land company of, 117.
- Braxton's, Carter, address, 197.
- Brenton and Coddington antagonistic, 83.
- Bristol, borough of, 161; town-meeting, 164.
- Brodhead on the Patroon, 15.
- Brooke, Robt., land grant of, 231; offends Gov. Stone, 239.
- Brooklyn, municipal privileges given to, 20.
- Buchanan's veto of Homestead Bill, 432.
- Burnett, David G., President of Texas, 321.
- C
- Calhoun's land policy, 409; opposes pre-emption, 422.
- California, negotiations of purchase, 326.
- Cambridge, a village grant to, 577.
- Carteret, "Concessions," 142.
- Catlin on New Haven party politics, 531.
- Chalmers on New England land laws, 599, 600.
- Champlin, Col., estate of, 119.
- Channing, Edward, on Narragansett planters, 105.
- Charles County, Maryland, Puritan colony in, 231.
- Charlestown, original extent of, 577.
- Chase's eulogy on the Ordinance of 1787, 358.
- Chauncey, Charles, appointed to committee of hospitality, 457.
- Checkley, editor of Leslie's work, 111.
- City and town government of New Haven, 443. (See New Haven.)
- Clarke, John, sent to England to secure charter rights, 90.
- Clay, Henry, offers a million dollars for the cession of Texas, 319; on Alaska Purchase, 328; on land question, 409, 412; distribution bill, 415; against pre-emption, 421; visits New Haven, 481.
- Claybourne, Wm., settles on Kent Island, 224.
- Coddington and Brenton antagonistic, 83.
- Cole, Josias, refuses to take oath, 251.
- Coles, Gov., ascribes authorship of the Ordinance to Jefferson, 367.
- Colfax on Homestead Law, 431.
- Colonies, land tenure in, 273; grants of land in New England, 561; orders from the company relating thereto, 562.
- Columbian Register, The*, issued by J. Barber, 469.
- Common lands, claims of, 281; for pasturage and forestry on the Hudson, 38; division of in New England, 586, 594.
- Commoners and Non-Commoners, differences and disputes between, 580; in Groton, Hampton, etc., 582.
- Concord, settlement of, 579.
- Connecticut, boroughs in, 136; Indian land deeds in, 552, 553; Colony incorporated, 557.
- Constitutional and Political History of States, by Dr. J. F. Jameson, 183.
- Copp, Mr., eulogy on Homestead Bill, 436.

Cox, Wm., chosen a Puritan delegate, 233.
 Cradock, land grant to, 568.
 Crandall, Miss Prudence, teaches negroes, 473.
 Crawford's system of relief, 408.
 Credit feature of American land system, 402; abolition of, 406.
 Crown lands, claimants to, 280; right to land titles, 550.
 Cunningham on the land laws of the United States, 276.
 Curtis on the Ordinance of 1787, 357.
 Cutler, Manasseh, authorship of the Ordinance ascribed to, 369; agent of the Ohio Company, 398.

D

Daille, Rev. Pierre, minister in New Paltz, 62.
 Dane, Nathan, authorship of the Ordinance, 362, 363, 365.
 Darby, Pa., town-meeting, 166.
 Day, Stephen, land grant of, 569.
 Dedham, land grant, 578; commonage in, 587; allotment, 590.
 Delaware County, town-meeting in, 166.
 Denison, Daniel, land company, 117.
 Desert Land Acts, 437.
 Domain, Public, origin of, 263; future of, 265; administration of, 335; relation to national life, 277; formation of, 279.
 Donaldson on rectangular system, 392.
 Donation lands, 427.
 Don Morales prohibits the use of New Orleans as a depository, 304.
 Don Onis protests against United States' occupation of West Florida, 315; opens negotiations relating thereto, 316.
 Dorr on Roger Williams, 82.
 Du Bois, Daniel, survivor of the last Duzine, 61.
 Durand leaves Virginia, 222; settles in Maryland, 224; compared with Roger Williams, 257.
 Durfee, Judge, on Rhode Island Charter, 96.
 Dutch Village Communities on the Hudson River, by I. Elting, 1;

government in, 12; education in, 14.
 Dutchess County, landholding in, 40.
 Duzine, powers of, 55, 60.
 Dwight, President, on New England prejudice to city market, 456; on New Haven in 1810, 474.

E

East India Company, trading enterprises in America, 11, 12; colonization by, 12.
 Eastham, commonage in, 586; land division, 592.
 Eaton, land grant to, 569.
 Education in Dutch colonies on the Hudson, 14; land grants for, 436.
 Edwards, Jonathan, on land and landless parties, 585.
 Edwards, Pierpont, appointed on committee of hospitality, 457; delegated to Convention, 458.
 Egleston, Melville, on the Land System of New England Colonies, 545.
 Elbridge, G., land grant to, 560.
 Ellsworth, advocacy of ratification by Convention, 199.
 Elting, Irving, on the Dutch Village Communities on the Hudson River, 1; family in New Paltz, 67.
 Eltonhead, Envoy of Gov. Stone, 243; death of, 247.
 Endicott, Agent of Land Company in American colonies, 564; land grant to, 570.
 English Folk-land, 270; feudal land laws, 272.
 Esopus given a charter, 30; ground-lots in, 37.
 Evans on Land Reform, 428.
 Everett, John, refuses to take arms, 251.
 Executive of the city of New Haven, 520, 534. (See New Haven.)

F

Fayerweather, library of, 111.
 Federalism in New Haven, 464; fall of, 468.
 Fendall, Josias, commissioned Lieut.-Governor, 248; conspiracy, 252.
 Feudal land laws of England, 272.
 Fire Department in New Haven, 459,

475, 491; insurance proposed, 493.
 Folk-land in England, Germany and America, 270.
 Foster, Wm. E., on town government in Rhode Island, 71.
 Floridas, purchase of, 311; revolution and independence, 314.
 Force, Peter, on the Ordinance of 1787, 350.
 Franklin, Pa., laying out of, 149.
 Free-Soil Democracy, 429.
 Friends' Advent into Rhode Island, 83, 125; into Maryland, 250.
 Fuller, Capt. Wm., advance of upon Indians, 238.
 Fustel de Coulanges, on village community, 6.

G

Gadsden Purchase, 327.
 Gallagher, James, opposes the draft, 494.
 Gallatin, Albert, on municipal government, 543.
 Garrison, Wm. Lloyd, on slavery excitement in New Haven, 473.
 Gates, Sir Thomas, land grant to, 555.
 General Land Office, 379, 381.
 Georgia cedes her land, 296, 297.
 Germantown, borough of, 151.
 Gilbert, land grants to, 554.
 Godkin, Daniel, conversion of, 220, 221.
 Gordon on Pennsylvania land system, 140.
 Gorges, Sir Ferdinando, land grant to, 556; feudalism of, 570.
 Gorham on the appointment of judges, 198.
 Gosnold's expedition, effect of, 554.
 Graduation Act, 428.
 Gravesend Charter, 26.
 Gray, Captain, discovers Oregon coast, 329.
 Grayson and the Ordinance of 1787, 347.
 Green on the Puritans, 217.
 Greenberry's Point, settlement on, 230.
 Greenbriar Company formed, 283.
 Grigsby's Phi Beta Kappa Address referred to, 197.

Gross, Charles, "Mediæval Boroughs" referred to, 170.
 Groton, land grant to, 576, 577; commonage in, 582; home lots, 596; acre lots, 597.
 Grow, Mr., on Homestead Law, 431.
 Guilford, Conn., land division in, 591; restrictions on alienation, 593.
 Gwin, Senator, proposes the purchase of Alaska, 330.

H

Hadley, division of land in, 589; home lots in, 596.
 Hale, John P., elected President of Free-Soil Democracy, 429.
 Hamilton, Alexander, on the election of the Senate, 198; plan for land office, 379, 399.
 Hampton, N. H., settlement of, 573, 579; commonage, 582.
 Hardwick town-meeting, 206.
 Harris antagonistic to Roger Williams, 83.
 Harrison banished from Virginia, 222; returns to England, 223.
 Hartford, rivalry with New Haven, 500; common lands in, 587.
 Hartranft, Gov., commissions to study municipal government, 529.
 Haverhill, commonage in, 583, 584, 587; home lots, 596.
 Hawthorne, Captain, land grant to, 576.
 Hayne on the authorship of the Ordinance of 1787, 362.
 Haynes, land grant to, 568.
 Hazard, Robert, estate of, 119.
 Heffernan, Wm., accused of horse-stealing, 113.
 Hegel Township, Pa., population, 172.
 Henry, Patrick, letter referred to, 167.
 Hillhouse, James, appointed on committee of hospitality, 457; nominated for Convention, 471; adornment of New Haven Green, 462.
 History, Constitutional and Political, of States, by Dr. J. F. Jameson, 183; of the Land Question in the United States, by Dr. S. Sato, 259.
 Holcomb, Wm. P., on Pennsylvania Boroughs, 131.

Holland, town government of, 9, 10.
 Holme, Thomas, lays out Philadelphia, 144.
 Home and house lots in New England, 596.
 Homesteads, early movements for, 428; bills in Congress, 430, 433; Buchanan's veto, 432.
 Houston, General, installed President of Texas, 321.
 Howell, Deacon, election of, 450.
 Hudson River, Dutch Village Communities on the, by Irving Elting, 1; institutional relationships with the Rhine, 65.
 Hudson, William, land company of, 117.
 Hull, Captain John, encourages horse breeding, 113.
 Hurley, town of, 43; landholding, 44-49.
 Hutchins, Thomas, appointed geographer, 379.

I

Indian policy of Puritans in Maryland, 237; right of occupancy, 551, 552.
 Ingersoll, Jon., appointed to committee of hospitality, 457.
 Ipswich, Mass., division of land in, 573, 576; commons in, 581, 586, 587, 589.

J

Jackson, General, ordered to take Pensacola, 315; sent against Seminoles, 316.
 James, Puritan preacher, sent to Virginia, 219, 220.
 Jameson, Dr. J. F., on the Study of the Constitutional and Political History of the States, 183.
 Jefferson on Louisiana and Florida Cession, 303, 311; provisions of his Ordinance, 338; on slavery, 343; authorship of the Ordinance of 1787 ascribed to, 362, 363, 367; rectangular system of survey, 392; Northwestern embroil, 464; embargo memorial to, 466.

Jones, Timothy, appointed on committee of hospitality, 457.
 Johnson, Isaac, land grant to, 568.
 Johnson, of Connecticut, and the Ordinance of 1787, 348, 350.
 Johnson, Senator, Homestead Bill, 431.
 Judiciary of the city of New Haven, 517. (See New Haven.)

K

Keith, Rev. George, Puritan preacher, 216.
 Kent, Chancellor, on New England land purchase, 554.
 Kent Island, Protestant settlement in, 224.
 Kieft, Director-General in the Dutch Colony, 19.
 King, Rufus, and the Ordinance of 1787, 347, 348.
 Knowles sent to preach in Virginia, 219, 220,

L

Laboulaye on public domain, quoted, 269.
 Land system in Pennsylvania, 139, 140; Question, History of, in the United States, by Dr. S. Sato, 259; policy of the United States and ancient Rome compared, 268; feudal laws of England, 272; tenure in colonial times, 273; tenure after the Revolution, 275; Maryland's protest against the bounty, 284, 285, 287; controversy, 283, 291; cession of Mexico, 325; General Office, 379; system of the United States, 385; Genesis of the U. S. Land System, 391; important features of, 400; credit feature in, 402, 406; alienations, 393; in politics, 409; grants between 1841 and 1862, 427; educational grant of, 436; System in New England Colonies, by Melville Egleston, 545; original sources of title to, 550; right of crown, 550; right of aborigines, 551; in Maine, 551; royal grants, 554; grant to Gorges, 556; grants of the Council, 559; colonial grants, 561; grants to

- private persons, 567; grants to communities, 571; restrictions on sale, 592; New England laws on, 597-600.
- Laveleye on village communities, 6; land-ownership in Switzerland, 45; on the Roman idea of property, 268; on Beisassen, 580; on primitive property, cited, 593.
- Lee, Richard Henry, writes to John Adams about form of government, 197; Washington's letter to, on the Western country, 344.
- Leggot, John, death of, 247.
- Legislature, City, of New Haven, 522.
- Levermore, Dr. Charles H., on Town and City Government of New Haven, 443.
- Lewis, Captain, death of, 247.
- Lines, Charles B., on liquor license in New Haven, 481, 482; against slavery, 486; on the care of the poor, 487.
- Liquor traffic in New Haven, 481.
- Lloyd appointed Commander of Anne Arundel County, 234; discharge of, 338.
- Locke, John, influence of on Maryland political ideas, 257.
- London Company, dissolution of, 555.
- Louisiana, purchase of, 298; history of settlement, 300; institutional peculiarities, 301; American diplomacy in the purchase of, 303; unconstitutionality of the purchase, 308; Spanish protest against the cession, 309.
- M**
- Madison on the constitutionality of the Ordinance of 1787, 361.
- Madox, Thomas, on boroughs, 136.
- Maine, boroughs in, 137; Indian land deeds in, 551; incorporated with the Province of Massachusetts Bay, 558.
- Maine, Sir Henry, on village communities, 6, 572.
- Manorial institutions of Dutch colonies, 14, 16, 17.
- Marbois negotiates the sale of Louisiana, 307.
- Mariana tract, grant of, 560.
- Martha's Vineyard, land title in, 553.
- Maryland, boroughs in, 137; Puritan colony in, 213; revolution in, 236; Friends' advent into, 250; growth of democracy, 255; political parties, 256; protests against land bounty, 284, 285; ground of this protest, 287.
- Mason, George, author of the preamble to the Virginia Declaration of Rights, 197; advocates ratification of Convention, 199.
- Mason, John, land grant to, 560, 561.
- Massachusetts, land claims of, 280; Indian land deeds in, 552; early settlements in, 574.
- Mather, Cotton, on Indian right of occupancy, 551.
- Matthews, General, commissioned to Florida, 315.
- Mayor, duties of in New Haven, 534.
- McFarland Commissioner of Land Office, 384; on the repeal of preemption, 425.
- McMaster on the westerly movement of population, 405.
- McSparren, library of, 111; missionary enterprise of, 123.
- Meadfield, restrictions on land sale, 594.
- Mendon, land grant to, 576.
- Mennonites, settlement of, in Germantown, 152.
- Mexico, land cessions of, 325.
- Milford, Conn., land division in, 591, 592; common fields in, 595.
- Military bounties, 389.
- Milton, John, influence of on Maryland political ideas, 257.
- Monroe, mission to France about Louisiana and Florida Purchase, 305; Ordinance of 1787, 348, 350.
- Muscovy Company, success of, 554.
- Mussey, R. D., on the rectangular system of survey, 393.
- N**
- Nantucket, land titles in, 553.
- Narragansett planters, Dr. Edward Channing on, 105; alleged superior birth of, refuted, 110; good land of, 112; pasturage, 113, 114; land-ownership by, 119; political im-

- portance of, 120; slavery in, 114; religion in, 124.
- New Amsterdam obtains municipal form, 21; becomes New York, 34; common lands, 24; representation in, 33.
- Newbury Plantation formed, 575, 579.
- Newburyport, Constitution discussed in, 206.
- New England colonies, land system in, 545.
- New Hampshire chartered, 557.
- New Haven, Town and City Government of, by Dr. Levermore, 443; dual government, 447; suffrage, 450; first charter of, 451; description of, 454, 474; municipal improvements, 455, 474, 491; care of the poor, 458, 486; fire department, (which see); present municipal administration, 504; town government, 507; city government, 515; judiciary, 517; executive, 520, 534; legislative, 522; taxation, 525; legislative control over commissions, 525; conduct of commissions, 530; administrative courts, 535; frequent elections, 537; Board of Councilmen, 537; choice of aldermen, 539; commonage in, 586; welcomes John Adams, 464; embroil with Jefferson, 464, 466, 467; slavery and abolition, 471; sidewalks, 478; court, 478; visit of Henry Clay, 481; resolutions on J. Q. Adams' death, 481; liquor traffic, 481; light in streets, 483; schools, 483, 504; era of railways, 484; meeting, 487, 509; offices, 489; in the Civil War, 493; recent charters, 495; conservatism, 497.
- New Jersey, boroughs in, 136; local government, influence of on Pennsylvania township, 159.
- Newman, Gov. Fr., proposes the improvement of cemetery in New Haven, 462.
- New Mexico, purchase negotiation, 326.
- New Paltz, site of, 49, 50; settlement, 51; patent given, 52; landholding, 53-59; religious life, 61; Dutch element introduced, 67.
- New Plymouth, cattle-breeding in, 576.
- Newport founded, 78.
- Newtown, Pa., taxation in, 176.
- Newtown (Cambridge) complains of want of land, 574.
- New York, New Amsterdam becomes, 34; government of, 35, 36; land claims of, 281.
- Nicholls, Colonel, Governor of New York, 33, 34.
- Niles, Baptist minister in Rhode Island, 125, 126.
- Norristown, Pa., taxation in, 176.
- Northampton, Mass., land allotments, 589.
- North Carolina cedes her territory, 296.
- Norton, town of, refuses to empower General Court to frame constitution, 204.
- Nowell, land grant to, 568.

O

- O'Callaghan on Representation in New Amsterdam, 33.
- Ohio Company organized, 282, 397.
- Orange County, rights of the common, 38.
- Ordinance of 1787, 338; preliminary steps to, 346; provisions of, 351; eulogies on, 356; constitutionality of, 360; authorship of, 362.
- Oregon coast discovered by Gray, 329.

P

- Pastorius, Francis, on Germantown settlement, 152, 153.
- Patroons, powers of, 13, 15; Brodhead on, 15.
- Penn, William, arrival of in America, 139; land, disposal of, 141.
- Pennsylvania Boroughs, by Wm. P. Holcomb, 131; villages, 146; towns laid out by speculators, 149.
- Pennypacker on Old Germantown Laws, 157.
- Pensacola, Jackson sent to, 315.
- Pettasquamscot purchasers, 124.
- Philadelphia laid out by Thomas Holme, 144.
- Phoenixville, Pa., made a borough, 172.
- Pickering, Thomas, on the importance of settlement in the West, 346.

Pierce, John, land grant to, 559.
 Pinckney's mission to Spain, 309.
 Pitches in New England, 597.
 Plymouth Company, control of, 555.
 Polk's Mexican policy, 325.
 Poole, Wm. F., on the Ordinance of 1787, 343, 370.
 Poor, the care of in New Haven, 458, 486.
 Portsmouth founded, 78; administration of justice in, 86.
 Pottsville, Pa., growth of, 149.
 Poughkeepsie, first mention of, 40; court-house in, 41.
 Pre-emption, 417; history of, 417; present law of, 423; no longer needed, 425.
 Preston, Richard, a leader of the Puritans, 243.
 Providence, town of, 77; plantation obtains charter, 80; administration of justice, 86; development of, 98; incorporation of, 557.
 Puddington, George, chosen a Puritan delegate, 233.
 Puritans, arrival of in New York, 22; Colony of in Maryland, D. R. Randall on, 213; in Virginia, 216, 218; significance of emigration, 217; persecution of, 220, 222; church government among, 230; in Maryland politics, 233; Indian policy, 237; Stone's campaign against, 243; compromise with Lord Baltimore, 249.

R

Railroads, land grant to, 438; in New Haven, 484.
 Raleigh, land grant to, 554.
 Randall, Daniel R., on the Puritan Colony in Maryland, 213.
 Randolph, Virginia plan, how originated, 198.
 Rawson, E., land grant to, 569.
 Rectangular system of survey, 392.
 Rensselaer, Kilien Van, a Patroon, 14.
 Rensselaerswyck, colony of, 30.
 Rhine, the, institutional relationships with the Hudson, 65.
 Rhode Island Colony, town government in, Wm. E. Foster, 71; difference between Massachusetts, 75;

characteristics of, 81; functions of town authority, 84; under the patent of 1643-4, 87; introduction of Quaker element into, 83, 125; charter of 1663, 90; General Assembly in, 93; refusal to accede to the Constitution, 102; Baptists in, 125; Congregationalist denomination, 124; Episcopalians, 126; Presbyterian Church, 125; Indian land title in, 553.
 Rice's, John L., article referred to, 201.
 Richardson, Amos, land company, 117.
 Robinson, Wm., imports Spanish horses, 113; estate of, 119.
 Rogers, Professor Thorold, quoted, 169.
 Ross, Denman W., on village communities, 6.
 Roswell, Sir Henry, land grant to, 559.
 Rowley, town-meeting, 206, 207.
 Roxbury, land grant to, 577, 578; commonage in, 583.
 Russia, village communities in, 593.

S

Sagadahock ceded to Massachusetts, 557.
 Salem, a village grant to, 577.
 Saltonstall, land grant to, 568.
 San Francisco, purchase of, negotiated, 326.
 Santa Anna, recall of from exile, 325; defeat of, 326.
 Schools of New Haven, 484.
 Scituate, town of, 97; Barnstable settled from, 578.
 Scott, Austin, on the rectangular system of survey, 392.
 Scott, Representative, of Pennsylvania, argues the importance of Land Office, 379.
 Severn, Puritan battle upon, 245; called Annapolis, 254.
 Seward, Secretary, on Homestead Law, 430.
 Sherman, Roger, sketch of, 449; delegated to the Convention of 1787, 458.
 Simsbury, Ct., commonage, 584, 594.
 Slavery in Narragansett County, 114;

- Jefferson on, 343; in New Haven, and its abolition, 471; lines against, 486.
- Slidell instructed to purchase California, 326.
- Smith, Henry, Governor of Texas, 320.
- Smith, Richard, anti-Rhode Island spirit, 117; religious profession of, 123; Mrs., introduces cheesemaking into Narragansett Colony, 114.
- Smith, Toulmin, on boroughs, 162.
- Smith, Wm. H., criticises Mr. Poole's view on the authorship of the Ordinance of 1787, 372.
- Smits, Claes, murder of, 19.
- South Carolina cedes her territory, 296.
- Southeastern Territory, cessions of, 296.
- South Kingstown, slavery in, 114, 115.
- Spain protests against the cession of Louisiana, 309; disputes with the United States, 312.
- Sparks, Commissioner, favors repeal of Pre-emption Law, 426; on unpatented land, 438.
- Springfield land allotment, 588.
- St. Clair Papers, H. B. Adams on, 373; Poole's reflections on, 374.
- Stanton's anti-Rhode Island spirit, 117.
- Staples on Rhode Island town government, 81, 84.
- States, Study of the Constitutional and Political History of, J. F. Jameson on, 183.
- Sterne, Simon, remark on modern city cited, 538.
- Stœckel signs the treaty of Alaska Sale, 331.
- Stiles, Dr., on city politics of New Haven, 450.
- Stith on Virginia boroughs, 137.
- Stoddard, Jon., on liquor sale in New Haven, 482.
- Stone, Wm., commissioned Governor of Maryland, 227; invites Puritans, 228; visit to Anne Arundel County, 234; resignation, 241; campaign against Puritans, 243.
- Story, Judge, on the constitutionality of the Ordinance of 1787, 362.
- Stowe, Goodman, land grant to, 569.
- Stubbs on boroughs, 136.
- Stuyvesant, Director-General, on Dutch colony, 20.
- Suffrage in New Haven, 450.
- Sumner on the Alaska Purchase, 332.
- Survey, rectangular system of, 392.
- Swamp lands, disposal of, 427.
- Symmes, John C., land purchase of, 398, 418.

T

- Tacitus on village community, 7.
- Talleyrand offers Louisiana for sale, 306.
- Taxation in New Haven, 525.
- Terry, Alfred H., alluded to, 495.
- Texas, annexation, 318, 321; after the Mexican Independence, 319; finance of, 323; boundary act, 324.
- Thomas, Philip, Puritan pioneer of Maryland, 231; refuses to bear arms, 251.
- Thompson banished from Virginia, 222; returns to Boston, 224.
- Thurston, Thomas, refuses to take oaths, 251.
- Tiffin, Edward, appointed Commissioner of Land Office, 381.
- Timber and Desert Land Acts, 437.
- Torrey, Joseph, Baptist minister in Rhode Island, 126.
- Town government in Holland, 9, 10; in Rhode Island, 71; Staples on, 81, 84; growth of in Pennsylvania, 139, 149, 159; theory of the autonomy of, 206; of New Haven (which see).
- Trist, N. P., commissioned to Mexico, 326.
- Trumbull on Indian occupancy of Connecticut, 553.
- Tuttle, Dr. Joseph F., on Dr. Cutler, 369.
- Tyler, John, reception of, in New Haven, 480.

U

- Updike library, 111.
- Upland, village of, 139; intention of Penn to make it a city, 143.

V

- Van Buren offers five million dollars for Texas, 320.

- Vancouver discovers British Columbia, 329.
 Verin, Joshua, trial of, 85.
 Village Communities, Dutch, on the Hudson, 1; system in Pennsylvania, 146.
 Virginia, boroughs in, 137; Puritans in, 216; revolution in, 236; land claims, 280; western and northern extent of, 284; disposition of her Western lands, 289.
 Von Maurer on village community, 6.
- W
- Waldenses, arrival in New York, 22.
 Walker, Judge Timothy, praises the Ordinance of 1787, 357.
 Wallis, Henry, presents petition to Council in behalf of Maryland Puritans, 232.
 Walloons, arrival in New York, 22; Dr. Baird on, 43, 44.
 Walpole Company proposed, 283.
 Warren, Pa., laid out, 149.
 Warwick, R. I., separate government for, 89.
 Washington, George, on territorial government, 344.
 Watertown, commonage in, 582; restrictions on alienations, 593.
 Waywayanda patents, 39.
 Webster, Daniel, on the Ordinance of 1787, 357, 362; land policy, 409; favors pre-emption, 421.
 Webster, Noah, member of Fire Department of New Haven, 461.
 Wenham, Mass., commonage in, 583, 586; restrictions on sale of land, 594.
 Western Territory before the Revolution, 282; Virginia's disposition of, 289.
 Westford, town of, Declaration of Rights discussed, 208.
 Weymouth Plantation formed, 575.
 Whittaker, Rev. Alex., arrival in America, 216.
 Whittlesey pastor in New Haven, 451.
 Willett, Thomas, land company, 117.
 Williams, Roger, founds Rhode Island, 75; obtains charter, 80; antagonism against Harris and Arnold, 83; comparison with Durand, 257; on Indian right of occupancy, 553.
 Wilson, Joseph S., eulogy on the Ordinance of 1787, 358.
 Wiltwyck granted a charter, 30.
 Winslow, Josiah, land company, 117.
 Winthrop, John, land company, 117; land grant by, 565; grant to, 568; on the division of town lands in Boston, 587, 588.
 Winthrop, Theodore, alluded to, 495.
 Woodstock, Conn., named, 577, 578.
 Wyatt, Rev. Hawte, Puritan minister in Virginia, 216.
 Wythe, George, letter to John Adams respecting form of government, 197.
- Y
- Yale College, influence of, 498, 499.
 Yates votes against the Ordinance, 352.
 York, Pa., growth of, 150; officers, 173; finance, 176.

F
122
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