III

LOCAL GOVERNMENT

IN

WISCONSIN

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

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WISCONSIN

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LOCAL GOVERNMENT IN WISCONSIN.

The three general types of local government in the United States, the town, the county and the mixed system, represented respectively by New England, Virginia and New York, have contended for the mastery on the soil of Wisconsin. It is the special aim of this sketch to set forth only what had a direct bearing on this struggle, passing by, also, those features of the town or the district, such as the courts and the administration of justice, in which Wisconsin, from the present point of view, offers nothing peculiar.

The present Wisconsin was a part of Illinois Territory. Owing partly to the original claim of Virginia to the region which became the State of Illinois, a claim strengthened by the conquests of George Rogers Clark in 1778, and partly to the geographical relations of Virginia, Kentucky and Illinois, the population of Illinois in 1818, confined to the northern half of the State, was mainly of Southern origin; and Southern influences controlled all political affairs and moulded the institutions. Thus the local institutions of the South were left as a heritage to Wisconsin, in common with Michigan, when severed from Illinois. In 1818 a law of Michigan Territory made it the duty of the governor to appoint for each county three commissioners, with the usual power over local matters. The confirmation of this system in a Territory whose inhabitants were then mostly of Northern birth, was probably due to the sparse settlement, which would have made the town organization impracticable. This law remained in force until 1827; but it was

provided in 1825, that the commissioners should be elected by the people of the county.

In that portion of the Territory west of Lake Michigan, however, the act of 1818 had little effect for several years. Green Bay, which in 1824 had only about six hundred inhabitants, and Prairie du Chien, with an even smaller population, were the only settlements in the State.[1] At the former settlement there were justices of the peace; but their jurisdiction, besides being, as a matter of course, limited in extent, was very irregular in exercise; and military rule prevailed till 1824. In that year regular terms of a new court established by law of Congress the year before were held at Prairie du Chien and Green Bay by Judge James D. Doty. And thereafter the civil power bore complete sway.

At Prairie du Chien a civil jurisdiction above the competence of a justice of the peace seems to have been established a little earlier than at Green Bay.[3] But there, too, the government was essentially military until 1822.[4] In that year the *borough* of Prairie du Chien was incorporated. There were to be elected a warden and two burgesses, corresponding to the president and trustees of our villages. The organization and powers of Prairie du Chien "borough" were essentially the same as those of villages in Wisconsin and other States. With the exception of Green Bay, incorporated in 1838, this is the only instance of the use of the term "borough" in Wisconsin. These early laws were copied from the codes of Eastern States, and the one for the incorporation of Prairie du Chien was taken from the statutes of Connecticut

[1] Except a very small one at La Pointe, which, for the present purpose, may be left out of account.

[2] For some account of rude frontier justice and an idea of the kind of government west of Lake Michigan prior to 1825, see, besides the references in the note below, *Wisconsin Historical Collections*, I, 59–61; II, 87–90, 105–7, 120–2, 126; III, 248–9; IV, 165–6.

[3] See especially *Wis. Hist. Coll.*, II, 115.

[4] Instances of arbitrary and oppressive acts on the part of the officers of the posts may be found in *Wis. Hist. Coll.*, II, 84–6, 128–9, 229–30, 250.

and Ohio. Pennsylvania, New Jersey and Connecticut are the only States that have "boroughs." And the name as applied here, doubtless came from the Connecticut laws. "The borough," says the annalist of Prairie du Chien, "passed and repealed by-laws for about three years and stopped business in 1825."

It was the influence of Governor Cass, who, born and bred in New Hampshire, was thoroughly imbued with New England ideas of local government, that led Congress in 1827 to establish the New York system in Michigan Territory. The county commissioner system was abolished, and towns were organized. Each town was to elect one supervisor, and the supervisors from all the towns in the county were collectively to form a county board. The towns had the more important business, *e. g.*, control of highways, management of poor-houses, supervision of schools; but town accounts were audited and allowed by the county board.

As far as the present territory of Wisconsin is concerned, this law is of little account. The towns of Green Bay and St. Anthony, which included respectively the villages of Green Bay and Prairie du Chien, were then the only settled portions of Wisconsin, and hence the only parts having regular civil government. These towns were specially excepted from this law of 1827, and given a special organization better suited to the scant population. In each were to be elected three supervisors, who were to perform the duties of both town and county supervisors. This was virtually the old system. There appear to have been no towns organized in the present Wisconsin, under this law.

Many acts relating to the county, town and school district may be found on the Michigan Territory statute books from 1827 to 1835.[1] But these had little operation in the unsettled

[1] It is worthy of note that there was some confusion in the use of the terms "town" and "township" in these and after years, the latter term being sometimes used to designate the civil sub-division. See page 15 of the present sketch for a quite recent instance of confusion of these words on the part of our law-makers.

and undeveloped country west of the lake, and such changes as were made in the distribution of powers between county and town were very slight. It was not until after the organization of Wisconsin Territory in 1836 that any important alteration took place. The discovery of lead in southwestern Wisconsin in 1827, brought a large immigration, chiefly from Southern States, into that region during the next decade. Thus, in the new territory, the Southern people of the lead region formed the majority, and in 1837 established the system of county commissioners. This shows the strong sympathies of southwestern Wisconsin with Southern institutions.

In 1836 was passed a general law of village incorporation, and in 1838 towns were organized for judicial and police purposes, and given some minor power in regard to roads.

The statute books of the first years of the Territory show numerous instances of direct control of local affairs through special acts of the legislature. Thus counties were authorized to build bridges and levy taxes therefor, to borrow money, set off towns, sell lands, open roads, etc. So also towns were empowered to borrow money and school districts to levy taxes. But by the law of 1841, presently to be described, this interference with local concerns was largely prevented by the enactment of general regulations. The more extensive and complex the local business the greater becomes the evil and in fact the impracticability of special legislation.

The Black Hawk expedition of 1832 had reported a rich farming region on the western shore of Lake Michigan. The land was purchased from the Indians, and an immense immigration immediately took place from New England and New York. This new element soon overbalanced the population of the lead region. A demand arose for the restoration of the more democratic form of local government, and in 1841 Northern influences and ideas once more triumphed.[1] Numerous

[1] "An act to provide for the government of the several towns in the Territory and for the revision of county government" (1841).

petitions for the change had been presented to the legislature, chiefly from citizens of the eastern counties, while petitions on the other side came from the lead region. In some localities the results of the county commissioner system had caused considerable dissatisfaction. Newspaper editorials denounced the existing system as "anti-democratic," and as causing "heavy taxes and unequal and improper assessments." "Each town," said *The Milwaukee Sentinel* of September 8, 1840, "is most competent to judge of its own wants and regulate its own affairs, and if left to itself would better secure the interests of its inhabitants than a more remote, expensive, and to them, in a measure, irresponsible body." These extracts sum up the chief grounds on which the county-commissioner plan was opposed. In some localities also, as in Washington county, the requirements of the increasing population burdened the three commissioners with an excessive amount of work in regard to roads, schools, valuation, and levy of taxes. A larger body became necessary to cope with the growth of local business. The continued attachment of the people of the lead region to the existing system was doubtless due solely to their Southern proclivities.

The new law provided that the people of each county might vote "for" or "against" county government. The vote was taken at the general election in 1841; and the returns, as reported to the legislature on February 3, 1842, show that the eastern counties, settled by Northern people, voted by large majorities against county government, while Green, Crawford, and Iowa counties voted for the old system.[1] In the spring of 1842 the change was thus effected in the counties of Jefferson, Milwaukee, Walworth, Racine, Fond du Lac, Rock and Brown. Others made the change in succeeding years, so that when Wisconsin was admitted as a State, in 1848, all had adopted the town organization except the southwestern counties,—Grant, Green, La Fayette, Iowa and Sauk. In these the Southern influence still prevailed.

[1] *House Jour., Wis. Terr. Legis.*, 1841, p. 224.

By the new State constitution, the legislature was required to establish "but one system of town and county government, which shall be as uniform as practicable."[1] Accordingly the New York system, substantially what we now have, was adopted, and the southwestern counties were obliged to re-organize on this plan.[2]

Perhaps no feature of the changes made is more important than that concerning the control of the common schools. Up to 1848 the arrangements for school management were very complicated. At first local school powers were vested in three sets of officers, namely, three town commissioners to pay wages, lay out districts, call meetings, three district directors to locate school houses, hire teachers and levy school taxes, and five town inspectors to examine and license teachers and inspect the schools. In 1839 the town commissioners were abolished, their powers being divided between the inspectors and the county commissioners. But in 1841 the town commissioners were restored, and five district officers, a clerk, a collector and three trustees were provided for. The outcome of such a system was the greatest confusion and consequent dissatisfaction.[3] Yet it continued substantially unchanged till 1848. Since then a large part of the powers formerly vested in the town officers have been exercised by the district boards of three chosen in the respective districts themselves. The town commissioners and inspectors were replaced by a town superintendent, who retained the functions of supervision and licensing of teachers, while the other powers formerly exercised by the town through its officers were given up to the districts. While this was an improvement on the cumbrous system

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[1] *Const. of Wis.*, Art. IV., sec. 23.

[2] A mark of the peculiarity of the southwestern counties is seen in Art. XIV, sec. 12, of the Constitution; the Assembly districts of Grant, Iowa and La Fayette counties consisted of "precincts" instead of towns. The same, however, is true also of an eastern county, Sheboygan.

[3] For the early school system in Wisconsin see Whitford, *Historical Sketch of Education in Wisconsin*, pp. 24–28.

it superseded, a still further advance was made in 1862, when the town superintendency was abolished, the greater part of the duties of the office being transferred to a superintendent elected for the entire county. Abler men are thus secured for the work of school supervision, which is accordingly far more intelligent and effective.[1]

Doubtless the southwestern counties would have retained the old system for many years but for the provision in the constitution requiring uniformity. The lead region must then have contained a large element, perhaps a majority, of citizens bred under Northern influences; but other causes than sectional prejudice or tradition were operating in favor of Southern methods of local government. It was urged, in numerous petitions to the legislature, that the system of three county commissioners involved less expense than that in which the governing body consisted of as many individuals as there were towns in the county. These petitions came from all portions of the State.

Section 22, article IV, of the constitution reads, in part, "The legislature may confer upon the boards of supervisors of the several counties" certain powers, thus implying that the "uniform" system established by the legislature should be the supervisor system. This term and that of Commissioner had come to have definite and distinct meanings; and were in common usage, in legal signification, and in the intent of the framers of the constitution, not interchangeable. The one, by general and legal usage, designated the system of New York, in which the county board consists of supervisors from the towns; by the other was understood the system of commissioners chosen for the entire county. The bill presented to the legislature provided that the "county board of supervisors should consist of three electors," one to be elected in each of the three districts in which the county was to be divided. But in those counties that contained three or more

[1] The development of town control of schools is spoken of, p. 15, below.

assembly districts a supervisor was to be elected in each assembly district, and one additional supervisor for the county at large where there was an even number of assembly districts. This arrangement was made with the purpose of making the number of supervisors proportionate to the population of the respective counties; and, in consequence, to the amount of business in regard to roads, schools, taxes, etc., to be transacted in each. Each county board would consist of at least three members, but the number in every county would be much smaller than under the existing system. As far as the rather limited business of the county is concerned, this was at least an approach to the spirit of the Virginia plan, with its concentration of power in the hands of a few. But the main purpose of the supporters of the new plan was to have a smaller body to transact county business, and at the same time to adjust the number composing it to the population and public business of each county. The system in which each town furnishes a member of the county board, making a comparatively large number in that body, was regarded as too cumbersome and expensive for the newer and more thinly settled counties of the State. It was thought that, in these at least, business would be transacted with greater efficiency and dispatch by a board of three or five members. On the other hand, in the older counties, where population was denser and more compact, and where local affairs had attained a great extent and a considerable complexity, a larger board, securing representation to each small locality, was deemed necessary. The extent of the financial and general interests involved in such counties demanded a large body to secure careful attention to the interests of each locality.

The people of these counties, therefore, regarded the new plan as a step backward; as a return to the spirit of institutions that the constitution had specially sought to avoid. The petitioners generally used the term "county commissioners" to express the desired system, but the legislators who framed the law used the word "supervisors," and thus evaded the plain and well-known intent of the constitution.

The opponents of the proposed plan accordingly argued that it was unconstitutional, and also urged its repugnance to the spirit and forms of democratic institutions. The minority report of the committee on town and county organization[1] declared that the bill "contracts the representative privileges of the people and concentrates power in the hands of the few." Further,—"Person and property are periled. It is a miserly policy that seeks to put money into the scale against popular rights."

In accordance with a very general desire for a change in the county organization, the bill became a law.[2] The town organization, however, remained intact; and as the town with us is more prominent than the county, having in charge the most important local interests, this change in the county organization was of relatively small consequence.

But it was of sufficient moment to secure repeated consideration on the part of succeeding legislatures;[3] and from 1867 on, a series of successful attempts on the part of some counties to secure an organization similar in effect, if not in form, to that which had prevailed from 1849 to 1861. We may take the case of Washington county as an example. There, a special law of 1868 provided for a board of eight members, while its population entitled it to but three under the general law. The question was brought before the supreme court, which decided that the board of eight members was clearly illegal as being hostile to the uniformity in the different counties required by the constitution.[4] But several other counties,[5] in the two or three years previous to 1870, made

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[1] *Wis. Assembly Jour.*, 1861, p. 563.

[2] *Laws of Wis.*, 1861, chapter 129.

[3] See especially *Laws of Wisconsin*, 1862, chapter 399; 1865, chapter 75. By the latter act the biennial election provided for by the acts of 1861 and 1862 was retained, but only part of the supervisors were to go out of office each year.

[4] State *ex rel.* Peck *vs.* Riordan and others, 24 Wis., 484.

[5] Sheboygan, Green and Calumet.

similar changes in such manner as to conform to the constitutional provision; at least, the question of the legality of their organization was not brought before the supreme court.

In 1870 the supervisor system was restored. As in 1861, the unconstitutionality of the existing system, as evinced by the wording of the constitution, the debates in the convention, and the manner in which the law was put in force, was urged on one side, while cheapness was the main argument on the other. Representation of each town in the county board was thought necessary to prevent injustice toward any one town and to bring the governing body into closer relations of responsibility to the tax-payers. The transfer of local business from the legislature to the county boards and the consequent reduction of the length of the sessions was also urged by the advocates of the change. The argument in regard to cost was very strong, but the spirit of republican government triumphed over the consideration of expense, and the New York system was re-established and has continued in operation to the present time.

The general type and spirit of our local organisms, county, town and district, are not likely soon to undergo any change. Indeed the system of local government originating in New York and copied by Michigan, Illinois, Wisconsin and Nebraska, is the model to which the other States of the Union will, it is very probable, ultimately conform. And while rearrangements in the details, the minor and unessential points, are constantly taking place with every session of the legislature, there is at present no tendency to disturb the balance of power between the Wisconsin local organisms in respect to highways and general taxation.

But as regards the two other most important local concerns, care of the poor and management of schools, there are tendencies toward important changes.

It is at the option of any county to take the entire care of paupers into its own hands to the exclusion of the town. Where this is done the whole management is put into the

hands of three superintendents of the poor, chosen by the county board. Many counties have adopted this plan. In the same line, but in this case at the expense of the State, is the tendency to place the insane in county asylums instead of in the State hospitals, to which latter, accordingly, their name of *hospital* comes more fittingly to correspond. In 1888 sixteen counties had county asylums for the chronic insane. This movement is due to the efforts of the State Board of Charities and Reform who advocate the county asylum as furnishing for the patients greater opportunities for occupation, freedom and individual treatment, and as being cheaper.[1] Here, then, the county is somewhat gaining over the town. On the other hand, mention may be made of the town local option law, of which, however, few localities have taken advantage.

As respects elementary education, now the very foremost object of local government, the establishment of town high schools, toward which a current, though yet very slow, has set in, will have a very great influence for the improvement and elevation of the whole public school system. In 1869 the township system[2] of school government, in which the clerks of the sub-districts constitute the town school board, was made optional; but it had no popular hold, and in 1875 a law providing for free high schools was passed, partly to encourage the adoption of the township system.[3] Comparatively few towns, however, have established it, but in some of these its value has been conclusively demonstrated. And one of the things at present most earnestly desired by leaders in school matters in the State is the general establishment of these town high schools.[4]

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[1] See *Biennial Report of the State Board of Charities and Reform*, 1887–8, p. xiv.

For a comparison of the arguments for and against county system of poor relief see the *Report* for 1885–6, pp. 179–82, xv–xx. See also *Report* of 1887–8, p. viii.

[2] This, of course, ought to have been called in the statute the *town* system.

[3] See *Report of State Superintendent*, pp. 33–34.

[4] For the advantages of the town as compared with the district system, see *School Laws of Wisconsin*, 1885, pp. 150–2.