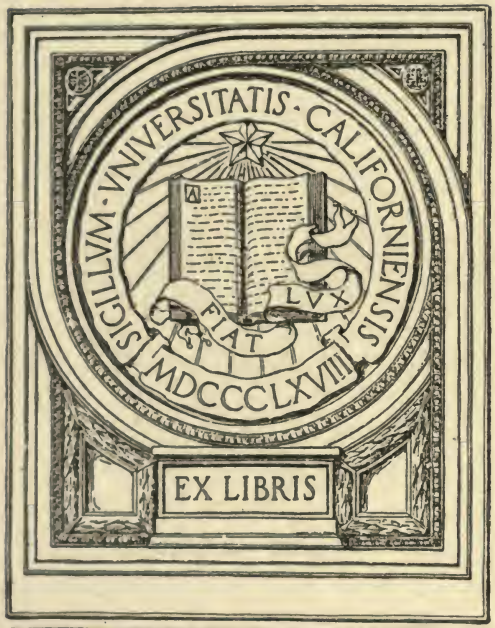
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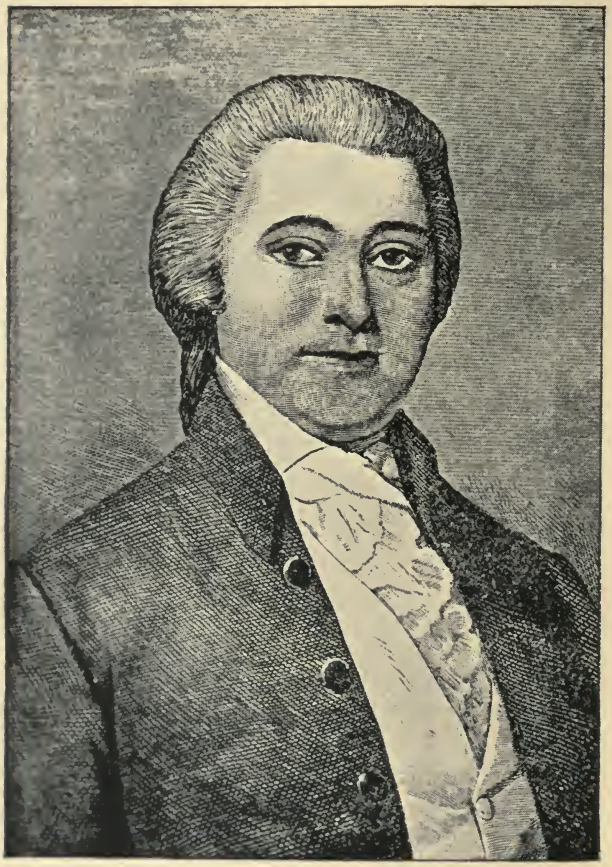


WILLIAM BLOUNT,

President of Convention of 1796.

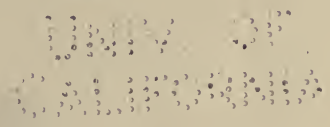
STUDIES

IN THE

Constitutional History of Tennessee.

BY

JOSHUA W. CALDWELL.



CINCINNATI:
THE ROBERT CLARKE COMPANY.
1895.

PREFACE.

This book is composed of a series of short studies of certain aspects of the political life of Tennessee. It does not aspire to the dignity nor to the completeness of a constitutional history of the State. Its substance was printed in the Spring of 1895, in the *Knoxville Tribune*, through the kindness of W. C. Tatom, the accomplished editor of that paper. The articles were written in aid of an effort for a Constitutional Convention, although they were essentially historical and not controversial. The writer has yielded perhaps too readily to the suggestion of friends, that they are worthy of permanent form. The book is presented with very few changes from the original articles. They were composed largely of general statements and suggestions, and it may be thought that at times these statements are extreme. For example, much stress is laid upon the influence of the Scotch-Irish in early Tennessee history, and it may seem that too much is attributed to them, but it was the purpose of the

writer to look only to general features and controlling forces, without going into historical detail more than was absolutely necessary. The book is an effort to indicate the origin and operation of the forces which have shaped the social and political life of Tennessee. The State has a distinct, unique, and important constitutional history, and it is to be hoped that one day it will find a competent historian.

The writer's thanks are due to General Marcus J. Wright, of Washington, D. C., Mrs. John C. Brown, of Pulaski, Tenn., the Hon. W. S. Morgan, Secretary of State, Nashville, and Mr. Edward T. Sanford and Major Hunter Nicholson, of Knoxville, for valuable assistance in his work. He wishes to acknowledge also that in stating the defects of the Constitution of 1870 he has availed himself freely of valuable publications on that subject by W. B. Swaney, of Chattanooga, and James H. Malone, of Memphis.

KNOXVILLE, TENN., *Sept.*, 1895.

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STUDIES

IN THE

Constitutional History of Tennessee.

CHAPTER I.

The Watauga Association.

1772–1777.

To comprehend the spirit and the true quality of institutions, we must know the people who established them. A subject so interesting and important as the institutional history of the United States has not failed to attract many earnest students and competent writers.

Conspicuous among these is Hannis Taylor, of Alabama, who has made the study and the exposition of English and American political history his life work, and whose admirable book is intended to demonstrate the fact that the American Constitution is only a phase in the development of the English Constitution.

That both our political and our social institutions are derived almost exclusively from England is an

opinion which until recently was universally accepted. It is asserted, in effect, by such writers as Sir Henry Maine, Edward A. Freeman and James Bryce, in England, and Bancroft, Fiske, Taylor and Woodrow Wilson, in America. Mr. Fiske declares emphatically that: except the development of the written constitution, every bit of civil government in America came directly from England.*

In 1892, however, appeared Douglas Campbell's valuable book on the Puritans in Holland, England, and America.

Mr. Campbell had been an enthusiastic student of the colonial history of New York, and had convinced himself that very much of what is best in our institutions had come to us from the Dutch, through English contact with Holland before the colonizing period, through the temporary residence of the Puritans in Holland, and through the Dutch colonists of America. It is as certain that Campbell overestimated the Dutch influence as that other American historians have underestimated or ignored it. It is not to be disputed that upon the social life and in less degree upon the political institutions of the Middle and Eastern Colonies, the

* Civil Government, p. 202.

Dutch influence was very great and very salutary. It will not be difficult to discover throughout our country, evidences of its indirect operation as one of the great and general civilizing forces, but in these colonies it acted directly and left its impress in substantive institutions. It was not only Dutch influence upon English civilization, but also the influence of Dutchmen living and acting in America. But even Mr. Campbell admits that this direct influence did not extend below the Middle Colonies, and therefore did not affect the Virginia group. He reconciles his argument with this fact by denying to the South any material part in forming our institutions.

In New England, political institutions were essentially old English with modifications resulting from the effort to realize an impossible theocratic ideal. It was in the Middle Colonies that the Dutch influence was strongest. The Hollanders colonized New York and overcame the Swedes, who had settled along the Delaware and Jersey coasts.

Virginia, however, was even more English than New England. The people were English and the institutions were modern English in form as well as in substance. Virginia was consistently

loyal to the Crown and to the Church of England, and her colonial society in some respects exhibited distinctly aristocratic qualities.

In all the colonies the right of local self-government was exercised in some form. The Massachusetts system differed widely from the Virginia system and the Middle Colonies adopted some of the peculiarities of each of these.

It has been said, happily, that the social forces of New England were centripetal, and those of Virginia centrifugal.

The New Englanders, seeking first of all, not religious freedom, but freedom for their own religion and none other, settled in clusters around their churches and school-houses, and thus established the township as the unit of government. The sterility of the soil and the consequent necessity for relying on trade for subsistence contributed largely to the permanency of the system. The Virginians, on the other hand, quickly became scattered. They found a fruitful soil and a genial and hospitable climate. They were not, as a rule, seeking religious freedom, but the betterment of their fortunes, and they lacked the cohesive and centralizing force of a strong and fiercely intolerant sectarianism. The introduction of tobacco and of

slavery at an early period in their history confirmed the tendency to diffusion. Nothing yielded such liberal returns as tobacco, and large plantations were needed for it. Thus the Virginia planters dispersed themselves through the broad and fertile lowlands, employing their increasing troops of slaves in the cultivation of this profitable plant. The New Englanders lived close together, under the eaves of their churches; the Virginians far apart, each isolated in the midst of his spreading plantation. Conditions in Virginia were wholly incompatible with the existence of the township system, and the county became of necessity the governmental unit.

The Virginians adopted the plan then existing in England, while New England had in modified form an older Teutonic system.

The people of Virginia were overwhelmingly English in blood. Fiske estimates that in the middle of the eighteenth century about ninety-eight per cent of the white population was English.* All the Southern colonies have aptly been called the Virginia group, and all the Southern States are in the same sense a Virginia group. The Virginia

* Harper's Magazine, vol. 65, p. 900.

system of local government, as distinguished from the New England system, prevails in all of them.

The territory of Tennessee belonged to North Carolina, which was more thoroughly Virginian than either South Carolina or Georgia. It was an agricultural colony, and its political organization, after the demise of the Locke and Shaftesbury Constitutions was, in essentials, identical with that of Virginia. The first settlers were from Virginia and the dominant element of population was English. So far as political and social institutions were concerned, every thing was of English origin. There were some Huguenots, Highlanders and Germans, and a considerable number of Scotch-Irish. The last were to be found mainly in the up country region, along the mountain slopes. They alone were sufficiently numerous and self-assertive to have competed in any respect with the purely English element, but they were Teutons in blood, and were politically no less English than the English themselves. Except that they were more pronounced and aggressive in their democracy, they differed not at all, in political beliefs, from the English settlers. It must always be borne in mind that while the Saxon blood of the lowland Scotchman has been copiously diluted, and while

the Britons of Wales and the Celts of Ireland are alien in blood to the English, they all belong to the English political family and represent the same beliefs and tendencies.* The fundamental tenets of Anglo-Saxon freedom are personal liberty and representative government, and in advocacy of these the Scotch-Irishmen have been as earnest and as steadfast as the full-blooded Englishmen of Massachusetts or of Virginia.

The Scotch-Irish, who play so important a part in the early history of Tennessee, entered America mainly at two points. Most of them came to Philadelphia, but many selected Charleston. Being late comers, they found the more fertile and accessible coast lands already occupied, and therefore were forced to the border, which then lay along the mountains. Persistent of purpose and

* Douglas Campbell declares that the Scotch-Irish were un-English and hated English institutions, both civil and ecclesiastical. This is a gross misconception so far as political beliefs are concerned. It is in the Scotch-Irish States, Tennessee and Kentucky, that modern English forms and methods were most closely copied and have been longest retained. If by reason of their democracy the Scotch-Irish were un-English, then John Bright was un-English, and so is the mass of the English Liberal party of the present day. Their principles were not un-English. They were English principles carried to their logical conclusion.

of dauntless courage they boldly pushed their way into new lands. From Western Pennsylvania they forged steadily southward along either slope of the Blue Ridge. In 1768 they had established themselves along the Holston as far south almost as the present Tennessee line. Upon the south of the Alleghanies the northern stream of migration had flowed on until it had met a counter current from the South. The Southern Presbyterians had come up from Charleston, settling the piedmont lands, and had met their kinsmen from Pennsylvania. Thus the Scotch-Irish had possessed themselves of most of the hill country south of the Appalachians, and in Western Virginia had gained foothold in the Holston Valley. The movement could not be arrested, but of necessity it was diverted westward.

The mountains could no longer bar the pioneers from the rich lands of the Mississippi Valley. They were already upon the head waters of the Tennessee, and their scouts and hunters had penetrated the forests of Kentucky and of the lower Cumberland.

The place of entrance was selected wisely by Boone and the first Watauga settlers. Upper East Tennessee was not an inhabited region, but an unoccupied hunting ground and this was perhaps

equally true of Eastern Kentucky. Here was undoubtedly the point of "least resistance" on the whole frontier. The pressure behind the Holston settlers pushed them as far south as the Watauga country in 1769, and there these Virginian Scotch-Irishmen found a few families of Carolinian Scotch-Irishmen who had preceded them a little while.*

The meeting of the tides of migration south of the mountains continued to cause a considerable though intermittent flow westward. The events connected with the Tryon rebellion in North Carolina brought many recruits to Watauga, and aided to confirm the Scotch-Irish ascendancy. Most of the settlers were from Virginia, and at first they believed that they were in the domain of that colony, and protected by its treaties with the Indians. In 1771, however, the line between Virginia and North Carolina was run, and the Watauga people found themselves in North Carolina, but separated from the settled regions of the parent colony by almost impassable ranges of mountains. Even if communication had been easier the settlers were not regarded with favor by North Carolina, and moreover the affairs of that colony were in a con-

* Haywood, History of Tennessee, edition 1891, p. 50.

dition so disordered and its administration so hampered that neither protection nor aid could be expected on the Watauga. It is literally true that Watauga was without government. The Indians were constantly threatening, and many lawless characters, needy adventurers, and fugitives from justice had come with the first wave of immigration. There was urgent need for law and for its prompt and vigorous enforcement.

When, some years later, the French settlers in Illinois found themselves thrown upon their own resources, they sent a petition to Congress for a Governor and for soldiers. As Roosevelt very truly says, they wished for a master.* But in the Saxon was the race instinct of self-government, along with a bold self-reliance. Watauga did not fretfully invoke the aid of North Carolina, and while awaiting a response tamely submit to the evils of which it complained. There was but a handful of settlers, but being of a free race, state making, and apt to organize, they speedily constructed a government of their own. This extemporary State was rough-built, but it answered the purposes for which it was intended. One is re-

* Winning of the West, Vol. 2, p. 184.

minded by it, vividly, of the ancient German federations. The line of descent is easily traced. The Watauga Association was a thoroughly Teutonic institution; a new England on a small scale, but shorn of aristocracy, and of every class distinction. In this backwoods community, Anglo-Saxon principles had perhaps for the first time full scope. What English-speaking community, before Watauga, had universal suffrage and absolute religious freedom?

Watauga may have had little influence on the course of history beyond the borders of Tennessee, but it has a great and general interest and importance as the first concrete manifestation of the distinctively American spirit of independence.

Speaking of Watauga, Bancroft says: "For government, its members in 1772 came together as brothers in convention, and founded a republic by a written association; appointed their own magistrates, Robertson among the first; framed laws for their present occasions; and set to the people of America the example of erecting themselves into a State, independent of the authority of the British king." *

* Bancroft, Vol. 3, p. 403.

It is both interesting and important to notice the descent of the three Watauga leaders. John Carter, the official head of the Association, was of an old and honorable Virginia family of English origin. His precedence is to be attributed to high social standing and superior abilities. James Robertson was a Scotch-Irishman who had come from Virginia through North Carolina, and John Sevier was an Englishman. More accurately speaking, they were all Americans, distinctively so by birth, and not less in sentiment. It is the custom to call Sevier a Huguenot, because his grandfather was a Huguenot, but in language, in education, and above all in political principles, he was thoroughly Saxon.

Another fact of the first importance is that the dominant element in the community was the Scotch Presbyterian. The Calvinistic theology developed democracy, not only in Great Britain, but throughout Western Europe. The strongest democrats were the English Puritans and the Scotch Puritans. When the Scotch Puritans of Watauga found themselves without a government, they established one on the English plan, improved so that all men should be equal. In the Watauga compact were the germs of nearly every thing that is in our

national constitution, and both these are phases of a political evolution which we know has been going on steadily since the Roman historians discovered the "huge, white-bodied, cool-blooded, blue-eyed, flaxen-haired" Saxons in the foggy marshes of the North Sea.

I do not wish unduly to exalt nor to idealize the Watauga men. They were, with few exceptions, plain people, and their sturdy virtues were mingled with many faults. John Sevier, who became most noted among their leaders, was not without education, though neither learned nor studious. Robertson, whose natural abilities were of a high order, was painfully illiterate, and was laboriously learning to write his own name. This last accomplishment appears to have been possessed by most of the settlers. The antecedents of the Carters support the belief that they were people of education and of superior social standing.

We are likely to classify immigrants as thriftless and unworthy. The Scotch-Irish, the English and Dutch Puritans, the Huguenots, the Swedish and German Lutherans, and the great bulk of the Virginia Englishmen were neither thriftless nor unworthy. The Scotch-Irish, who dominated the Watauga community, came to this country, not

more to better their temporal fortunes than to find freedom of religion. But not even in earliest times was America exempt from the evil of criminal and pauper immigration, which has now assumed such vast and menacing proportions.

The Watauga settlement was not exceptional in this respect, but had its quota of ruffians and criminals, to whom it did not hesitate to administer condign punishment. It is certain that, in the main, the Watauga people were honest and worthy professors of the Presbyterian faith. They were rough in act and in speech; their virtues were homely and substantial; they lived hard lives in mud-chinked, puncheon-floored cabins; ate coarse food, and dressed in homespun and in the skins of wild beasts.

Their morals were good, and their political principles were of the soundest Anglo-Saxon stock. Politically, they were Englishmen living under new conditions which were favorable to the development of that spirit of personal independence which their theology inculcated. Their principles were the very essence of the English Constitution freed from the trammels of tradition and precedent. They were thorough-going democrats. Their individualism was defiant, aggressive, fierce. Their

impress upon the intellectual and political life of the State is indelible. The settlers who came after them were mainly of their own kind.

The political institutions of Tennessee are therefore the purest Anglo-Saxon, with the highest possible development of individualism. This intense democracy is a continuing characteristic. Even the eminently aristocratic institution of slavery could not overcome it. In no part of the earth is belief in the equality of men stronger or more persistently asserted than in East Tennessee. It must be admitted that in some instances the development of this virtue has been excessive.

Such were the founders of Tennessee as we see them in history and in the characteristics of their descendants.

The rule of the first settlers has been perpetuated. Theodore Roosevelt, to whom we are much indebted, remarks frequently and justly upon the fact that while in Kentucky and the other Western States the control of affairs quickly passed from the first settlers to the more cultured class which came later, it was not so in Tennessee. Here the descendants of the pioneers, or of the same class to which they belonged, are still dominant. No Virginia family, for instance, ever held such place

and power in Tennessee as the Preston-Breckinridge family has held in Kentucky. Nearly all the great names in the history of Tennessee are pioneer names, Scotch-Irish names. Jackson and Polk are conspicuous examples. It is probably true that Tennessee has always been the most democratic community in America.

As to the Watauga Constitution or Compact, our knowledge unfortunately is very limited. The instrument itself has perished. I shall discuss hereafter the connection between it and the Cumberland Compact. As James Robertson and at least three of his associates were leaders in the two communities, and as the conditions under which they were organized were very similar, it is almost certain that the Cumberland Compact, which has been preserved in part, was in large measure a reproduction of the Watauga Constitution. Haywood is very brief and unsatisfactory on the subject of the Watauga Agreement. He says that the settlers "formed a written association and articles for their conduct and that they appointed five commissioners, a majority of whom was to decide all matters in controversy and to govern and direct for the common good."* This laconic description is some-

* Haywood, p. 54.

what enlarged by Ramsey, who says: "The Watauga settlers, in convention assembled, elected as commissioners thirteen citizens. They were John Carter, Charles Robertson, Zach Isbell, John Sevier, James Smith, James Robertson, Jacob Brown, Wm. Bean, John Jones, George Russell, Jacob Womack, Robert Lucas, William Tatham.

Of these, John Carter, Charles Robertson, James Robertson, Zach Isbell and John Sevier were selected as the court, of which W. Tatham was the clerk.*

This court, or board of five commissioners, appears to have exercised all judicial and executive functions.

Roosevelt discusses the subject more at length, and in much the same tone as Bancroft. He recognizes the quality of the Watauga Association, and its importance as the first free and independent community established by men of American birth, on this continent. He comments also upon the likeness of the Association and its procedure to the ancient German polity, calling the general convention, "a kind of folk-thing, kin to the New England town meeting," and the representative assembly a small parliament or "witanagemot." †

* Ramsey, p. 107. † Winning of the West, Vol. 1, p. 184.

The settlements originally composing the Association were Watauga and Carter's Valley, the last being about sixteen miles east of the present town of Rogersville. The Nolichucky or Brown settlement was admitted afterward. The principle of representation appears to have been fully and fairly employed, but as to the exact method, we have no information. It may be accepted as certain, however, that the entire procedure was modeled upon the Virginia system, and probably each little station or settlement was allowed representation in proportion to the number of its inhabitants.

For about six years Watauga existed as an independent community, exercising every prerogative of statehood, and all its proceedings seem to have been moderate and prudent, but firm and in the main efficient.

So far as we can judge from the meager information that survives, the citizens were not dissatisfied, although the petition for annexation to North Carolina, which was presented in 1776, expressed regret that some who deserved punishment had escaped.

The people were fairly well protected in life and property, and especially effective measures seem to have been adopted for the suppression of the gravest of frontier crimes—horse-stealing. I can

find no traces of any insurrectionary feeling such as was exhibited by the supporters of the State of Franklin in later years. The people and their leaders seem to have had in view nothing beyond a government for their own protection.

In their petition of 1776, they use the following language in explanation of their purposes: "Finding ourselves on the frontiers, and being apprehensive that for the want of a proper Legislature we might become a shelter for such as endeavored to defraud their creditors; considering, also, the necessity of recording Deeds and Wills, and doing other public business, we, by consent of the people, formed a court for the purposes above mentioned." *

When non-residents were dealt with, bonds were required from them in order that personal proceedings might not be necessary. Deeds and wills were recorded, marriage licenses were issued, and all essential functions of government were carried on in a due and orderly and dignified manner. Mr. Roosevelt thinks that Ramsey is unhappy in characterizing the government as "paternal and patri-

* Ramsey, p. 136.

archal," and yet this is true in a sense, though it was also essentially democratic.

Some of its legislation, or more accurately, some of its administration, was decidedly sumptuary, and it assumed liberal, though salutary, powers for the regulation of morals. At least one instance is known in which it intervened in family affairs, requiring an errant husband to return to his duties. It adopted the laws of Virginia in preference to those of North Carolina, and interpreted and administered them, wisely, with more regard to its surroundings and needs than to technical methods. There is no evidence of any restriction of suffrage, nor any reason to doubt that all free men over twenty-one years of age were allowed to vote. This was the law in Cumberland. In the petition of 1776, the Watauga people declared that their committee had been chosen "unanimously by consent of the people," and again that they had acted with the consent of "every individual." *

Nothing is said of religious or other special tests as conditions to the exercise of any right, nor to the enjoyment of any privilege or preferment. In short, the Association seems to have been a purely

* Ramsey, p. 136.

representative democracy, based upon universal suffrage.

It is impossible to define the respective powers of the committee of thirteen, and of the court or commission of five. It is stated that the chairman of the court was also the presiding officer of the larger body. Whether the committee had any supervisory or appellate relations to the court or not, I am unable to say positively. The thirteen do not appear to have had any part in the actual conduct of the public business. Ramsey says, referring to the court of five, that it was a tribunal for the settlement of "any private controversies," and that its sessions were held at stated and regular periods.* It seems at first to have carried on its business without the assistance of a clerk, but later, it is recorded, four different persons served it successively in that capacity. It had also a sheriff and an attorney. No record of its decisions nor account of its proceedings has been preserved.† Roosevelt

* Ramsey, p. 133.

† I have heard from the descendants of several of the Watauga leaders that the records were purposely concealed or destroyed for fear that members of the government might be called to account for certain summary acts of administration. This is not improbable.

says that the court of five members had "entire control of all matters affecting the common weal, and all affairs in controversy were settled by the decision of a majority."* Nothing can be said definitely concerning the committee of thirteen, except that it met in 1772 and appointed the court, to which it appears to have intrusted all the functions of administration.

The military establishment of the Association is described in the petition of 1776 in the following language: "We thought it proper to raise a company on the district service, as our proportion, to act in the common cause on the seashore. A company of fine riflemen were accordingly enlisted and put under Capt. James Robertson, and were actually embodied, when we received sundry letters and depositions (copies of which we now enclose you), you will then readily judge that there was occasion for them in another place where we daily expected an attack. We therefore thought proper to station them on our Frontiers in defence of the common cause, at the expense and risque of our own private fortunes, till farther public orders, which we flatter ourselves will give no offence."†

* Winning of the West, Vol. 1, p. 184.

† Ramsey, p. 137.

The fact that such an organization as the Watauga Association existed for six years, and that its administration, so far as we know, was acceptable to the people, is strong proof of the wisdom and worth of the men who established and controlled it. Many of its founders were unlearned, but they were educated in free principles;* they were just and firm, and their native good sense and probity were equal to every demand upon them. When in 1777 North Carolina created Washington county, which comprised all the constituent communities of the Association, there was no disturbance of either public or private affairs. The Watauga officers in many instances were appointed to corresponding places by the State, and matters went on very much as before. The law was administered with the same directness, informality, and efficiency, and the connection with North Carolina was little

* As a rule, the Scotch-Irish were not illiterate. In reviewing my work, I am led to doubt whether I have done the Watauga people full justice in this respect. The petition of 1776 has 113 signers, and all but two appear to have written their names. For many years the illiteracy of her people was a source of shame to Tennessee, but this illiteracy was largely a result of unfortunate conditions of a period subsequent to the first settlements.

more than nominal. The sentiment of allegiance to the State was never strong west of the mountains, and the ultramontane settlements were never favorites of the mother State. The Tennessee counties regretted and resented the fact that they were not in Virginia.

I have endeavored to show that the first political institutions established on the soil of Tennessee were free and were wholly democratic; that they were thoroughly Anglo-Saxon in origin and quality, and that they for the first time carried certain principles of English freedom to their logical conclusion, in that they declared the absolute equality of all free men; ignored all distinctions of class, and allowed the fullest freedom of conscience, as well as of conduct.

The Watauga Association has been given no little prominence in recent historical writings, and very much has been claimed for it. It has been called the "first free and independent government in America." In a certain sense, this is true. It was the first of the series of self-dependent and thoroughly American commonwealths established on the frontier just before the Revolution. Our Tennessee historians are content to say that the Watauga Compact was the first written constitution west of the Alleghanies. Roosevelt concurs in this,

and adds that Watauga was the first free and independent community established on the continent by men of American birth.

We must be moderate in our claims. Our Yankee kinsmen, from the beginning, were much addicted to state-making. The Pilgrims of the Mayflower employed the leisure time of their voyage in preparing a compact which was almost a constitution, and the early history of New England is full of commonwealths and confederations. On the 14th of January, 1639, three Connecticut towns adopted an instrument which is known as the "Fundamental Orders of Connecticut." Of this, Mr. Fiske says: "It was the first written constitution known to history that created a government, and it made the beginning of American democracy."* It must be remembered, however, that the Connecticut men were Englishmen, while the Watauga men were Americans. It is true also, that while the framers of the Fundamental Orders were less illiberal than their Massachusetts neighbors, with whom they could not agree, they were more intolerant in religious matters than the equally pious Scotch-Irishmen of the West. The Watauga

* Beginnings of New England, p. 127.

Community seems to have had no restriction upon suffrage, and any good man was eligible to office, whereas, Mr. Fiske, going as far as he can, says of Connecticut that suffrage was "almost universal;" * and it was provided in the compact that the governor should be a member of some "approved congregation."

But if the Connecticut men said much of God and of religion they gave no heed to the King of England in their compact. Upon its face that instrument is the organic law of an independent republic, not less so than the Watauga Compact, as we know it.† That there was a tacit acknowledgment of the sovereignty of Great Britain is at least probable, and that Connecticut afterward submitted to that power is certain. The Watauga Compact was made a hundred and thirty years later, and by men who had been born in America, and had imbibed that spirit of greater independence which the free life of the colonies, remote from England, had begotten. There was no express declaration of independence in Connecticut, nor was there in Watauga, so far as we know. Thus the points in favor of Watauga in the comparison

* Beginnings of New England, p. 128.

† Poore's Charters and Constitutions, title, Connecticut.

are universal suffrage and unqualified religious liberty.

Ramsey and Roosevelt state the case for Watauga as strongly as it can safely be put. It was the first free and independent government west of the Alleghanies, and the first established anywhere by men of American birth.

In August, 1776, Watauga sent to the Legislature of North Carolina the petition to which I have referred above, asking to be annexed to that State. It is to be assumed that the word "annex" was used advisedly, as the petition is evidently the work of a man of fair education.* It is not possible, however, that the Watauga people were unaware, even in 1772, that their country belonged to North Carolina. The running of the North Carolina line in 1771 was the prime cause of the establishment of their Compact, and they must thenceforth have been conscious of the right of that Commonwealth to extend its dominion over them. It is true that they did not hesitate to assume the highest functions of government, such as making treaties and purchasing lands in their corporate capacity, but as men of intelligence they must have

* It is said to be in Sevier's handwriting.

known that when North Carolina should assert her sovereignty, they would have neither the power nor the legal right to resist. After their incorporation into the State, they conducted themselves as dutiful though not devoted citizens.

This petition of 1776, which was discovered among the neglected archives of North Carolina by Dr. Ramsey, is an invaluable document. It breathes the spirit of the truest and most unselfish patriotism, and declares that it is presented in order that the signers may "share in the glorious cause of liberty."*

The spirit of the people, as shown in this petition, reveals the spirit of their Constitution. They were thoroughly American and liberty loving, and for their own government, in a time of necessity, they had created a State whose institutions exhibit in crude form every essential quality of our American system in its highest development. They were able to govern themselves, but they voluntarily surrendered their independence in order that they might the more effectively fight for the liberty of their country. Their petition makes this the paramount consideration.

* Ramsey, p. 137.

The Watauga Association is the most important fact in the early history of the South-west. It may be suggested, with the greatest deference to Mr. Bancroft, that he is in danger of misleading, when he declares that Watauga "set to the people of America the example of erecting themselves into a State independent of the authority of the British king."

If it be intended by this to assert that the Watauga people were in rebellion against England, or that they were actuated by what Roosevelt, speaking of a later period, calls the "separatist" sentiment, the assertion, it is respectfully submitted, is erroneous.

The Watauga people did not at first intend nor wish to separate from England. The subject probably was not considered when they formed their government. The Association was the creature of necessity. The physical separation from the only established government which was entitled to jurisdiction over the settlements was complete, and the people were compelled to make their own government. If North Carolina had been able and willing to protect them, the Association probably never would have been formed. That the sentiment of loyalty to England had in all the colonies become much impaired by distance, by the condi-

tions of life in the remote West, and by the unjust policy of the Crown, may be admitted. It is undeniable, also, that the Scotch-Irish were essentially independent and democratic, and that some of the Watauga settlers had taken active part in the Tryon rebellion. Nevertheless, it seems certain that the prime, and indeed the sole, motive of the founders of the Association was not opposition to any authority whatever, but the desire to create an authority. Mr. Phelan intimates that they had hopes of becoming an independent State, and it is probably true, but this looked to the future, and was not the motive for creating the Association.

The episode loses nothing of its importance by this construction. The significant facts are that the people had become self-reliant, and conscious of their ability to protect and to govern themselves, and that in organizing their State they not only discarded class distinctions, as the Connecticut colonists had discarded them in the preceding century, but gave to all freemen the right of suffrage, and to all men perfect liberty of opinion.

It may be said that there could not have been classes, nor discrimination in civil rights, nor preference of any creed, in a frontier settlement which

was engaged in an incessant struggle for existence, and where harmony of action was indispensable; but we know that in the early days of Massachusetts, when conditions were not more favorable, nor danger less constant, bitter internal wars of opinion were waged.

If in the seventeenth century there were no Americans, in the last half of the eighteenth century this was not the case. There was then a distinct American race, mainly English in blood, but highly composite, and a distinct American sentiment.* These Americans were loyal to the great principles of Anglo-Saxon freedom, but they, or at least their leaders, were wise enough to see that those principles not only admitted of the equality of men, but in their truest interpretation required it.

Every condition in America, which had come to be the meeting place of all races and of all religions, not only favored but exacted the most liberal concession and toleration in matters of opinion. The full importance of the individual man was first recognized and declared in America. By the middle of the eighteenth century conditions

* Winning of the West, Vol. I, p. 20.

throughout the colonies were favorable for a manifestation of this American sentiment.

The persistent assertion of the right of self taxation by the larger colonies, and the Tryon rebellion in North Carolina were such manifestations. Owing, however, as it appears, to purely fortuitous circumstances, the Watauga settlers were the first to embody these liberal principles in actual institutions. It may justly be claimed that they were peculiarly prepared for this step, as well as compelled to it by their circumstances. Certainly they were the first Americans to establish absolutely free and democratic institutions. They were obscure men, and their community was little considered in the older settlements; they were, therefore, the forerunners rather than the leaders of the great movement that was at hand.

Nevertheless their influence powerfully affected not only the contemporary, but also the later history of the South-west. It is not to be doubted that the republics of the Cumberland and of Transylvania were the lineal descendants of Watauga.

But I repeat that while Watauga was in a sense an independent community, it was not established in conscious rebellion or opposition to the Crown. The situation required a government, and the peo-

ple, having only themselves to consult, made one to suit themselves. The fact that other English settlements, under similar conditions and at the same time, in Western Pennsylvania and elsewhere, did not manifest equal self-reliance and independence, may be accepted as proof that the Watauga men were of more advanced principles and were better prepared for the change.

It does not matter whether they or the Connecticut Puritans established the first independent government. They did not consciously imitate any one; they were brave, honest, God-fearing men, and true patriots; they made a peculiar and important place for themselves in history; their influence upon succeeding generations has been the most salutary, and we have every reason for regarding them with pride and with gratitude.

CHAPTER II.

Cumberland.

1780–1783.

"Like almost all those in America who have ascended to eminent celebrity, he had not a noble lineage to boast of, nor the escutcheoned armorials of a splendid ancestry, but he had what was far more valuable, a sound mind, a healthy constitution, a robust frame, a love of virtue, an intrepid soul and an emulous desire for honest fame." These are the flowing words with which John Haywood, the first historian of Tennessee, a just man and tenacious of his rhetoric, describes James Robertson, the pioneer leader of Watauga and of Cumberland.

It is probable that Robertson was the first man in Watauga; it is certain that he was the first in Cumberland. He had none of the brilliancy and dash of Sevier, but surpassed him in solidity of character, in firmness, and in soundness of judgment. He was a wise, brave, industrious, persistent Scotch-Irishman. He was the safest and the surest of our pioneer leaders. History, even in these later years of renewed interest, has not dealt justly with him.

JAMES ROBERTSON,

The Cumberland Leader.

He was a man of exceptional intellectual and moral endowments, and was born to leadership.

I am earnest in calling attention to his character, because through him we may know the qualities of the better element of the Cumberland settlers.

We find also, in the earliest Annals of Middle Tennessee, the names of Lucas, Tatham and Isbell, whom we have already met in Watauga.* Politically, Cumberland was the offspring of Watauga. Robertson had been almost ten years at Watauga when the westward impulse, and, it may be, the land fever, seized him; and taking his life in his hand, he went long journeys into the untrodden wilderness. There were others as reckless as he, and all came back bringing the most alluring accounts of the fertility and beauty of the lands of the lower Cumberland. Through Cumberland Gap, or down the long and winding course of the Tennessee, and up the Ohio and the Cumberland, companies of adventurers starting from Watauga mainly, found their way to this new land of plenty. Another Scotch-Irish Saxon settlement sprang up on the site of the future capital of Tennessee, under the leadership of Scotch-Irish Robertson.

* Putnam, History of Middle Tennessee, p. 26.

The Cumberland bluff was not a bed of roses. Furious and incessant assaults of the Indians fairly broke the spirit of the settlers at one time, and all their leader's energy of character and of conduct was needed to prevent them from abandoning the enterprise and returning to the East.

By the first of May, 1780, there were grouped about Nashborough * seven other stations of sufficient importance to be represented in the convention which organized a government.

The constitution which was framed by this convention, which met at Nashborough on the first day of May, 1780, has been preserved except the "first page;" presumably a foolscap page of the age of caligraphy which preceded the invention of the atrocious steel pen.† On the thirteenth of the same month, certain important amendments were added, and these have been saved intact.

Two hundred and fifty-six persons signed this instrument, and the list might have been copied from the register of a Belfast or Coleraine emigrant ship.

This was another State founded upon the unanimous consent of the governed. The Constitution

* Now Nashville.

† Putnam, pp. 94–102.

however contains an express recognition of the fact that the settlement belonged to North Carolina. The language of the instrument is in the main precisely such as we believe the Watauga Compact to have contained. The following is an illustration: "As this settlement is in its infancy, unknown to government, and not included within any county within North Carolina, the State to which it belongs, so as to derive the advantages of those wholesome and salutary laws, for the protection and benefit of its citizens, we find ourselves constrained from necessity to adopt this temporary method of restraining the licentious, and supplying, by unanimous consent, the blessings flowing from a just and equitable government."*

These words so accurately represent the condition and the purposes of the Watauga settlers that one is ready to believe that they are borrowed from the older compact.

Putnam, whose history of Middle Tennessee is a book of genuine and enduring value, in which the narrative is richly embroidered with quotations from the poets, which are more or less apposite, summarizes the Cumberland Constitution as follows: " Which said persons, or a majority of them,

* Putnam, p. 97.

after being bound by the solemnity of an oath, to do equal and impartial justice between all contending parties, etc., shall be empowered and competent to settle all controversies relative to locations and improvements of lands; all other matters and questions of dispute among the settlers; protecting the reasonable claims of those who may have returned for their families; providing implements of husbandry and food for such as might arrive without such necessaries; making especial provision for widows and orphans, whose husbands or fathers may die or be killed by the savages; guaranteeing equal rights, mutual protection and impartial justice; pledging themselves most solemnly and sacredly to promote the peace, happiness and well-being of the community; to suppress vice and punish crime." *

This glowing and somewhat incoherent statement is fairly in accord with the facts. The Cumberland Constitution is an admirable document, of excellent literary quality. It shows a clear perception of the essential principles of popular government. A high order of intelligence and of enlightened public spirit is manifest in every part of it.

* Putnam, p. 90.

Descending to details, we find that its framers wisely gave careful attention to the subject of land locations and improvements. Land controversies were the bane of all the West in early times, the sources of ruinous litigation, and not infrequently of bloodshed. This is the subject first mentioned and most extensively treated in that part of the instrument which has been preserved, and the regulations established are eminently wise and just. Subsequent sections provide for the administration of the departments and affairs of an orderly government.

In Watauga a committee of thirteen had been appointed by the representative assembly. In Cumberland a committee of twelve was chosen by the people as a governing body. I do not find the equivalent of the sub-committee or court of five, which seems to have had the actual administration in Watauga. The committee of twelve are referred to in the instrument itself as "Judges, Triers or General Arbitrators," * and a majority of them was competent to transact all public business. They were elected from the various stations, by the votes of all free men over the age of twenty-

* Putnam, p. 97.

one years. At least it is inferred, with good reason, that this was the age prescribed. An unfortunate mutilation makes it impossible to speak with certainty.

Vacancies in the committee were filled by vote of the electors of the stations losing representatives, and the highest regard for popular rights was shown in the following provision: "That as often as the people in general are dissatisfied with the doings of the 'Judges or Triers' so to be chosen, they may call a new election at any of the said stations, and elect others in their stead." It will hardly be denied that this was essentially a democratic Constitution.

The Judges or Triers were declared to be the "proper court or jurisdiction" for the recovery of any debt or damage, provided the cause of action had arisen among the settlers themselves at a time when they were beyond the limits of established government. Cases involving one hundred dollars or less were tried before three of the judges, whose decision was final. If the amount involved was larger, it seems that three judges might still hear the cause, but an appeal would lie to the entire court. Upon the hearing of these appeals, the three judges, who had officiated as a lower court,

were excluded, and nine members constituted a full bench, the concurrence of seven being necessary to a decision. The costs were taxed according to the discretion of the court, and the judgment was executed by persons designated by it.

The judges had general criminal jurisdiction, but they were forbidden to proceed with execution, "so far as to effect life or member; and if any case should be brought before them whose crime is or shall be dangerous to the State, or for which the benefit of clergy is taken away by law," then the offender was to be sent under guard to the place where the offense had been committed, or to a place where a legal trial could be had.

A unique feature of the articles is that they were intended to be signed and apparently were signed by Richard Henderson as an independent contracting party.* Henderson was the manager of the company from whom the people purchased their lands, and it seems that they not only bound themselves to abide by their agreement, in so far as it prescribed rules of conduct, but were contracting in the same instrument with Henderson or with his company. It is expressly recited in the articles

* Putnam, p. 96.

"that the said Richard Henderson on his part does hereby agree," etc. The first name on the list of signers is that of Richard Henderson, who agreed that 26£ 13s. 4d. current money for one hundred acres should be the price of the lands.

The articles conclude with the declaration that the signers do not desire to be exempt from their "ratable share of the public expense of the war, nor from any other contingent charges of government," and with a prayer addressed to the Legislature of North Carolina for immediate aid and protection, and for the erection of a county to include the settlements, and for the appointment of officers for "the discharge of public duties."

It is believed by some that Henderson was the author of this instrument, but it is much more probable that the honor belongs to Robertson, although the paper certainly was drafted by some one of better education.

There is no reason to doubt that Robertson had the chief part in the formation of the constitution and of the government. He was already acting as the military leader, and as soon as the Articles were adopted, he was made Chairman of the Judges or Arbitrators. His influence was paramount in every thing.

The points of similarity between the Cumberland Compact and the Watauga Articles, as we know them, are so numerous as necessarily to attract attention, even if the Cumberland document had been prepared by men who had had no connection with Watauga; but when we put together the facts that the people of the two settlements were of the same race and training, that the conditions attending the formation of the two governments were identical, that Robertson, the Watauga leader, was also the Cumberland leader, and that he had with him in Cumberland three of the most influential members of the Watauga Association, the conclusion that we may discover in the Cumberland Compact all the essential features of the Watauga Articles, is irresistible.

Certain minor points of difference are known, but they are not at all inconsistent with this inference. There were thirteen committeemen in Watauga, who were chosen by a convention, and twelve in Cumberland, who were elected by the people.

The most striking of these variances is the omission of the sub-committee or court of five, from the Cumberland organization. It is impossible to say with certainty why this was done; my own opinion

is that the Watauga people had found by experience that it was not necessary to have both the court of five and the committee of thirteen. It is to be inferred that in Watauga the larger body became practically of no value, rendering no service.

As the Scotch-Irish are tenacious of personal rights and opposed to the centralization of power, whether ecclesiastical or political, it may be that after experience, they preferred not to grant so much authority to so few men.

It should be said that the Cumberland Compact recognizes the dependence of the people upon "Divine Providence," and breathes a spirit of sincere reverence and piety, as well as of patriotism.

We have inferred that universal suffrage prevailed in Watauga; we know that it prevailed in Cumberland. We have also inferred that in Watauga there was religious freedom; it is certain that in the Cumberland Constitution nothing whatever is said upon the subject.

The thoroughly Anglican quality of the Cumberland Compact is obvious. Roosevelt compares it to the ancient "Court Leet." Phelan says of the Watauga settlers that they selected from "the old store-house of English law and prece-

dent," and the saying is not less applicable to Cumberland.

As I shall be unable to speak of it elsewhere, I call attention here to the very interesting fact that in the year 1788, after the dissolution of the Franklin government, the people "inhabiting South of Holston, French Broad and Big Pigeon rivers," in East Tennessee, entered into written articles of association establishing a government for themselves, and no doubt following closely the Watauga plan. Their purposes are declared in the following language: "Being at present destitute of regular government and laws, and being fully sensible that the blessings of nature can only be obtained and rights secured by regular society, and North Carolina not having extended her government to this quarter, it is rendered absolutely necessary for the preservation of peace, the good order, and the security of life, liberty, and property to individuals, to enter into the following social compact as a temporary expedient against greater evils." * The other provisions are of a kind to afford convincing proof that this third independent constitution is, like the Cumberland Compact, substantially a reproduction

* Ramsey, p. 435.

of the Watauga Articles. On account of the proximity of the French Broad people to Watauga, it is probable that this last constitution follows the Watauga Articles even more closely than the Cumberland Compact followed them.

I have endeavored to emphasize the two facts that the people of Watauga and of Cumberland were principally Scotch-Irish, and that their institutions were wholly English. It is surprising to find intelligent people maintaining that the Scotch-Irish are Celts. Undoubtedly the race has received a large infusion of Celtic blood, but so have the Saxons of England. The lowland Scotchmen are Teutons, and their political and social training and institutions are necessarily Teutonic. Upon this subject the best authorities are in accord.*

If to the student of history Cumberland is less interesting than Watauga, it is because Watauga

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* Reclus Europe, Vol. 4, pp. 309 and 310; E. A. Freeman, English People in its Three Homes, p. 81; Wm. Wirt Henry, "Scotch-Irish in the South," Proceedings Scotch-Irish Congress, 1889, p. 113.

"The population of Scotland, with the exception of the Celtic tribes which are thinly scattered over the Hebrides, and over the mountainous parts of the northern shires, was of the same blood with the population of England." Macaulay, Hist. England, Vol. 1, pp. 50, 51.

was the original, of which Cumberland, like Transylvania, was a reproduction. I can say nothing of the social or political life of Cumberland that I have not already said of Watauga. We find in the two communities the same race, the same leader, similar environment and conditions, the same necessities and purposes.

Watauga and Cumberland arose from causes and by processes which are identical, and they are identical in significance.

The Cumberland judges are entitled to honorable mention. They were James Robertson, George Freeland, Thomas Molloy, Isaac Linsey, David Rounsevall, Heydon Wells, James Mauldin, Ebenezer Titus, Samuel Barton, and Andrew Ewin.

We are indebted to Putnam for the preservation of the Cumberland Compact. He deserves our gratitude also for a trustworthy account of one of the most interesting and admirable phases of American history.

In April, 1783, the Legislature of North Carolina created the County of Davidson, and Cumberland passed into history.

CHAPTER III.

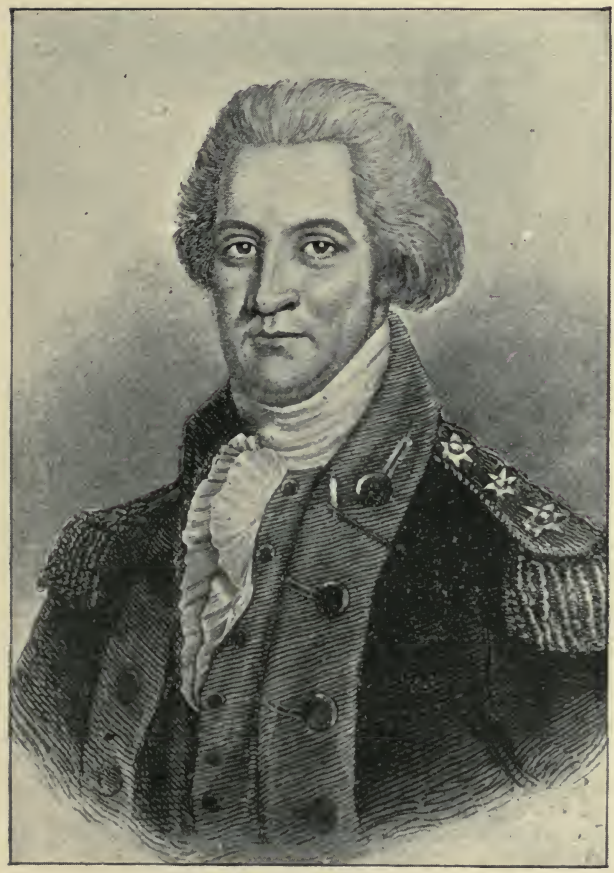
Franklin.

1784–1788.

We return now to East Tennessee. The State of Franklin fills a much larger place in historical writings than either Cumberland or Watauga. This can be justified only by the fact that its field of action was more conspicuous. In historic importance and significance it is inferior to the others.

Its beginnings in some respect resemble those of Watauga and of Cumberland, but its later history is one of petty faction. The facts are familiar, and need not be stated at length.

Watauga had been merged into North Carolina, and for six years the people had recognized the authority of that State. In June, 1784, the Legislature, without notice to the inhabitants, ceded what is now the State of Tennessee to the general government. It may be conceded that this measure was largely justified by an honest desire, inspired by the request of Congress, to aid the Confederation to meet its enormous and pressing



JOHN SEVIER,

President of Franklin Conventions.

debts. If this had been the sole reason it would have been beyond criticism, if the act had provided for the protection of the settlers.

The cession was conditioned upon its acceptance by Congress within two years. The Tennessee counties no doubt would have welcomed a separation made in a proper manner, or in one which they considered proper, and their representatives in the Legislature voted for the cession, probably without apprehending its full significance. The disapproval of their constituents, however, was instantly and vehemently manifested. Injustice, perfidy, tyranny, were the favorite words for characterizing the conduct of North Carolina. The vigorous vocabulary of the frontier was exhausted in denunciation. The people were furiously, not to say absurdly, angry. One is disposed to agree with Phelan in ascribing much of this to wounded vanity. The Scotch-Irish self-esteem, a quality well developed in our sturdy race, was offended beyond endurance. But the popular feeling was not without justification. The Watauga settlers had been much distressed by the fact, which was developed in 1771, that they belonged to North Carolina, instead of Virginia, and the mother State was no more anxious to have them, than they were to belong to

her. One of the least efficient of the Colonial and early State governments was that of North Carolina. The irrepressible turbulence of the people, especially in Colonial times, continually prevented efficient administration. It is true that this fault became a virtue when in 1775 it took the shape of a vigorous and fearless opposition to English misrule, but in ordinary times, its consequences were unfortunate, especially to the settlers west of the mountains. The Indians incessantly threatened them, and lawless men of their own race constantly preyed upon them.

While it is true that the Watauga people were exacting, persistent, and often unreasonable, it is also true that appeals to the State for assistance and for protection in times of urgent need frequently went unheeded. The settlers were poor, and contributed little to the public treasury, upon which they made many demands.

There was no sympathy between the Watauga counties and the remainder of the State. The judicial system of the State was not extended in its complete form west of the mountains, nor was the military system.* The State continually com-

"The Superior Court alone had jurisdiction of felonies, and

plained of the exactions of the Watauga people, and the mutual dislike which had existed from the first was daily intensified. It must be remembered that a majority of the first settlers in Watauga had come from Virginia, and were much attached to that State. Many of those who were from North Carolina had come on account of dissatisfaction with the government.

High ranges of mountains separated Watauga from Carolina, preventing free communication and intercourse, and thus there were many reasons why the Washington district should not have remained a part of the State. This fact was recognized in the bill of rights prefixed to the Carolina constitution of 1776. It is probable that if the cession had not been made by North Carolina, a separation would have occurred in a few years. It would have been the natural result of the mutual dislike and the mutual desire. When the Cession Act was passed, many of the inhabitants of Watauga believed that the jurisdiction of North Carolina had been withdrawn entirely, and that they were as much

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no judge of the Western Circuit had ever been appointed. Only a brigadier-general could call out the entire militia of a district, and there was at that time no brigadier-general." Phelan, History of Tennessee, p. 70.

without government as they had been twelve years before, when they had organized the Watauga Association. In this they were mistaken, but the belief was honestly entertained, and it materially affected their course. But all believed, not without reason, that as the State had been remiss in the discharge of her duty before the cession, she would now withhold her assistance entirely. In many minds there was doubt of the authority and of the willingness of the Congress of the Confederation to create new States. Ramsey mentions this as one of the strongest arguments in justification of Franklin.*

Without going farther into historical details, it seems that the impartial student can hardly deny that in its inception the Franklin movement was justifiable. The people believed then, and had no little reason for believing, that a government of their own was a necessity.

In November, 1784, the Cession Act was repealed, and laws were passed providing for the extension of the jurisdiction of the State in its civil and in its military branches over all the Western Counties, thus promising them better government and more protection than ever before.

* Ramsey, p. 439.

In view of the facts that the Watauga territory unquestionably belonged to North Carolina, and that the people were too weak to resist the State, moderate and prudent minds may now be of the opinion that the movement for independence should have been abandoned when the Act of Cession was repealed, but it was not so easy to consider the subject with impartiality and serenity then as it is now after the lapse of more than a century.

If it had been true that the Watauga people had grievances which justified them in armed resistance, it is certain that they were not able to withstand the State, and therefore, while we may not hold them inexcusable, we can hardly escape the conclusion that their course after the repeal of the Cession Act was ill-advised and unfortunate. But however philosophically we may consider the matter now, a Tennesseean will with difficulty withhold his sympathy from Franklin.

It may be well to mention the fact that Sevier, who was a civil and military leader in Watauga, was appointed Brigadier-General for the Washington District upon the repeal of the Cession, and that he advised the abandonment of the undertaking. This little Revolution, however, had the

proverbial quality of its kind and would not go backward, and Sevier went forward with it.

Three several Conventions were held, and the last of them adopted a Constitution. The second Convention had agreed upon a Constitution subject to the ratification of a subsequent assembly. The unit of representation in the first Convention was the captains company, but subsequently each county elected five members.

These Conventions were so numerous and so eccentric that much confusion has arisen in regard to them. The first met at Jonesboro, August 23, 1784; the second at Jonesboro in December, 1784; the third at Greeneville in December, 1785.* Sevier was president of all three; Landon Carter was Secretary of the first, and F. A. Ramsey of the second. The form of government until the adoption of the Constitution by the Convention of December, 1785, was that of North Carolina.† Greeneville was made the Capital of the State.

Before the meeting of the last convention, the Rev. Samuel Houston, "with the advice and assistance of some judicious friends," as Ramsey puts it,

* I have followed Haywood as to these dates. See pp. 150, 154, 155–170.

† Ramsey, p. 296; Haywood, p. 163.

prepared a Constitution to be submitted to that body.* In this Constitution the State was called Frankland. The instrument contained a number of innovations upon English law and precedent, and does not seem to have had the approval of Mr. Houston's professional brethren, because it is recorded that when it was presented to the Convention, the Rev. Hezekiah Balch, being not a member, but an interested spectator, having obtained leave to offer some remarks, "animadverted very severely" upon it, and especially upon the section which provided for the institutions of learning. After much discussion, the Houston Constitution was rejected by a very small majority, and the Constitution of North Carolina, with such modifications as were made necessary by the change of conditions, was established as the organic law of *Franklin*, the name Frankland having been rejected with the Houston Constitution. But while this Constitution was finally rejected by a very small majority, it is a document of great interest and importance, because it is shown to have represented the opinions and wishes of almost one-half the members of the Convention, and therefore of a

* Ramsey, p. 323.

large number of the people. It is an elaborate paper ornately written.

We have found the Watauga Petition of 1776 and the Cumberland Compact to have been plain, straightforward, and simple. The people of those communities were confronted by stern and exigent conditions, and they used in the rough the material which they had at hand in making governments for themselves. They had no time for theories. Their purposes were wholly practical, and they used only elementary principles, erecting a strong but rude framework, and caring nothing for finish.

In 1784, conditions in Watauga had changed materially. The population had increased greatly, and evidently the preachers and the lawyers had begun to make their impress upon the community. Four counties had been organized: Washington, Greene, and Sullivan in East Tennessee, and Davidson in Middle Tennessee; the last, however, did not enter into the Franklin movement, and apparently had little sympathy with it.

The population west of the mountains at this time was about 25,000. The people being stronger and less apprehensive of the Indians, had opportunity to consider their affairs, and in making their new Constitution they were not content to announce merely

fundamental and general principles, but wished to establish a detailed and completed scheme of government.

It is evident that Mr. Houston was a man of education and of literary aspiration, that his ideas and the ideas of his "judicious friends" were advanced for that time, and that he and his supporters were infected with the disposition to experiment in government, which was a characteristic of the time both in Europe and in America.

The plain people had made the two earlier compacts, but the Houston Constitution, in its original features, is unmistakably the work of men of learning and of pious inclinings. The contest in the Convention was between the men of experience and the men of theories, and the triumph of the practical men, if hard-won, was complete.

The Bill of Rights of the rejected Constitution is taken almost literally from the North Carolina Bill of Rights, and it is very evident that the Carolina Constitution is the basis of the entire instrument.

I call attention to some of its more unique and characteristic features.* The Legislative power

* This Constitution is set out in full by Ramsey, pp. 325–334.

was vested in one body, which was to be composed of the citizens "most noted for wisdom and virtue," provided they owned one hundred acres, or fifty pounds worth of land. No person was eligible to any civil office, who was of immoral character or guilty of "such flagrant enormities" as drunkenness, gaming, profane swearing, lewdness, sabbath breaking, and such like, or who should either by word or by writing deny any of the following propositions:

1. That there is one living and true God, the Creator and Governor of the Universe.

2. That there is a future state of rewards and punishments.

3. That the scriptures of the Old and New Testaments are given by divine inspiration.

4. That there are three divine persons in the Godhead, co-equal and co-essential.

The same section which creates these limitations, also excludes from the Legislature "ministers of the gospel, attorneys at law, and doctors of physic." It may be remarked in passing, that the frontier village is the normal habitat of the shyster, and therefore such communities are not to be censured for failing to know the essential worth and the beneficence of the legal profession.

All acts were to have explanatory preambles, and no bill could become a law at the first session to which it was presented.

The House of Representatives was to choose its own Speaker "and all other officers, Treasurer, Secretary of State, Superior Judges, Auditors, members of Congress." But it was declared that, as a "free people have a right of free suffrage for all officers of government *that can be chosen by the people*, the freemen of this State shall elect Governor and Counsellors, Justices of the Peace for each county, Coroner, Sheriff," and all officers except such as the Assembly was empowered to elect. The Governor was to be chosen annually.

The State was to be divided into six grand divisions, each of which was to elect a "Counsellor." These "Counsellors" were to be a dissolving board, divided into three classes, the members of one class to be changed each year; the Governor and the Council were to meet annually with the Assembly.

Two-thirds of the "Counsellors" were to make a quorum, and they, with the Executive, were to have the pardoning power, and to exercise generally the functions of administration.

The "Counsellors" and the Governor also were to have the extraordinary power of laying embargoes.

Justices of the Peace were not to be allowed compensation, and in all cases salaries were to be "as moderate as possible." * It was wisely ordered that no receiver of public moneys should be eligible to office until he should have accounted fully. There was a provision for compelling freemen to attend elections, and it was especially ordered that no one should be chosen to office who was "not a scholar to do the business, nor unless acquainted with the laws of the country in some measure, but particularly with every article of the Constitution."

In the twenty-fourth Section it was ordered that: "To prevent the civil power usurping spiritual supremacy, the establishing of professions, denominations, or sects of religion, or patronizing ecclesiastical hierarchies and dignitaries, also to secure religious liberty and rights of conscience forever inviolate, every citizen of this Commonwealth shall forever have full and free liberty to join himself to any society of Christians he may judge most for his edification, and shall experience no civil or legal disadvantages for his so doing." There were additional provisions securing unlimited liberty of opin-

* In the larger cities, at the present, there is no more lucrative office than that of justice of the peace, and the promoting of small litigation has become an exact science.

ion, but it might be difficult to maintain the proposition that this constitution would have established freedom of religion, as one condition to office-holding was a perfect orthodoxy. A citizen might have held what opinion he pleased, but he would not have been eligible to office unless his beliefs had conformed to the dogmas of the Church.

Imprisonment for debt was authorized, but except in cases where the presumption of fraud was great, the debtor could not be held after delivering his estate for the benefit of his creditors.

There was to be a university near the center of the State, and if "experience should make it appear to be useful to the interests of learning," a grammar school conducted by masters of "approved morals and abilities," and supported by the public, was to be erected in each county.

Freedom of the press was established, and in no case were printers to be prosecuted, provided they would disclose the authorship of the offensive publication.

The Constitution was to be "drawn out into a familiar catechetical form," and taught in all the schools.*

* The Constitution of 1796 was so "drawn out" by Willie

Every free inhabitant of the State was entitled to vote after reaching the age of twenty-one years.

The popular aversion to lawyers was manifest in a provision for arbitration which was intended to avoid the necessity of litigation. It is probable that a more effective method of securing discord and of making lawyers indispensable never was devised.

The entire Constitution has not been preserved, but we have forty-four sections complete, and the forty-fifth in part. Probably there was not much more of it.

That part of the forty-fifth section which is preserved contains one of the empirical provisions. It ordained that in every fifth year, twenty-four freeholders should be elected as a "*Council of Safety*" who, during a year and a day next succeeding their election, should have *full power*, and whose duty it should be to inquire whether the Constitution had been preserved.* The remainder of the Constitution has been lost, the word "preserved" be-

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Blount, and I have before me a copy of his work which was printed at Knoxville by Geo. Roulstone in 1803.

* It will be noticed that Willie Blount wished to insert a similar provision into the Constitution of 1834.

ing the last word in that part which has been discovered.

This instrument had not only the approval, but also the ardent support of many influential citizens. Its importance is in the fact that in part at least it was the product of the Franklin people. Mr. Houston represented a numerous and strong constituency, and his paper may be examined with profit, as an expression of the mind of that constituency on important questions of politics, of morals and of religion.

Among other things, it shows beyond question the existence of a more highly developed and organized society than existed in Watauga and Cumberland. It indicates a large increase of population, of wealth and of culture. In respect of religious freedom, we know that the Cumberland Compact was silent, and infer that the Watauga Articles were silent also. In this Houston Constitution we have a qualified recognition of the principle in an instrument which was prepared by a Presbyterian preacher.

It is to be noted that while property qualification for certain offices was established, suffrage was to be universal.

The strict moral requirements of Scotch Calvin-

ism appear in the provisions excluding immoral men from office, and the Scotch-Irish devotion to education in the clauses authorizing the University and a public school system. The instrument in its entirety expresses the mind of the more cultured and more devout component of the population.

In all its essential features it was an Anglo-American Constitution, with certain unwise and purely empirical features added.

When it had been voted down by a very small majority, Sevier* proposed the adoption of the North Carolina Constitution, with such immaterial modifications as the circumstances required. The proposition was carried by a small majority. The effect was the adoption of the good parts of the Houston Constitution, and the rejection of the bad parts, because, as I have already stated, Mr. Houston had made the Carolina Constitution the basis of his scheme. That Constitution was, for that time, a thoroughly democratic and American version of the English Constitution. I shall discuss it in connection with the Tennessee Constitution of 1796.

While the State was struggling with the Consti-

* Ramsey, p. 324, says that Sevier proposed it. Haywood, p. 120, says that William Cocke made the motion.

tution, the Legislature had assembled in the spring of 1785, and after electing Sevier Governor and appointing other necessary officers, had entered upon a vigorous course of law making. One of its first acts was "for the promotion of learning in Washington County." Under the provisions of this act, Martin Academy, which had been chartered by North Carolina in 1783, appears to have procured a new charter from Franklin in 1785.* This was the first Legislative act west of the Alleghanies for the encouragement of learning.†

The financial system which was established by this Legislature is both entertaining and instructive. In addition to the ordinary medium of exchange, divers commodities were made legal tender. Tow linen, for instance, was legal tender at the rate of one shilling nine pence a yard, and linsey at three shillings; clean beaver skins, six shillings each;

* Ramsey, p. 294.

† About the year 1780, Samuel Doak, who became President of Martin Academy, had established a private school in Washington County, North Carolina (now Tennessee), which is asserted to have been the first literary institution in the Mississippi Valley. Foote, in his Sketches of North Carolina, says Martin Academy was chartered by that State in 1788, and Phelan follows Foote.

raccoon and fox skins, one shilling and three pence; bacon and tallow, six pence a pound; bees-wax, one shilling a pound; rye whisky, two shillings and six pence a gallon; peach and apple brandy, three shillings a gallon; maple sugar, one shilling a pound. Thus the Governor might have been compelled to take the amount of his salary in bees-wax and rye whisky. There is a tradition, probably not well founded, that he was always paid in mink skins. Dr. Ramsey was very much distressed on account of the merriment which had been caused by this financial legislation, and devoted two pages to an effort to show that Franklin was not the only frontier government that had resorted to such measures. He recites the fact that in early times in Virginia, the price of a wife was estimated at one hundred and fifty pounds of tobacco; that in North Carolina, as late as 1722, debts were paid in hides, tallow and furs; that in Massachusetts, corn was at one time legal tender; that later, musket balls were current at a farthing apiece, and that, in 1680, a New England town paid its taxes in milk pails.

This legislation is extremely interesting and valuable to those who study history in conditions and in institutions rather than in events.

When the separation movement began it was sup-

ported almost unanimously by the people. John Tipton, who became Sevier's bitter and relentless enemy, was an ardent advocate of the movement at that time. It was not long, however, until disaffection began. Quarrels arising out of the vain efforts to agree on the Constitution, alienated a number of influential men. We have seen that when the Cession Act was repealed, Sevier advised the abandonment of the movement. His position was such, however, that he was compelled to yield to the popular clamor and to accept the leadership which was tendered him.

Tipton gave his adherence to the old State, and as early as the year 1786 was elected a member of the Senate of North Carolina. By the beginning of the year 1787, a majority of the people had submitted to the authority of North Carolina, and that State was exercising jurisdiction over all the Franklin Counties except Sevier and Caswell, both of these being new counties created by Franklin. In the original counties North Carolina already had exclusive control.

The existence of two rival governments in the same territory produced disastrous though sometimes ludicrous results.

Affairs continued to be confused and disordered

until about the middle of the year 1788. Sevier's term of office expired on the first of March, 1788, and the last Legislature of Franklin met in September, 1787. In 1787, all the Counties that had been created by North Carolina elected representatives to the Legislature of that State. Sevier was now advised by his friends to submit, but his pride rebelled at the thought of surrendering to the party led by his implacable enemy, John Tipton, and so for awhile he maintained a show of resistance. He had been outlawed, and during his absence upon an expedition against the Indians, the North Carolina Sheriff went to his home and seized his slaves under execution. Sevier in turn besieged Tipton's house; the proceeding, however, was much more a farce than a tragedy, and ended in failure. Not long after this, Sevier was arrested on the charge of treason and carried to North Carolina for trial. He made his escape, returned home, and being elected a little later to the State Legislature, his disability was promptly removed.

I have outlined the career of Sevier and the closing years of Franklin for the purpose of showing what were the social conditions of that period.

The later history of Franklin is wanting in dignity and in attractiveness. The disturbed condition

of society was disastrous to the growth of the country in population and in wealth. Nevertheless the westward march of the white man was not discontinued. Middle Tennessee doubtless profited largely by the Franklin disturbances, and East Tennessee lost correspondingly. But while affairs were unsettled, there was comparatively little violence and almost no bloodshed. The people realized that the division was only temporary, and the asperities of partisanship were tempered by mutual forbearance and by the inherent love of the people for law and order.

The fact that so little violence resulted from conditions the best calculated to produce it, is highly creditable to the men of Franklin of both factions.

I can not forbear mention of the subject which Mr. Roosevelt treats at length under the name of separatism. I think that he reaches the right conclusion, but magnifies the few scheming politicians and speculators, who, for selfish reasons, encouraged the Spanish leaders to hope for the accession of the western settlements, and who might have been willing to carry their intrigues to the point of a temporary alliance with Spain. He proves that Sevier and Robertson and other Tennessee and Kentucky leaders were in correspondence with Gardoqui,

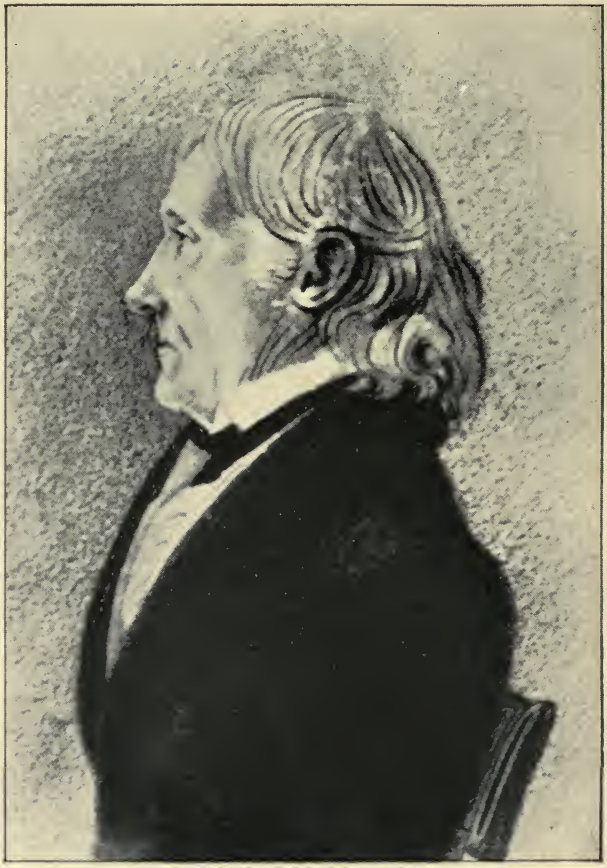
Miro and other Spanish officials, but I find nothing to justify the belief that even the leaders of the Americans, in Tennessee at least, desired or contemplated the absorption of the settlements by Spain, or the establishment of organic union with that power.

The race antipathy was strong, and the American leaders could hardly have been deluded so far as to think that the settlers would follow them over to Spain.

There was no friendship between North Carolina and the Tennessee counties, but the western people neglected no opportunity to avow their devotion to the general government. There was no conception of the great Union of States which was soon to possess the temperate zone of the Continent; at least this was true of the frontiersmen, but there was a deep-rooted, ineradicable love of liberty, and the least intelligent of the backwoodsmen knew that Spain was the most despotic and bigoted of the European powers. I can not believe that the common people as a rule ever considered, much less desired, even a temporary connection with Spain. Mr. Roosevelt clearly is right in thinking that Sevier, even when he had become the outlawed and desperate leader of a ruined cause, never intended to

do more than to ally himself temporarily with the Spaniard in order to escape the penalty of treason to North Carolina. Some of the Kentucky leaders were men of a baser sort, but I do not believe that the people ever approved their purposes. The separatist leaders were not representative, and the people can not justly be judged by the conduct of a handful of unprincipled adventurers. Confining myself to the Franklin people, I can not concede that there was the slightest possibility of carrying them over to any foreign power. The desertion from Franklin began immediately upon the repeal of the Cession Act, and Sevier's correspondence with Gardoqui occurred at the downfall of Franklin, as a desperate personal effort made necessary by the reunion of the two portions of North Carolina. Franklin did not separate from North Carolina, but established a government to protect herself because she thought it necessary. If some of the people adhered to the movement after it had ceased even to appear to be necessary, their number constantly decreased until the reunion was complete. If by the "separatist" spirit, Mr. Roosevelt means the desire of the people to establish new States upon the same footing as the old, he is right in saying that there was such a feeling, for this was the

earnest and proper wish of the people of Tennessee and of Kentucky, but it is submitted that there is no warrant for believing that the people ever desired to break away from their own race and join themselves to the Spaniard. If we consider the conduct of Robertson, we find him corresponding with the Spanish officials with the hope of opening the Mississippi, but so little of a separatist was he that he would not aid nor even countenance Franklin, but was a member of the Carolina Legislature while Sevier was an insurrectionary leader.



CHARLES McCLUNG,

Of Convention of 1796.

CHAPTER IV.

THE CONSTITUTION OF 1796.

1796–1834.

I have described in general terms the methods of local government in New England and in the Southern Colonies. In considering the organization of the State of Tennessee it becomes necessary to revert to the subject.

John Fiske says truly that the political life of Virginia was built up out of the political life of the Counties; and with equal justice this may be said of North Carolina and of Tennessee.

The County is a modern English institution. It is the successor of the Shire. Among the German peoples who conquered Britain, as among those who remained upon the continent, a division into tribes was common. The tribes were in turn divided into Clans, and the Clan, when it became sedentary, took a certain territory, which was held in common by its members, and in the midst of which the Clan village or "tun" was located. The village had the largest liberty of self-govern-

ment, and it is the ancestor of the modern Township and the original Teutonic unit of government. Its local laws were made at town meetings. This system antedates the appearance of the Germans in history by many centuries, and is by far the best as well as the oldest scheme of local government that has been devised.

Above the Clan was the tribal or Shire government. The governing body of the Shire was the Shire mote or meeting, including in Christian times the lords of the land, ecclesiastical and temporal, and the reeve or head-man and four select men from each Township, and this body made laws for the Shire and tried suits at law, both civil and criminal.

These were the original Anglo-Saxon institutions. After the Norman conquest in the eleventh century, the Township practically disappears from English history, though most of its characteristics survive in the institutions called the Parish, and the Manor.

The lands of England were nearly all apportioned among the Norman conquerors, and local government became less popular and more personal. The Shire succeeds the Township as the unit of government, but under its new name and with many modi-

fications. For a time the name Shire almost disappears and is succeeded by "County," a French word indicating a district such as was usually presided over by a Count. Thus we find the Township and the County springing from a common stock, both being thoroughly English. The Township, however, falls into disuse until it is revived in New England, while the County is established in England and passes over to all the Southern Colonies of America. The reasons for this I have heretofore indicated.

After the Norman Conquest the Shire mote became the County Court. Its legislative powers were gradually restricted until the county became little more than an administrative district. Cases were no longer tried by the County Courts as independent tribunals, but the king appointed Circuit Judges to preside over them. The people had formerly elected the Sheriff or Shire reeve for life, but now the king appointed him for one year. In the reign of King Edward III, a new functionary is developed, to wit, the Justice of the Peace. Of these there were six, at first, in each county, but later they were multiplied at the royal pleasure. In the year 1632, the justices were first required to hold court four times a year. This court was

called the Quarter Sessions, and its lineal descendants now sit four times a year in every County of Tennessee.*

The English County system comes to Tennessee directly by an unbroken line of descent, through North Carolina, but the time has come when many citizens wish earnestly to see it modified by the restoration of the old Township system which our German forefathers established before they passed under the dominion of feudal lords, and which experience conclusively proves to be the best adapted to the local government of a free people.

Local government in North Carolina seems to have begun with the famous and impossible "Fundamental Constitutions" which were conceived by the great empirical philosopher, John Locke, and which formulated probably the worst scheme of government that ever was committed to writing. It was a most unhappy union of diverse and incompatible principles and plans, and so elaborate and complicated was it, that while it had a nominal existence of twenty years, no degree of energy nor of ingenuity could get it all into operation at one time. The one important survival from it was the

* In treating early English institutions I have mainly followed Fiske, who is always accurate.

Precinct, which was a sort of a substitute for the County and was the original unit of government in North Carolina. There were four Precincts at first, but the number grew to fourteen.

In 1729 the Proprietors who held the Province under the royal charter of 1663, ceded it to the crown, and in 1738 the Precincts were first called Counties.

Justices of the Peace were appointed in the beginning by the Governor, but later his council had a voice in selecting them. When the Crown became the proprietor of the Province, the County government seems to have been conformed as nearly as possible to the English original.

The Judiciary of the Province as originally organized, consisted of a General Law Court of eight members, one of whom was Chief Justice, who was appointed by the Lords Proprietors jointly, while each of the remaining Justices represented one of the Proprietors individually. Afterwards the number of Judges was reduced to three, a Chief Justice being appointed by the Proprietors, and the two Assosociates by the Governor and the Council. There was also an Attorney-General, who was appointed by the Governor and the Council. The jurisdiction of the General Law Court extended over the entire

Province. It had original, as well as appellate jurisdiction. There was a Chancery Court, consisting of the Governor and the Councilors, whose procedure was that of the English Courts of Chancery. There was also a court of original and general criminal jurisdiction, called the Court of Oyer and Terminer, in which cases were brought by indictment and upon information of the Attorney-General. In course of time a Circuit Court was established, to which was transferred the entire original jurisdiction of the General Law Court in civil cases. We thus have in substance our present Tennessee system.

Subsequently, there were various changes of form which I have not space to mention. The system thus briefly outlined was retained in all essential respects by the State of North Carolina and by Tennessee.

The chief executive officer of the Province was the Governor, with whom was associated a council composed at first of twelve, but afterwards of six members.

The Assembly consisted at first of one body, but when the number of Councilors was reduced to six, the Governor and the Councilors became the upper house of the Assembly. The lower branch

was called the House of Burgesses, two members being elected from each county, and one from each of the six larger towns. The meetings of the Legislature were biennial.

In the year 1701 the English Church establishment was extended over the Province of North Carolina, where it nominally existed till the Revolution. It is needless to say that, while by operation of law it extended over the territory of Tennessee, there was never in fact any established church West of the Alleghanies.

Another interesting and important fact is, that at least twice before Tennessee became a territory, the entire body of the English common law, so far as applicable, was re-enacted as the law of North Carolina.*

I have gone into these details in order to establish the correctness of the statement, that the institutions of Tennessee are of purely English origin. There is nothing in Tennessee, considered as a political organization, which is not traceable directly to England. Upon the subject of local government I wish to emphasize the declaration which I make above in favor of the Township system. The

* The common law as thus enacted by North Carolina is still in force in Tennessee, except where modified by statute.

County plan comes to us from feudal England, the Township from Saxon England. The Township is the natural unit in Teutonic institutions. It was the form which the independent and compact societies of New England naturally assumed. I have no hesitancy in asserting that in the history of this country the Township has produced the better results. A discussion of the question is beyond the scope of this volume, but I should feel amply repaid for the work I am doing if I could direct public attention to the subject. If Tennessee should have another Constitutional Convention, there will be a strong sentiment in favor of grafting the Township upon our polity, especially for the benefit of cities, whose local needs are frequently at variance with those of the Counties to which they belong, and whose proper development indisputably requires an enlarged right of self-government. Thomas Jefferson said: "Those wards called Townships in New England, are the vital principle of their governments, and have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self-government and for its preservation." *

* Jefferson Works, Vol. 7, p. 13.

John Fiske, who quotes this saying, expresses his own opinion of the Township system as follows: "It is the most perfect exhibition of what President Lincoln called, 'government of the people, by the people, and for the people.'" *

The Township and the County may and should exist together without friction and without impairment of any essential function of either organization.

But to return from this digression.

Phelan, whose History of Tennessee is composed in a philosophic spirit, although he appears at times to force the facts to fit his theory, declares that: "If we examine the Constitution (of North Carolina) of 1776, we shall find that it has introduced absolutely not a single feature into North Carolina with which we are not already familiar." † This Constitution became, with a few modifications, the Constitution of Tennessee, twenty years later. It provided for a Governor, and for a General Assembly composed of a Senate and a House of Commons. Each County had a Senator, and two members of the House of Commons, and the six largest towns in the State had each a mem-

* Civil Government, p. 32.
† History of Tennessee, p. 196.

ber of the Lower House. This last was a survival from the English borough system.

The Houses elected their own officers and were judges of the qualification and election of their members. Judges were chosen by joint ballot of the two Houses, to hold office during good behavior. The Governor also was elected by the Legislature at its first meeting after each annual election. No one was eligible to the office of Governor who was not thirty years of age or who did not own a freehold in land above a thousand pounds in value. The Assembly also elected a council of seven men who were to be advisers of the Governor, and whose advice was expected to be so valuable that it was to be recorded in a book. Members of the Assembly were required to own two hundred acres of land in fee or for life, and the suffrage was limited to holders of fifty acres and upwards.

In these provisions will be observed a cautious adherence to English precedents and a reluctance to enlarge the powers of the common people.

On the 25th of February, 1790, North Carolina by formal deed conveyed the territory of Tennessee to the United States, and on the second of April following, Congress accepted the deed. In May, 1790, an act was passed for the "Government of the Territory of the United States South of the

River Ohio."* A Governor and three judges were to be appointed, and until the territory should contain five thousand voters, these were to exercise all the functions of government. The first Territorial Assembly met at Knoxville, August 25, 1794. It was composed of a House elected by the people, the basis of representation being five hundred, and of a Legislative Council of five, which corresponded in a general way to the modern Senate. The members of the Council were nominated by the representatives and commissioned by the President of the United States. They were Griffith Rutherford, John Sevier, James Winchester, Stockley Donelson and Parmenas Taylor. Among the members of the Lower House were James White, William Cocke, Joseph McMinn, and John Tipton.

The territorial organization was entirely artificial, and is of little importance in the institutional development of Tennessee.

William Blount, the Governor, is in many respects an interesting personage. He is unique in Tennessee history. He was of prominent family, the friend of Washington, and our historians delight to pay tribute, not only to his virtues, but

* The government was to be similar to that of the Territory North of the Ohio.

more especially to his accomplishments. By his exalted lineage and fine manners, by his unfailing and judicious urbanity, and his lavish hospitality, he impressed and attracted the frontiersmen, while his lofty demeanor and splendid uniforms dazzled the Indians. His wife, a most gracious and accomplished lady, contributed greatly to his popularity. He was our one, avowed aristocrat of early days, and naturally we regard him with affectionate pride.

He was a man of more than ordinary ability and character, and his sagacity is to be impeached only on account of the injudicious letter which cost him his place in the United States Senate, though it did not deprive him of the confidence nor the affection of his people. History has dealt with him very tenderly.

Apparently he was a leader in the movement to establish the State of Tennessee; in fact he was wisely obedient to an irresistible public sentiment.

On the 11th of July, 1795, the Territorial Assembly passed an act for the enumeration of the inhabitants of the Territory. The eighth section of this act, following the act of Congress, creating the Territory, provided that if the census should show a population of over 60,000, the Governor should call a convention, to prepare a Constitution for a State government.

The enumeration indicated a population of 77,-262, of whom 10,613 were slaves, and 973 were distinguished from the whites as "other free persons." East Tennessee was favorable to the establishment of the State, but Middle Tennessee voted strongly against it. Davidson County voted 96 for and 517 against the State, and more than a third of all the voters of the Territory opposed it.

The Convention, composed of five members from each county, was called and assembled at Knoxville on the eleventh of January, 1796. There were eleven counties, Blount, Davidson, Greene, Hawkins, Jefferson, Knox, Sullivan, Sevier, Sumner, Tennessee and Washington, and consequently fifty-five members of the Convention. The names of members who are best known, are, Andrew Jackson, John McNairy, James Robertson, Thomas Hardeman, Joel Lewis, Joseph McMinn, William Cocke, Joseph Anderson, Archibald Roane, William Blount, James White, Charles McClung, W. C. C. Claiborne, John Rhea, Landon Carter, John Tipton and David Shelby.

On the motion of James White the Convention was opened, not only with prayer, but also with a sermon by the Rev. Samuel Carrick. Wm. Blount was elected President, and Wm. Maclin, Secretary.

The first resolution of the Convention after the

adoption of the rules was as follows: "That economy is an amiable trait in any government, and that in fixing the salaries of the officers thereof, the situation and resources of the country should be attended to."

It is an indisputable fact that this "amiable trait" has continuously been conspicuous in the history of Tennessee.

The first important action was the appointment of a committee of twenty to draft the Constitution. This committee was composed of Andrew Jackson, John McNairy, Samuel Frazier, William Rankin, William Cocke, Thomas Henderson, Joseph Anderson, James Roddye, William Blount, Charles McClung, W. C. C. Claiborne, John Rhea, David Shelby, Daniel Smith, Samuel Wear, John Clack, Thomas Johnston, William Fort, John Tipton and James Stewart. It is a part of the history of the Convention, not heretofore written but believed to be authentic, that the original draft of the Constitution was made by Charles McClung whose portrait appears at the head of this chapter, and who was the founder of one of the most prominent and influential families of the State.

It is an interesting and pleasing fact that the members of the Convention being allowed compensation at the rate of two dollars and fifty cents a

day, agreed to accept only one dollar and fifty cents, and at the same time made a corresponding reduction of their mileage.

The Constitution of 1796 was the organic law of a society composed of sixty-six thousand white persons who were mainly of English, Scotch and Irish origin, of ten thousand slaves and of a thousand free negroes. The white people as a rule came from the middle and the lower orders of society, but there were comparatively few who were not of respectable antecedents and good character. The Carters had been prominent in Virginia, and the Blounts in North Carolina, while the McClungs, Whites, and other Scotch-Irish families were of the educated and leading class of that race. Charles McClung had been a civil engineer, James White had a fair education, Roane was a man of erudition, McNairy was a learned lawyer and judge, and Cocke was a brilliant orator; but the people as a rule were as plain and unpretending as they were independent, honest and patriotic.

We have found from the legislation of the State of Franklin, that there was a strong sense of the necessity and of the benefits of education, and we know that wherever the Scotch-Irish went they carried their preachers, who almost invariably com-

bined the business of school teaching with their sacred vocation. We trace the line of their Southward and Westward progress by a cordon of colleges and academies. The names of Doak, Carrick, Balch and Craighead survive to us, mainly because they were pioneers of education. The State University owes its existence to the Legislature of the Territory.

There was little wealth among the people despite the picturesque account which Haywood gives of the acquisitiveness and the luxuriousness of the Scotch merchants. William Blount's weather-boarded log house at Knoxville was esteemed a monument of wealth and of luxury. The Middle Tennessee people have somewhat complacently claimed that the two-horse men stopped in East Tennessee, while the four-horse men went on to Middle Tennessee. But, conceding this to be true, the four-horse men were not necessarily opulent. The fact is that while there was little abject poverty, there was a great scarcity of ready money. Land was abundant and cheap, and the establishment of a property qualification upon a land basis, for voting and office holding, indicates that the people generally were freeholders. The financial condition had improved since the days of Franklin, and the presence of slaves shows some accumula-

tion of property, but the available resources of the State were very limited. It is recorded that it began its career with less than four thousand dollars in the treasury.

The population was, politically, homogeneous; there was little inequality of individual conditions, and, therefore, under any circumstances, there probably would have been no serious difficulty in framing a satisfactory Constitution. The accomplishment of that result was made easier by the fact that there was at hand an instrument under which the people had been living for many years. Franklin had virtually adopted the Carolina Constitution, and Tennessee wisely took the same course.

The North Carolina Constitution, while thoroughly democractic in its proclamation of principles, was essentially conservative in method. The same spirit is manifest, though in less degree, in the Tennessee Constitution. The advanced principles of American liberty appear in general declarations in the Bill of Rights and elsewhere, but many modifications of English institutions which were the logical, and ultimately the necessary, results of the assertion of those principles were not made.

Monarchy and aristocracy were absolutely repudiated, of course, and in every respect the people

were thoroughly democratic in sentiment, but they had not the experience nor the confidence in themselves to give adequate form and expression to their principles. The common people were not fully prepared to assert themselves. The same cautious adherence to English precedents in state-making was naturally exhibited every-where in America. The electoral college is, in one sense, an embodiment of the distrust of the people which was felt by the National Convention, and generally by American leaders of that age. The requirement of the Carolina Constitution that the Governor should own a thousand pounds' worth of land, and other kindred provisions, show an utter failure to comprehend the great part which, from the very nature of our institutions, was to come to the common people in the affairs of this country.

The Tennessee Constitution exhibits a slow and almost timid process of evolution. This conservatism, if it appears to us now to have been excessive, was natural, and may have been wise. Earlier or more radical changes could hardly have produced better results than have followed.

The first place in the Constitution is given to the Legislature, and one principal defect of the instrument is the reservation of too much power to

that department. The General Assembly was composed of two houses, the Senate and the House of Representatives. The English name, House of Commons, which North Carolina had retained, was discarded, as was the borough representation. The Tennessee Constitution provided for one Senator and two Representatives from each County in the first Assembly. These were distinctively American changes. After the census which was to be taken within three years of the first meeting of Assembly, Senators and Representatives were to be apportioned according to the number of *taxable* inhabitants, and not according to population. Here we see the persistence of the sentiment in favor of property rights.

No one could be a member of the Assembly who had not for one year possessed and continued to possess two hundred acres of land. In this the North Carolina rule was retained.

The Legislature was to fix all salaries, but till the year 1804 the following were paid: To the Governor, $750; to the Judges, not more than $600; to the Secretary, not more than $400; to the Treasurer or Treasurers, not more than four per cent for receiving and paying out all moneys; and

to the Attorney or Attorneys, not more than fifty dollars for each Court attended.

No collector of public moneys was allowed a seat in the Assembly until he had satisfactorily accounted—a wise provision, which still holds its place in our Constitution. It was taken from North Carolina.

The revenue clauses are unique, artificial, and difficult to understand. Land was the chief source of revenue, and it was to be taxed equally and uniformly.* No one hundred acres was to be taxed higher than another, except town lots, and no town lot was to be assessed higher than two hundred acres of land. Free men were to pay a poll-tax, but it was not to exceed the tax on one hundred acres of land. There was also a poll-tax on slaves, but it was not to be more than the tax on two hundred acres of land. The principle of this poll-tax law possibly was clear to our forefathers, but it is not so to us.

* In a valuable brief prepared for use in the famous Income Tax Cases of 1895, Judge J. M. Dickinson, Assistant Attorney-General of the U. S., presents a comparative analysis of early State Constitutions, showing that Tennessee was among the first to declare the principle of equality and uniformity. It was declared, rather than adopted, in the first Constitution.

The Governor was elected by the people for a term of two years. He was required to be twenty-five years of age and to own five hundred acres of land. The succession was, as now, to the Speaker of the Senate, an illogical and undemocratic arrangement. The Governor's council was omitted. Every freeholder over the age of twenty-one, and every male citizen over the age of twenty-one who had been for six months a resident of the county where his vote was offered, was an elector of the Governor and of members of the Assembly.

This clause allowed free negroes to vote, and they did vote until the Constitution of 1834 declared that only free white men should have the right. Tennessee had in the meantime received large accessions of free negroes, and was anxious to stop the inflow.

The Judicial power was vested in such superior and inferior Courts of law and equity as the Legislature might establish.

Herein lay probably the gravest defect of the Constitution. The true American idea of government is that there shall be three co-ordinate departments. In 1796, this had already been declared in the Federal Constitution. The Supreme Court of the United States is independent of Congress and

of the President, and there is no power in Congress to coerce it. But a Court created by Legislative act, and subject to abolition in the same manner, is not an independent body, and certainly is not co-ordinate with the law-making power.

The vice of the system was demonstrated early in our history, when a Legislature threatened to abolish a Court which denied the validity of certain of its enactments.

The Judges and the Attorneys-General were elected by joint ballot of the two houses, to hold office during good behavior.

Each Court appointed its own clerk, to hold during good behavior. Justices of the Peace were appointed by the Assembly and commissioned by the Governor, to serve during good behavior. The number was not to exceed two for each Captains Company, except that the Company which included the County town was entitled to three. Coroners, Sheriffs, Trustees, and Constables were elected by the County Court for two years. The same body appointed Registers and Rangers, to serve during good behavior. The civil district, as part of the County organization, does not appear till 1834.

The Militia establishment was elaborate and important as the time required, and it will readily be

understood that legislative action was not necessary to call out the troops.

The eighth article denies to clergymen the right to sit in the Assembly, and declares that no one who denies the being of God or a future state of rewards and punishments, shall hold any office in the civil department of the State. There seems to be a good deal of worldly wisdom in this tacit permission to unbelievers to take the lead in the military service.

It is declared in the Bill of Rights: "That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; that no human authority can in any case whatever control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious establishment or mode of worship. *That no religious test shall ever be required as a qualification to any office or public trust under this State.*"

This was a full and ample declaration of religious liberty, and apparently it did not occur to the Convention that there was any conflict between these

provisions and the requirement that office holders should believe in God and in a future state of rewards and punishments.

On the subject of religious liberty, it may be added that the Constitution of North Carolina, which was adopted by Franklin, with a few amendments, has in its thirty-second section the following words: "That no person who shall deny the being of God, or the *truth of the Protestant religion*, or the divine authority of either the Old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department within this State." This was the law of our territory so long as it remained a part of North Carolina. And unless the provision was omitted from the Constitution as recast by Franklin, there certainly was a deliberate and most unjust limitation of religious liberty on the soil of Tennessee and by a law made by its own people. It is improbable that this section was omitted. A more stringent requirement was proposed in the Houston Constitution, and the Carolina provision is in accord with the temper of the religious leaders of Franklin. It will be observed that freedom of opinion was not restricted, directly.

One was at liberty to believe any thing, but only the Protestants had the right of civil preferment. It can not be maintained that there was religious liberty where such a law prevailed, and there can be but little doubt that it prevailed in Franklin.

The Tennessee Constitution was, as we have seen, more liberal because it established equality between sects. And as a matter of fact, I do not recall any suggestion, even, of the exclusion of a citizen from office on account of his religious opinions. That the Constitution of 1796 did not go so far as the very advanced religious or irreligious thought of the present time demands may be true; but, in practical effect, it did establish unlimited religious liberty. Considered with reference to the conditions of the time, it was exceptionally liberal and just in this respect. North Carolina retained the provision requiring belief in the Protestant religion till 1835.

The Constitution of 1796 authorized imprisonment for debt, but provided that the debtor should not be held after surrendering his estate for the benefit of creditors, unless the presumption of fraud was strong.*

* This provision appears in the Bill of Rights of 1834, but imprisonment for debt was abolished by statute in 1842.

The press was to be free, and, in short, the principles of the English and American Bills of Rights were re-affirmed and declared to be essential parts of the Constitution.

The foundation principles of this Constitution are as old as English history. The modifications of English doctrines and institutions in the direction of the new American conceptions were imperfect, and in some respects purely tentative.

The scheme of selecting officers was artificial, inconsistent, and undemocratic. The people, in whom the Bill of Rights declares all power to inhere, were allowed to elect only the Governor and the members of Assembly. The tenure of many offices was, in effect, for life. And although there are well founded objections to an elective judiciary, I can not but regard life tenure of office as anomalous, and as inadmissible and dangerous in a free country, and I venture to assert that experience does not show results that justify the maintenance in the State nor in the Nation of a system so absolutely undemocratic. It seems to be illogical and wrong, and an assurance of disturbance and of danger to place one of the three departments of the Government beyond the reach of the people. Stability and independence are the virtues claimed for the

system, and its advocates treat with indifference the suggestion that these qualities may become excessively developed.

The omission of the Constitution of 1796 to create a Supreme Court as a permanent branch of the Government, co-ordinate with the Executive and the Legislative branches, was due to a failure to comprehend the wisdom of the Federal Constitution, and to the adherence of the Convention to the Constitution of North Carolina, under which all courts were created and abolished by the Legislature. The distribution of the powers of the Government to three distinct co-ordinate departments is essentially an American plan. The counterpart of the Supreme Court of the United States does not exist in England, and no other judicatory of equal rank and power is known to the history of institutions. This plan of co-ordinate departments was first fully developed in our Federal polity from which it has spread to the States.*

The North Carolina Constitution, however, was formed eleven years before the meeting of the Federal Convention, and before this most original of

* The beginnings of the system are to be found in the colonies wherein the courts were frequently called upon to construe the charters and to pass upon the validity of legislative acts.

American institutions was conceived. Therefore, while we must regard the Tennessee Constitution as defective in the respect now under consideration, it would be unjust to censure its framers on that account.

Other grave defects were developed in the practical operation of the Constitution. Mr. Jefferson is quoted as saying that it was: "The least imperperfect and most republican" of the State Constitutions.* Mr. Phelan, whose utterances are generally very positive and sometimes extreme, says that it was "unrepublican and unjust in the highest degree." He characterizes as "monstrous" the provision that no one hundred acres of land should be taxed higher than another, and declares that it was an "entail law in disguise." The Constitution, he says truly, was made by land owners; and he adds that they were also speculators. They owned the more valuable lands contiguous to the centers of population, Jonesboro, Greeneville, Knoxville, Nashville, which, under a just system, would have been assessed higher than the lands remote from the towns; but as no hundred acres could be taxed higher than another, the owners were able to hold

* Ramsey, p. 657.

these valuable lands indefinitely. It will not be denied that there is justice in the criticism, and it is very certain that such a system would not be tolerated now. But at that time the inequalities in land values, on account of location, were slight.

I have before me the Journal of the Convention which is brief and unsatisfactory. The tax clause was originally in the following words: "All lands held in this State by deed or grant shall be taxed equal and uniform in such manner that no one hundred acres shall be taxed higher than another, except town lots, and no town lot or free man shall be taxed higher than one hundred acres, and no slave higher than two hundred acres, for each poll." *

The subject appears to have been debated twice. On the first of February, Mr. McMinn moved to strike out the words "town lots," and that being lost, he moved that the entire section be stricken out, which, in the language of the Journal, "passed in the negative." Three days later, the subject being again under consideration, the section was amended on motion of McNairy and Rutledge, so as to cover lands held by entry, and so as to re-

* Journal, p. 14.

cast the last sentence without changing the meaning. McClung and Mitchell moved to strike out the words "town lots," which "passed in the negative." Cocke then moved that no town lot be taxed higher than two hundred acres, which was agreed to. Beyond this the Journal shows nothing.* McMinn seems to have opposed the entire section, but it is not recorded that he offered any substitute. There is nothing to show that there was any other opposition to the plan. It is probable that the town tax-payers and land owners did their best to have their rural compatriots bear a full share of the burden of taxes, but it is submitted that there is no reason for impeaching the motives of the Convention. That these provisions were unjust in their effect, will hardly be denied, but we must remember that Tennessee was a frontier agricultural community, that land was exceedingly cheap, and that the wisest men are unable to read the future. Moreover, the tax laws followed those of the Territory. It had been enacted, in 1794, that lands should be taxed by the hundred acres, except town lots. The only other subjects of taxation were white and black polls and

* Journal, p. 27.

stallions.* To these the policy of the State added billiard tables, which were taxed first at twenty-five dollars and then at ten dollars each.

Lands, under the first State statute, were assessed at twelve and one-half cents on the hundred acres; town lots, at twenty-five cents each; white polls, twelve and one-half cents; black polls, twenty-five cents; stallions, a sum equal to the season of one mare; and billiard tables, twenty-five dollars each. Such were the sources of revenue of the infant State of Tennessee.

There is one other feature of the Constitution to which I wish to direct attention. I have already argued that the authority of the Legislature over the Judiciary was excessive, and if we regard the Constitution closely, we shall find the same criticism applicable to the relations of the Assembly to all the inferior members of the State. Directly or indirectly, the Assembly had the power of influencing the selection and therefore the policy, of all State officers. It elected the Judges, Attorneys for the State, and Justices of the Peace. The Judges chose their own Clerks, and the County Court, composed of Justices who served

* Acts, 1794, Chap. 3.

during good behavior, elected the Sheriff, Coroner, Trustee, and Constables. It will thus appear that very superior advantages were afforded for establishing what is now called a ring. It will not be doubted that there were politicians in those days who were fully alive to these advantages.

Phelan is the only historian of Tennessee who has given serious attention to the construction and the workings of this Constitution, but his discussion of it is scattered through several chapters and is hardly coherent. I can not avoid the conclusion that his sharp criticisms are unjust to the members of the Convention. His language occasionally is intemperate, and in at least one passage, the momentum of his rhetoric has carried him far beyond the limits of justice and of fact. He declares that: "The whole State was one old Sarum;" that the condition of affairs in Tennessee "put to shame the rotten borough system of England;" that "it surpassed the Athens of the Kings."* The greatest respect for Mr. Phelan's memory and the most cordial appreciation of the value of his book can not hide the fact that these statements approach perilously near to the absurd. I understand him in effect to assail the motives of the members of the

* Hist. Tenn. 253, 254.

Convention, in saying that they left untried no expedient consistent with a republican form of Government to withhold power from the people. I have studied carefully every original source of information within reach, and have tried to comprehend the conditions, and the spirit of the time, and while I concur in the opinion that the Constitution of 1796 was defective, and even unjust in important particulars, there is not one of its deficiencies which may not be accounted for satisfactorily by the natural and honest conservatism and by the inexperience of the men who composed the Convention. There is no need to impugn their motives, and there is no ground for impugning them. If they were guilty of contriving against popular rights, what must Mr. Phelan have thought of the Constitution of North Carolina, under which the Legislature not only exercised all the powers of the Tennessee Assembly, but even elected the Governor? As a matter of fact, he says, on page 199, that the Tennessee Convention "made such changes in the North Carolina Constitution as were commensurate with the progress of Democratic ideas in America, giving less power to the representatives of the people and more to the people them-

selves, but leaving the seeds of future dissensions in the election of County officers and the taxation of land." To commend the Constitution as "commensurate with the progress of Democratic ideas," to say that it gave to the people more rights that a Constitution which satisfied the free State of North Carolina until 1835, and then to say that it produced a condition of affairs worse than that in Athens under the kings, is to be seriously inconsistent.*

I think we may conclude that the truth is, that bad as the Constitution was in many respects, it was, nevertheless, the result of the conscientious efforts of a company of honest and sincerely patriotic men, whose task was difficult and who accomplished it, as well as could reasonably have been expected. Mr. Jefferson was a competent judge of such matters; he lived at the time when the Constitution was made and was familiar with the general political conditions of the country and

* Phelan's Chapters on "Tennessee Institutes and Local Self-Government" are of the greatest value, and I wish to acknowledge my indebtedness to them. There are some extreme opinions, and some careless statements, but upon the whole no better work than these two chapters has been done in Tennessee history.

with the Constitutions of the several States, and there is every reason for believing that he was right when he said that our Constitution was the least imperfect and the most Republican. I have no pleasure in disputing Mr. Phelan's conclusions, but I maintain that the Constitution of 1796 was the natural product of the political and social conditions of the time, and that it was in no sense a wicked or willful device for the abridgment of popular rights.

The people did not realize how much their rights and powers had been enlarged, and they lacked confidence in themselves.

In 1834 it was different, and I shall endeavor hereafter to indicate the process of social and political evolution whose results were formulated in the work of the Convention of that year.

The Convention of 1796 met January 11 and adjourned February 8 of that year. The Constitution was not submitted to the people.

The method of choosing Presidential Electors which was first adopted in Tennessee, in the year 1796, and again resorted to in 1799, was unique and is worthy of attention. The State was then partitioned into three districts, Washington, Hamilton and Mero. On the eighth of August, 1796, an act was

passed naming three persons from each County to choose the Electors. The Commissioners thus chosen from the Counties in Washington District, were to meet at Jonesboro, those chosen from Hamilton, at Knoxville, and those from Mero, at Nashville, on a day designated, and ballot for Electors for their respective districts. In case of a tie, the decision was to be made by drawing lots.

WILLIAM B. CARTER,

President of Convention of 1834.

CHAPTER V.

The Constitution of 1834.

1834–1870.

The Constitutional Convention of 1834 assembled at Nashville on the 19th of May, and adjourned on the 30th of August of that year. The Constitution was submitted to the people on the 5th and 6th of March, 1835, and was ratified by a vote of 42,666 against 17,691. As I have just been considering the provisions of the Constitution of 1796, I shall enter at once upon an analysis of the Constitution of 1834, in order that the two may easily be compared, reserving for the latter part of this Chapter some general remarks which are suggested by a study of the Journal of the Convention.

The Declaration of Rights is made the first article of the Constitution instead of the last, as in 1796. The first section of the second article is in the following words: "The powers of the Government shall be divided into three distinct departments, the Legislative, Executive, and Judicial." This is directed to the most conspicuous defect of the old Constitution. The supreme importance of this

fundamental division of powers had been so forcibly impressed upon the people of the State that it was provided for in the first words of the new Constitution. The ninth section of the second article declares that no one shall be a Representative in the General Assembly unless he be twenty-one years of age, and shall have been a citizen of the State for three years, and a resident of the County which he represents for one year immediately preceding the election; and that no one shall be a Senator unless he be thirty years of age, and have the other qualifications prescribed for Representatives. These changes, and nearly all others that are to be noticed, make the Constitution more democratic, more American. The people had outlived the old Constitution and were determined to amend it to meet their social and political needs and opinions.

The next important section is upon the subject of taxation, in which it is declared: "That all land liable to taxation, held by deed, grant or entry, town lots, bank stocks, slaves between the ages of twelve and fifty years, and such other property as the Legislature may from time to time deem expedient, shall be taxable. All property shall be taxed according to its value; that value to be ascertained in such manner as the Legislature shall direct, so

that the same shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value, but the Legislature shall have the power to tax merchants, peddlers, and privileges in such manner as they may from time to time direct. The tax on white polls shall be made in such manner and of such an amount as may be prescribed by law." The succeeding section provides that the General Assembly shall have the power to authorize Counties and incorporated towns to impose taxes as prescribed by law; all property to be taxed according to its value and upon the principles established in regard to State taxation.

These provisions, as well as those above referred to, are full of history, and comparison of the primitive and arbitrary provisions of the tax law of the Constitution of 1796, with the well-considered and equitable regulations just quoted, reveals in outline the industrial and commercial history of Tennessee during the period between the two instruments. The law of 1796 shows upon its face that it was established by a community whose principal source of revenue was large areas of cheap land together with town lots of uncertain value,

and a few slaves and brood horses, and that it was prepared by men of little or no experience in State-making. The law of 1834 indicates an extraordinary growth of that society. Not only lands and slaves are taxed, but also bank stock, merchants and privileges of various kinds. The backwoods settlements have grown into an industrial community where all the vocations of civilized life are carried on, and in which incorporated towns have grown up and have become of sufficient importance to be subjects of legislation and to be endowed with the power of self-taxation. The minds of the people have been enlarged; a correct conception of the principles of taxation has succeeded the rude methods of 1796. The second Constitution recognizes and proclaims uniformity and equality as the true rule of taxation, and does not, like its predecessor, declare equality and establish inequality. I do not commit myself to the absolute justice and correctness of the tax provisions of the Constitution of 1834, but I do not hesitate to say that they were sufficient for the needs of the State at that time, and were as equitable as they could well have been made. They were sufficient for that time, but they are not adapted for the present time, especially if we accept the judicial constructions that have been

put upon them; and with a very few notable exceptions, these interpretations commend themselves to the legal profession. Tennessee was not even yet a highly organized society. The population was less than 700,000, and of this number 150,000 were slaves. The era of public improvements had not begun, there were no railroads and no cities worthy of name. But, if no history of the State had ever been written, we should know from this tax law that there were municipalities and banks, and occupations of the kinds which are recognized and taxed as privileges. This clause proves increase of population and wealth, diversification of industries, enlarged knowledge of the principles of Government, and general advancement of intelligence.

The third article of the Constitution deals with the Executive. The Governor is required to be thirty years of age and the property qualification is omitted; another instance of reform in the direction of true American and democratic principles. The fourth article is upon the subject of suffrage. Here again the property qualification is wiped away, and every free white * man of the age of

* There is reason to believe that free negroes would not have been deprived of the suffrage, but for the fact that so many were being attracted to the state.

twenty-one, being a citizen of the United States and a citizen of the County wherein he may offer his vote for six months next preceding the day of election, is granted the right to vote, and it is provided that no one shall be denied the right of suffrage except for conviction of an infamous crime.

Article VI vests the judicial power in one Supreme Court and such inferior Courts as the Legislature may establish. This provides for a Constitutional Supreme Court which the Legislature does not create and can not abolish, and thus is completed the establishment and the proper distribution of the powers of a fully equipped and organized American State. The Legislature might still create and abolish inferior Courts, but its action could always be revised by the Supreme Court.

The Supreme Court was composed of three Judges. one from each grand division of the State, and its jurisdiction was exclusively appellate. It was to sit at one place in each grand division of the State, and its Judges were required to be thirty-five years of age. The term of office was twelve years.

The Legislature elected Attorneys for the State by joint vote of both Houses, the term of office being six years. The Clerks of the Supreme Court

were to be appointed by the Judges for six years. Clerks and Masters of the Chancery Court were appointed by Chancellors for the same period. Clerks of other inferior Courts were elected by the qualified voters of the respective Counties, for a term of four years.

The Counties of the State were to be laid off as the General Assembly should direct, into Districts of convenient size, so that the whole number in each County should not be more than twenty-five, or four for every one hundred square miles, and there were to be two Justices of the Peace and one Constable elected in each District by the qualified voters therein, except Districts including County towns, which were allowed three Justices and two Constables. The jurisdiction of these officers was co-extensive with the County. The Justices were to serve for six and the Constables for two years. The Justices were to be commissioned by the Governor, and the Legislature was authorized to provide for the appointment of an additional number in incorporated towns. These provisions are in every essential respect superior to the corresponding parts of the old Constitution. In the first place, the Counties had not before been divided into Districts, and the Justices were appointed from the Captains Companies,

and the Captains Company as a political quantity was indefinite and unsatisfactory, and the method was an innovation which had nothing to commend it. The Justices, it will be remembered, had been chosen by the Legislature and the Constables by the County Court, under the Constitution of 1796.

By Article VII each County was authorized to elect a Sheriff and a Trustee to serve for two years, and a Register to serve for four years. The Coroner and the Ranger, who were to hold office for four years, were elected by the County Court.

Ministers of the Gospel and Priests are excluded from the Legislature, and persons who deny the being of a God and a future state of rewards and punishment are denied the right to hold civil office in the State.

A new and important qualification for office is established in this Article. It is declared: "That any person who shall, after the adoption of the Constitution, fight a duel, or knowingly be the bearer of a challenge, or send or accept a challenge for that purpose, or aid or abet in fighting a duel, shall be deprived of the right to hold any office of honor or profit in the State, and shall be punished otherwise in such manner as the Legislature may prescribe." This strong but proper and

wise provision follows and emphasizes Acts passed in 1817 and 1829. The legislation of Tennessee against dueling is an interesting illustration of the growth of a public sentiment. As far back as the 10th of November, 1801, an Act was passed providing that whoever should fight a duel should "forfeit and pay the sum of fifty dollars, and further be committed to close gaol for sixty days, there to remain without bail or mainprize, and also forfeit the rights and privileges of a citizen for and during a space of one year." By that Act, killing a person in a duel was declared to be willful murder, punishable by death without benefit of clergy.* The Act of 1829 fixed the punishment for dueling at confinement in the penitentiary for not less than three nor more than ten years. This statute remained in effect under the Constitution of 1834, but the disqualification for office was declared, as I have shown, in the Constitution. The public sentiment in Tennessee against dueling was largely created by Judge Hugh Lawson White, who was the author of the Act of 1817.

The increase of population is indicated in the provision that new Counties should consist of not

* Acts, 1801, Chap. 32.

less than 350 square miles, and should contain at least 450 qualified voters. Under the old Constitution, the minimum area of new counties was fixed at 625 square miles.

Under the Constitution of 1796, divorces had been granted by the Legislature, and the public business is said to have suffered greatly by that fact. Samuel G. Smith, Secretary of State, reported to the Convention of the 10th of June, 1834, that within the six years immediately preceding that date, 163 applications for divorce had been presented to the Legislature, of which number only sixty had been granted.* Very much was said in the Convention in opposition to this method of granting divorces, particularly upon the ground that the hearings consumed time and provoked acrimonious controversy. I have no doubt that as a matter of public economy, and it may be of propriety and of decency, the method was objectionable. But in view of the fact that three-fifths of the applications appear to have been rejected, one would be willing almost to have the Legislature resume jurisdiction of the subject if there were any assurance that the same policy would prevail.

* Journal, 79.

Speaking for myself, I regard the facility of divorce which is secured by the laws of Tennessee as in the highest degree wrong and as injurious to public and to private morality, and I can not neglect the opportunity to express unqualified approval of the better policy of the early Legislatures. The Constitution of 1834, however, withdrew the power to grant divorces from the Legislature and vested it in the Courts. My objection is not to the change of forum, but to the statutes, and to the dangerous liberality with which they have been construed in favor of divorce suitors.

Another provision forbids the Legislature to authorize lotteries. The Supreme Court had already declared lotteries to be gaming, but the practice seems to have been flagrant in the State. The report made to the Convention by West H. Humphreys, Chairman, on the 24th of July, says: "The Committee are aware that it may be said that the Legislature has never authorized lotteries to a very extravagant extent, yet it is nevertheless true that that body is constantly in the habit of exercising their power in this respect. The Committee are of opinion that it is a power which they should not have, and that a prohibition to that effect should be

a part of our fundamental law." * The lottery had been a favorite device for raising money in aid of public enterprises. In 1794, the Territorial Legislature formulated an elaborate scheme of 3,100 tickets for building a wagon road from Kingston to Nashville. Prisons and stocks were frequently built in this way, and excellent purposes habitually promoted. The early legislation of Tennessee was friendly to lotteries, but inimical to billiards.

Stringent provisions were inserted for the prevention of special laws. These were directed wisely against an evil which had grown to intolerable propertions under the old regime. The report of the Secretary of State, which I have quoted above on the subject of divorces, recites that in the years 1829, 1831, 1832, and 1833, there had been passed in the aggregate 1,052 private acts and 352 public acts.† The new Constitution did not afford a complete remedy for this evil, but mitigated it very much. I take the liberty of suggesting that the true remedy, so far as legislation upon local affairs is concerned, would have been the establishment of the township system which I have advocated in the preceding chapter, and under which local affairs

* Journal, p. 160. † Journal, p. 79.

would have been adjusted by local authorities. I am continually impressed by the fact that while the South has been constant and clamorous in advocacy of the right of local self-government, in the abstract, she has really enjoyed less of it than any other section of the country, and that genuine local self-government does not exist and can not exist except where the Township System prevails. The earnest conviction that this system is not only incomparably superior to our present system, but is the only logical and adequate one that has been devised for a free country, must excuse this return to the subject.

When the Convention met, the State debt amounted to five hundred thousand dollars, consisting of bonds issued for stock in the Union Bank. A clause was inserted in the Constitution declaring that a well regulated system of internal improvement is calculated to develop the resources of the State and to promote the happiness and prosperity of our citizens, and therefore, that it ought to be encouraged by the General Assembly. This policy was most frequently and earnestly advocated by Willie Blount, the younger half-brother of William Blount, who had served three terms as Governor of the State. He was a delegate in the Convention

from Montgomery County, and his reports and resolutions upon this subject evince great ardor of temperament and large powers of rhetoric. I can not deny myself the gratification of relieving the dullness of this statement by quoting one of his imposing periods, as follows: "Whereas, the geographical position of Tennessee, in reference to the other States of the Union, she being *central*, and whereby she is every-where separated at a great distance from the National frontier; a situation affording a peculiarly favorable position for usefulness; a position which gives her population and her citizen soldiers the enviable characteristic of *disposable force* with the glorious *privilege of being permitted*, in a state of war, to fly to the succor of whatever part of the national frontier may become the theater of war, and to co-operate in the national defense with whatever sister State or Territory may be assailed by an invading foe—thereby demonstrating to the world the hitherto doubtful political problem, that freemen know how to appreciate equally the kindred privileges and duties of '*self government* and *self* (or national) *defense*,' privileges and duties equally essential to the efficient maintenance of our Republican institutions and our national independence; privileges and duties, in the

vigorous exercise and discharge of which, we may contribute to prove to a hitherto doubting, and a future admiring world, that the freest and happiest of republics may be, in war, the most powerful and invulnerable of nations."* This is the first, and I believe the shortest sentence of Mr. Blount's preamble. It is certainly entitled to the highest praise for affluence of language. It is probable that many citizens of Tennessee are not aware of the fact that one of the chief objects in the creation of our system of public improvements was to secure the privilege of flying to the succor of our sister States. I do not mean to speak lightly of Mr. Blount, who was a good lawyer and an acceptable Judge, and who distinguished himself more than any of our early Governors except Sevier and Carroll. This policy was suggested by the most patriotic considerations, but its adoption produced many unfortunate results.†

* Journal, 345.

† Before the Civil War, the State issued bonds in aid of railroads to the amount of $14,841,000, and at the beginning of the war its total indebtedness, most of which was for public improvements, was $20,408,000. In 1866 and 1867, bonds to the extent of $14,393,000 were issued to railroads. At various times about $2,000,000 were issued in aid of turnpikes before 1870. See Phelan, p. 293.

Provision was made for the appointment of a Board of Commissioners to have the custody and control of public school funds. I have shown that from the very beginning the people of Tennessee manifested a strong interest in matters of education, and it will be found that the early legislation and State papers abound in the praise of education and in suggestions in aid of it. It was the result of many conditions, which I can not properly discuss here, that Tennessee did not until a comparatively late period in her history, have an efficient public school system. It may be stated generally that the public school system really dates from the year 1829, when an Act of the Legislature was passed providing a plan for the establishment of school districts in the various Counties. As late, however, as the year 1837, a strong opposition was manifested to the system of entirely free schools. The Constitution of 1834 did not remedy the prime defect of the system, which was the want of a responsible head. Appropriations had been made by the Legislature and the proceeds of public lands had been devoted to educational purposes, but never until 1845 were measures enacted that produced results at all satisfactory. In that year a law was passed requiring the various districts to tax themselves

for the support of schools. This was in effect a partial adoption of the Township principle, and the Township has always been the best friend of the free school. The history of education in Tennessee is full of interest, but it is not within the scope of this volume to say more than that the Constitutional Convention of 1834 proved its interest in the subject, but, directly at least, did not contribute materially to the advancement of the cause.

I have now indicated the more important changes made in 1834. The Constitution as formulated by the Convention was adopted and remained in force until 1853, when public sentiment compelled certain important modifications. Amendments were then adopted transferring the selection of all Judges to the people; fixing their term of office at eight years; making the attorneys for the State and for the districts elective in the same manner, and fixing their term at six years. These amendments made the Constitution democratic in all its parts. Previously there had been a declaration that all rights belonged to the people, but a reservation of important powers to the Legislature, which in my judgment belong of right and in sound policy to the people.

In 1866, amendments were adopted to harmonize

the Constitution with the Federal Constitution as amended upon the subject of slavery. When this had been done, the State had in every essential respect the same Constitution that it has now. To this fact of the substantial identity of the last two Constitutions I shall return in considering the Constitution of 1870.

Having shown the amendments which were made in 1834, I wish now to call attention more directly to the causes and the spirit of these changes. And first I notice the workings of the Court system under the Constitution of 1796, as explaining some of the changes made in 1834. It is surprising and not at all pleasing to find how very unsatisfactory was the conduct of Tennessee Judges under the Constitution of 1796. Never, probably, in the history of the country were so many Judges impeached within so short a time. The certain tenure of office seems to have been demoralizing.* Impeachments were distressingly frequent, and more than once they resulted in the conviction of a man of the highest reputation. The people rose in arms against the system and they were fully justified. It ought never to have been adopted; it was wisely

* Phelan, p. 301.

abolished and was the cause of many of the ugliest things in our history. The Court system itself was complicated and ill-regulated. The County Court, which, as constituted in Tennessee, ought never to have judicial powers, had concurrent jurisdiction with the Circuit Court of many important matters, and, indeed, the jurisdictional boundaries between the County Court and the Circuit and Chancery Courts are not even now satisfactorily established. If we must continue to have the County Court, it ought at least to be made a purely administrative assembly, because it is not properly constituted, nor in any respect equipped for the trial of law suits. "The first judicial system in this State for the final decision of causes was known as the District or Superior Court system, which went into effect in April, 1796, and was composed of three Judges until the fall of 1807, when another Judge was added. This system continued until the first of January, 1810, when a Court of Errors and Appeals was established, consisting at first of two Judges; afterward, in 1815, increased to three Judges; again, in 1823, to four Judges; and in 1824, for a few months, to five; then reduced to four again, which continued to be the number until the Courts were reorganized under the Constitution

of 1834. During the entire period, with the exception of the period from 1831 to 1834, and subsequently under the Constitution of 1834, the Judges were of equal grade, without any Chief Justice or presiding officer. In 1831, the Legislature created the office of Chief Justice, and elected the Hon. John Catron, one of the Justices, to that position. By the Constitution of 1834, the Court of last resort was styled the Supreme Court; and the designation is repeated in the Constitution of 1870. Under the Constitution of 1834, the Court was composed of three Judges. The new Constitution of 1870 directs the Judges to designate one of their own number who shall preside as Chief Justice." *

The Chancery Court is worthy of special attention. The first Court established in the Tennessee Counties by the State of North Carolina, was a general law and equity Court combined. It was created in 1784, but in 1787 it was divided and the Chancery branch called the Court of Equity, and a Clerk and Master appointed for each Equity Court, but the same Judge continued to hold both Courts. The Cession Act of 1790, provided that the laws of North Carolina should remain in force

* Cooper's edition 1st Overton Tenn. Rep., xi.

until changed by Act of the Territorial Legislature. The first Act of the Territorial Legislature confirmed the North Carolina Act giving the Superior Court equity jurisdiction. The same Act confirmed the division of the Territory into the Washington, Hamilton and Mero districts, but conferred a separate Court of law and equity jurisdiction upon each of them. When in 1809, the Superior Courts of law and equity were abolished, and a Supreme Court of Errors and Appeals established, Circuit Courts were also created and invested with all the original common law and equity jurisdiction of the Superior Court. In 1811, the Supreme Court was given "exclusive jurisdiction of all equity causes arising in the Circuit Court." In 1813, Circuit Judges were given concurrent jurisdiction with the Supreme Court in equity causes. During this time Circuit Judges continued to hold the Chancery Courts, but in 1822, an Act was passed providing that Chancery Courts should be held by one of the Supreme Judges; in 1824, a Chancery Court to be held twice a year, was established in each Circuit, and in 1827, an Act was passed for the election of two Chancellors, to hold all Chancery Courts. The State was divided into two Districts and the Chancellors having jurisdic-

tion throughout the State, were allowed to interchange. The Sixth Article of the Constitution of 1834 provides for Courts of Equity, and the first Legislature under that Constitution substantially reenacted the North Carolina Act of 1782, creating Courts of Equity; and increased the number of Chancellors to three. There have been no material changes in the constitution of the equity system since that time, but the number of Districts or Divisions has steadily increased. I acknowledge my indebtedness to Gibson's "Suits in Chancery," for the facts stated in this sketch of the Chancery Court.

There is nothing in the history of the Circuit and the County Courts that need be recited here. The general constitution of the Courts has remained unaltered, although many changes of jurisdiction have been made by statute. The Circuit Courts have all the powers of the English Court of King's Bench in criminal cases, and also general jurisdiction of all cases at law. The question of jurisdiction under the old Constitution constantly gave trouble. Chancery Courts and County Courts were continually in conflict, and no man could say with certainty where the boundary was between the Circuit and Chancery Courts on one

side and the Supreme Court on the other. The result was unbounded confusion, multiplicity of suits, ruinous costs, interminable appeals and delays. A committee of the State Senate declared in 1829 that the system was the most expensive and the least efficient in the United States.

From this brief statement it will be seen that under the Constitution of 1796, the jurisdictions of the various Courts were inextricably confused. Of this there was much well grounded complaint, and if the Constitution of 1834 did not cure the evil entirely, it greatly simplified and improved the system. There are many changes yet to be made, but the Convention of 1834 is to be commended for its work in this department.

There has been no more thoughtful and no fairer student of American institutions than Woodrow Wilson. In his book, "Division and Reunion," he has shown happily and clearly the change of political life which this country experienced early in the second quarter of the present century. He says: "The Colonial States were, of course, a bit raw and callow as compared with the seasoned growths of European history; but even they had acquired some of the mellowness and sedateness of age. The new States, on the other hand, which came

rapidly into being after the Revolution, were at a much greater remove from old tradition and settled habit, and were in direct contact with difficulties such as breed strength and a bold spirit of innovation. They brought into our national life a sort of frontier self-assertion which quickly told upon our politics, shaking the Government out of its old sobriety, and adding a spice of daring personal initiative. . . . The inauguration of Jackson brought a new class of men into leadership, and marks the beginning, for good or for ill, of a distinctively American order of politics begotten of the crude forces of a new nationality. A change of political weather, long preparing, had finally set in. The new generation which asserted itself in Jackson was not in the least regardful of conservative tradition. It had no taint of antiquity about it. It was distinctively new and buoyantly expectant." *

In the establishment of this "new order of politics," Tennessee had an important part. Andrew Jackson, in whose election to the Presidency the new sentiment triumphed for the first time, was a Tennessean, and was a faithful representative, a

* Division and Reunion, pp. 10, 11.

natural product, of the political and social conditions which prevailed in this State. The Convention of 1834 was demanded and its conduct dictated by this sentiment. A wave of democratic reform was sweeping over the country; the people had become conscious of their rights. It was in the Western communities like Tennessee, which had never in fact been under British dominion, that the new spirit was first and most strongly developed. And in this connection I think it is true that the most important and salutary of the improvements in institutions and in methods that have been made in this country have originated in the Western States. Not because the people are more intelligent, but because they are more independent, and are not trammeled by traditions nor precedents. It is certain, for instance, that the science of municipal government is greatly indebted to the progressiveness of the Western cities, and the Western and North-western States have led the way to many important and beneficial changes from the harsh and rigid common law.

It is interesting and instructive to examine the Constitutions of the States and to see how many Constitutions and how many important amendments, all democratic in tendency, were made be-

tween 1830 and 1850. South Carolina, New Jersey, and a few others were faithful to the old system, but in a great majority of the States, constitutional changes signalize the growth of democracy, the appearance of the "new order of politics."

The co-ordination of the Executive, Legislative, and Judicial departments was accomplished for the first time in several States by these amendments.

In Tennessee, the foremost champion of the new order was Governor William Carroll, who, in intelligence, independence, and valuable service, has hardly been surpassed by any Governor of the State. He lived in the time of Jackson, whose largeness filled the public eye. The excessive reputation of Andrew Jackson continues to obscure many able and worthy men whose names will stand high in the fair and just history which remains to be written.

Among the more important and interesting subjects that were considered by the Convention of 1834 was Emancipation. It must be borne in mind that in 1834, Slavery had not become an active political question. The Anti-Slavery Society had been organized in the East for a few years, and Colonization Societies in several States for about twenty years, but the tremendous movement which

was to shake the Republic to its foundations was not fairly begun. There had been no definite movement of serious import against Slavery in Tennessee. In Middle and West Tennessee, there were many opulent slave-holders, but in East Tennessee very few. There is much interesting personal and Church history connected with this subject, but my attention must be confined to the doings of the Convention.

The first mention of the subject was on Saturday, the 24th of May, when Mr. Cahal introduced the petition of sundry citizens of Maury County on the subject of Emancipation.* From that time forward the proceedings of the Convention abound in references to it. On the 30th of May, Mr. Stephenson, of Washington County, moved: "That a Committee of thirteen, one from each Congressional district, be appointed to take into consideration the propriety of designating some period from which slavery shall not be tolerated in this State; and that all memorials on that subject that have or may be presented to the Convention, be referred to said Committee to consider and report thereon." On the 19th of June, the Committee, which had been

* Journal of the Convention, p. 26.

appointed pursuant to Stephenson's resolution, presented a long and elaborate report which is signed by John A. McKinney, Chairman. This report covers more than six closely printed pages. In the beginning, it is in effect a severe arraignment of slavery. It declares: "The Committee does not understand the Convention as denying the truth of the proposition which asserts that Slavery is an evil; *to prove it to be a great evil is an easy task*, but to tell how that evil may be removed is a question that the wisest heads and most benevolent hearts have not been able to answer in a satisfactory manner." A subsequent sentence admits that "fleecy locks and black complexion mark every one of the African race so long as he remains among white men, as a person doomed to dwell in the suburbs of society." Again it is said: "But the friends of humanity need not despair; the memorialists need not dread that Slavery will be perpetual in our highly favored country; Providence has already opened the door of hope, which is every day opening wider and wider. On the coast of Africa the foundation of a mighty empire is already laid, and thither the sons and daughters of Africa, made free by the sons of their masters and transported by funds furnished by the benevolent, shall repair, and

carrying with them the blessings of civilization and the truths and consolations of Christianity, they will, in process of time, banish idolatry, ignorance, and superstition from that wretched land which has so long been the habitation of horrid cruelties." The concluding sentence of the report is as follows: "So a premature attempt on the part of the benevolent to get rid of the evils of Slavery would certainly have the effect of postponing to a far distant day the accomplishment of an event devoutly and ardently desired by the wise and good in every part of our beloved country." *

But while the report abounds in expressions like those which have been quoted, denouncing slavery in the strongest terms, it advises against interference with the institution on the ground of inexpediency, and of the injury which it is said would necessarily result to the negroes. It would be impossible to believe that sentiments so antagonistic to slavery were uttered in this Convention if we were unmindful of the fact that the agitation of the subject in politics had not yet begun, and that there had been no incentive to find arguments in support of the institution. When this report

* Journal, pp. 87–93.

was put to the vote, it was carried by forty-four against ten, and if this was a declaration that action upon the subject was inexpedient, it was not less an approval of the anti-slavery sentiments which make up so large a part of the report. Among those who voted against the resolution were Robert J. McKinney, who represented Greene County, and Joseph A. Mabry, who represented Knox County. Soon after the adoption of this report, Messrs. Stephenson, McGaughey, Bradshaw and Gillespie, all from East Tennessee, presented a protest against it, in which they declared it to be "at variance with the spirit of the Gospel," and "a kind of apology for slavery." *

There is no room to doubt that as an original proposition the sentiment of the Convention was strongly opposed to slavery. The popular expression which gave the Convention so much trouble, was not at all general, and the number directly represented by it was insignificant. Chairman McKinney resenting the strictures of the protest above referred to, made an additional report at a later day wherein he vigorously defends his committee and reargues the question. It is stated

* Journal, p. 104.

that the memorials upon the subject of emancipation had been presented by the following Counties: Washington, Greene, Jefferson, Cocke, Sevier, Blount, McMinn, Monroe, Knox, Rhea, Roane, Overton, Bedford, Lincoln, Maury and Robertson. The number of signers in Washington County was 273, in Greene 378, in Maury 33, in Overton 67, in Robertson 24, in Lincoln 105, in Bedford 139. The signers of each of the remaining petitions represented more than one County, so that no distinction could be made. The total number of signatures was 1,804, of whom 105 declared themselves slave-holders, but it is possible there were other slave-holders who did not so designate themselves.* It will be noticed that the petitioning Counties are sixteen in number; eleven in East Tennessee and five in Middle Tennessee. It is obvious that there was nothing of the nature of a popular uprising, and no demand of sufficient proportions to impress itself strongly upon the Convention, therefore, the sentiment of the Convention against slavery must have existed in the minds of the members without regard to these memorials. A few years later, mention of the subject in such a

*Journal, p. 125.

forum would have provoked the bitterest controversy, and opinions such as were expressed in the report could not have hoped for indorsement. The plans proposed by the memorials are interesting. It appears that Washington County alone did not submit a definite plan. The committee states that of the remaining thirty petitions, about one-half asked that all the children of slaves in this State, born after the year 1835, be made free, and that all the slaves be made free in 1855, and that they be sent out of the State. The others request that all slaves be made free by 1866, and that they be colonized. There were forty-six Counties from which no memorials were presented.* In addition to those to which I have referred, there were many other discussions of the subject in the Convention, but no other facts of particular interest were developed.

Many suggestions were made in the Convention that were not adopted, but are interesting as indicating at least a limited public opinion. It was proposed that men eighteen years of age be allowed to vote; that voting be *viva voce;* that drunkenness be a disqualification for office; that corporations

* Journal, p. 126.

be prohibited as dangerous to the liberties of the people; that there be a Lieutenant-Governor.

A unique undertaking, worthy of special mention, was that of ascertaining what one delegate called the "center of gravity" of the State. The exact ascertainment of this important fact was desired for the purpose of locating the Capital. There was much contention for the Capital among the larger towns of Middle Tennessee, and nearly all from McMinnville westward were proposed. The Convention gracefully evaded the question, but for a time it indicated some disposition to solve it by putting the Capitol on the center of gravity, regardless of other considerations. It is proper to state that a learned professor of mathematics found the geographical center of the State to be a mile and a half east of Murfreesboro. The report declares that the "center of position and the center of gravity are necessarily the same." *

In the chapter on Franklin, I called attention to the queer provision of the rejected Houston Constitution creating a Council of State, which was to be elected every fifth year, to sit during one year, and to have practically absolute power. Its special

* Journal, p. 62.

duty was to be to inquire whether or not the Constitution had been preserved. A proposition almost identical with this was presented to the Convention of 1834, by Willie Blount, but was wisely rejected. It is plain from the wording of Blount's paper that he expected this high and extraordinary tribunal to have onerous duties in the way of impeaching State officials, an expectation which was justified by the unfortunate history of the judiciary.

The feeling against lawyers had not yet subsided. The people did not understand then, and do not understand now, the indisputable fact that there is no calling in which labor brings such small returns as the lawyer's. Mr. Hodges, of Jefferson County, introduced the following resolution, which was not adopted, to wit: "That lawyers do the business of the Justices of the different Counties, gratis, as they are more capable to do this business. The fee of lawyers as it is, is plenty high to do all those duties." *

The attempt to insert into the constitutional oath of office a statement that the affiant had not directly nor indirectly given ardent spirits to electors for their support, proves that the methods of politicians were not immaculate even in those days.

* Journal, p. 286.

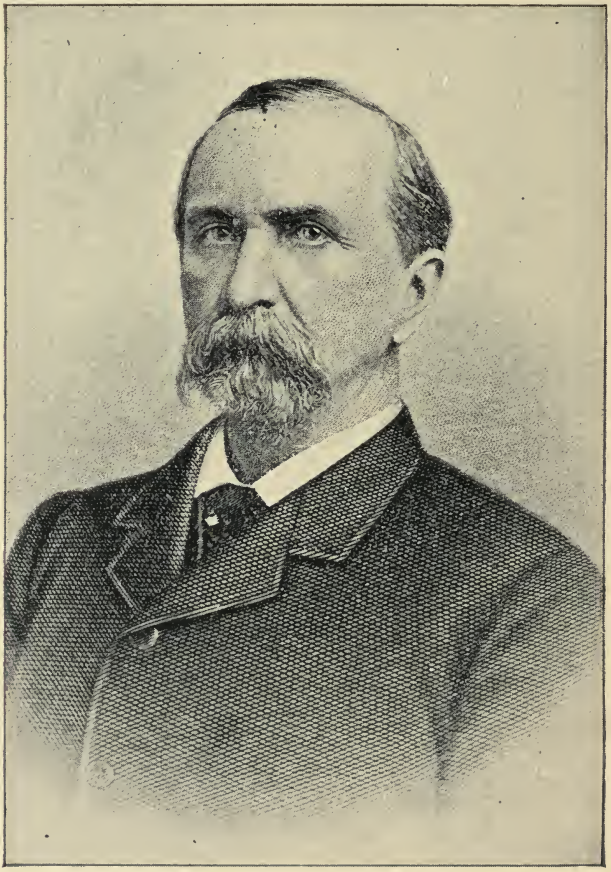
In conclusion, upon this subject I wish to say that the Constitution of 1834, is the only Constitution that the people of Tennessee ever have made. It is the only one of the three State Constitutions that was the product of conditions existing in the State at the time when it was enacted. I have said that the Constitution of 1796 was the outgrowth of the conditions of that time, but it was not a product of the State life. The conditions to which I referred were the general conditions of this country. Tennessee had then no individuality. The people were gathered from all quarters, and while they were exceptionally homogeneous, they were all new comers, and their undertaking was an experiment. In 1834, the State as a distinct political and social entity, had existed for forty years. It had established an individuality, it had developed distinctive characteristics, and these were embodied in the Constitution of 1834. A process of social and political evolution had been going on through these four decades, and its results appear in the new Constitution. That instrument faithfully represented the conditions and opinions of the State at the time when it was adopted, and it was in almost every respect, excellent. It was what the people demanded and what they needed. The most serious

objection to it is that it was too long and descended too much into details. If its tax provisions are unjust and injurious now, it is because we have retained them despite radical changes of condition.

I shall endeavor to show that the Constitution of 1870, is not entitled to the same praise.

It is singular that while the Conventions of 1796 and 1870 contained each a large number of men who are prominent in State history, the Convention of 1834 had comparatively few. Among the more prominent members are: William B. Carter,* the president, Robert J. McKinney, Francis B. Fogg, Robert Weakley, Newton Cannon, West H. Humphreys and Willie Blount. In the ordinance passed by the Convention, calling for a vote upon the new Constitution, it was provided that no one should vote except such as were included in the first section of the fourth article as amended. The effect of this was to disfranchise free negroes before the adoption of the new Constitution. The free negroes would have opposed the Constitution. The scheme was original, practical, and effective.

* William B. Carter, the President of the Convention, was a grandson of John Carter, the Watauga leader. Intellectually and physically, he was one of the striking figures of the time in Tennessee. He served acceptably in Congress for three terms, and held with credit, other positions of honor and trust.



JOHN C. BROWN,

President of Convention of 1870.

CHAPTER VI.

The Constitution of 1870.

1870–1895.

I have said that the Constitution of 1834 was a natural product of the political and social conditions existing in the State at the time of its adoption, and that this was not true of the Constitution of 1870.

In 1796, Tennessee was a frontier community; in 1834 it was a purely agricultural State, but with a population increased tenfold and a society much more highly organized. Its commercial relations were rapidly expanding, there was a growing sense of the importance of developing the material resources of the State, and there were faint beginnings of manufacture. But it was essentially an agricultural society without railroads and without large cities.

To the needs of such a community, the Constitution of 1834 was admirably adapted. Between 1834 and 1861, the progress of the State was

steady but not rapid, and when the Civil War began, society had not outgrown the Constitution.

The war resulted in a tremendous destruction of values, and in the complete overthrow of the industrial system.

In 1870, the old system had been swept away, and the new one had not been fairly established. The people were impoverished, helpless, despairing. The future was inscrutable and threatening.

The Constitution of 1834 had, in 1866, been amended so as to conform to the amendments of the Federal Constitution on the subject of slavery, and it was apparent to thoughtful men of that time that it was impossible for human wisdom, under existing circumstances, to construct a Constitution which would long suffice under the new order of affairs.

Nevertheless, we find a Constitutional Convention assembling in 1870, while the drastic Federal policy of reconstruction was still in operation in most of the Southern States, and in this body were many of the most thoughtful, capable and conservative men of the State.

We will readily believe that such men thought it best to make as few changes as possible in the organic law, preferring that the new order should

first be developed, and then the Constitution reshaped and adapted to it. The essential differences between the Constitutions of 1834 and 1870, are few and unimportant.

Why then was the Convention called at a time when it was indisputably the wisest policy to await developments, and when the great fact of the abolition of slavery had already been provided for by amendment of the old Constitution?

The truth is that the Convention was a political expedient, designed to restore to citizenship and to the mastery of affairs, the majority of the white voters of the State, who had been disfranchised by by a minority party which the war had placed in power. If certain minor constitutional changes were advocated, the wish to secure them was not an important factor in promoting the Convention.

The disfranchised citizens availed themselves of the ambitions of opposing leaders, whose fortunes were declining, and thus enfranchised themselves.

The Convention of 1870 was composed of strong men. It was probably the most intellectual body that ever was elected in Tennessee, for any purpose. The President, John C. Brown, was a man whose abilities were of a high order and who deserves a larger place in our history than has been

accorded him. The venerable Neill S. Brown brought to the deliberations of the Convention a high intelligence, spotless character and ripe experience. James D. Porter has in many capacities proved himself one of the purest and best of our public men. John Netherland was a man of deserved note in two generations of strong lawyers. John Baxter possessed extraordinary force of intellect and of character, was a lawyer of the highest standing and a born leader of men. George W. Jones had been one of the first citizens of the State for many years and had won distinction as a member of Congress. William H. Stephens and Joseph B. Heiskell represented Shelby County, and were men of exceptional ability and learning. John F. House, of Montgomery County, has long been recognized as one of the ablest men in Tennessee, and it is to be regretted that indifference to public honors has deprived the people of his services. Judge David M. Key has won distinction as a lawyer, as a Judge, as a Senator and as Postmaster-General of the United States. Probably the most distinguished delegate was A. O. P. Nicholson. This venerable and admirable man is one of the finest figures in our history. His intellect was commanding, and wherever he went he

was the peer of the foremost. His character was the purest and his personality was infinitely attractive. His wise conservatism was invaluable to the Convention. Not to make the list too long I mention as other conspicuous members, W. H. Williamson, George E. Seay, J. J. Turner, H. R. Gibson, W. B. Staley, John W. Burton, A. Blizzard, George G. Dibbrell, Sparrel Hill, Alex. W. Campbell, James Fentress, Thomas M. Jones and John A. Gardner. All of these have been prominent in public affairs. There was hardly a member of the Convention who was not of more than average ability.

While the Convention was ostensibly charged with the duty of reforming the Constitution, its members were fully aware that the real purpose of their assembling was very different. The leaders, at least, were wise enough to know that even if the object of the Convention had been a revision of the Constitution, the wisest policy was to do as little as possible. They realized that they were at the beginning of a new era; that the near future must bring many changes which they could not provide for nor foresee.

The sentiment and purposes of the dominant element were frankly spoken by the venerable

Judge Nicholson, who again and again said in effect, to those who were inclined to experiment or to be extreme: "Let us be careful; let us do no more than is absolutely necessary. In ten years all this must be done again."*

There were hot heads and men with pet theories in the Convention, but the conservative majority adopted and adhered to the policy declared by Judge Nicholson.

There was another reason for being cautious. The Convention owed its existence to a stroke of political policy which was little less than audacious. The political party whose supremacy was to be destroyed by the new Constitution, was naturally unfriendly to the Convention. The Federal Government was exercising, throughout the South, the most extraordinary powers, and its agents kept vigilant watch upon the proceedings. The slightest imprudence might have brought the soldiery into the hall of the Convention. The members are fond of saying that they worked with

* I quote Judge Nicholson on the authority and with the permission of his son, Major Hunter Nicholson. Congressman Henry R. Gibson, a prominent Republican member of the Convention, confirms my statement, and says that at first it was expected that the Convention would not be in session more than ten days.

the "Sword of Damocles" constantly suspended over them.

The gravest difficulty, probably, was in adjusting the suffrage. The Chairmanship of the Committee on Elections and the Right of Suffrage was assigned to Judge Nicholson, in whose prudence and wisdom the Convention had great confidence. The result reached was the virtual re-enactment of the provisions of the old Constitution, with the addition of the poll-tax qualification which played so large a part in the election of 1894.

The way to this conclusion lay through much strenuous debate and many conflicting and fervid resolutions and protests. The Journal shows many rejected resolves, asserting the superiority of the white man and his right of supremacy, but the conservatives were wisely steadfast in favor of admitting the negro to equal rights. There was hardly a moment when the Convention was free from apprehension that indiscreet utterances on this subject might provoke the intervention of the Federal authorities.

But while this was difficult, and, under the circumstances, dangerous work, the result was, practically, to leave the suffrage as it had been before. A strange spectacle was presented when the ex-

treme Southern men, who were expected to be the most uncompromising advocates of white supremacy, took the floor in support of provisions which necessarily conferred the suffrage upon negroes.

The policy was wise. Indeed, no other course was open. The restrictive measures which were proposed would certainly have defeated the purposes of the Convention.

Among the more important changes of the Constitution made by the Convention may be mentioned the granting of a qualified veto power to the Governor. It is not an effective veto, because a bill may be passed over it by a bare majority. The homestead exemption was created, provisions were inserted denying the State the right to give aid to public enterprises, and the Legislature was directed to enact general laws for the organization of corporations. This last was a very important and a very wise measure.

I state generally what the remaining noteworthy changes were, with the purpose of showing that in the main they were comparatively unimportant, and it is respectfully submitted that many of them deal with matters which are proper subjects of legislation, and not of constitutional regulation.

Where the Declaration of Rights in 1834 pro-

hibits a religious test as a qualification for office, the new Constitution adds that there shall be no political test; it unnecessarily elongates the fifth section; wisely amends the fifteenth by requiring action of the Legislature for suspension of the writ of *habeas corpus;* provides for the humane treatment of prisoners and prohibits slavery.

Article II fixes the term of members of the Legislature; regulates the time of elections; provides that no bill shall become a law which embraces more than one subject; that repealing, amending, and reviving acts shall recite, in the caption, the substance of the repealed, revived, or amended act; that general laws shall not take effect until forty days after passage, unless otherwise expressed therein; slightly changes the form of tax provisions, and elongates them by clauses taxing the capital of merchants, authorizing an income tax, and fixing the limit of the poll-tax; prescribes how counties and cities shall lend credit; prohibits the State from lending aid, or becoming owner or stockholder in any association or corporation, and declares that no Convention or General Assembly shall act upon an amendment of the Constitution of the United States, unless such Convention or

General Assembly shall have been elected after the submission of the amendment.

Article III declares that the militia shall not be called into service except in cases of rebellion or invasion, and then only when the General Assembly shall declare, by law, that the public safety requires it. This apprehensive provision, in conjunction with the Coal Creek riots of 1892, necessitated the creation of the Army of Tennessee. A long section in the same article regulates the signing and approving of bills by the Governor.

Article IV contains new provisions in regard to the payment of poll-tax as a condition to voting.

Article V provides that the Chief Justice shall preside in the Senate during impeachment trials.

Article VI adds a clause authorizing Courts to be holden by Justices of the Peace, increases the number of Supreme Judges to five, provides for the appointment of a Chief Justice, contains unimportant amendments as to the election and ages of Judges, changes the term of the Attorney-General from six to eight years, provides that he be selected by the Supreme Court, and makes the Circuit and Chancery Courts constitutional Courts.

Article VII regulates the terms of officers and makes the Comptroller a constitutional officer.

Article X fixes the area of new Counties, adds a multitude of local provisions of no importance, and declares the liability of new Counties for debts of the old Counties.

Article XI provides for Constitutional Conventions, for a conventional rate of interest, declares that white and negro children shall not be received in the same school, authorizes game and fish laws, forbids the intermarriage of whites and negroes, and declares that no County office created by the Legislature shall be filled otherwise than by the people or by the County Court.

These are not all the changes, though very few are omitted.

Many of these changes are lawyers' comments on the original text, critical or explanatory notes inserted into the body of the instrument. In many instances, I repeat, they are provisions which are too much dignified by places in the organic law, and should be relegated to their proper rank, as statutes. For instance, is there room to doubt that the Legislature might, without special constitutional authority, enact game and fish laws?*

* It is only just to the Convention of 1870 to state that many of these enactments on matters of detail and of inferior im-

I have said in effect, that the Convention, having been called ostensibly to revise the Constitution, adopted the policy of "how not to do it." If this was not publicly avowed, it was indisputably the sentiment of the leaders, which was made effective by their personal influence.

The exceptional ability and prudence of the Convention were not absolute preventives of error. Certain of its amendments have been very detrimental. The clause regulating the militia requires Legislative action before the Governor can invoke the military power. The result, as shown in the notorious and disastrous Coal Creek riots, was to make the State helpless to put down insurrection, and therefore, evading, or rather overriding, the Constitution, we have created an Army of Tennessee, as distinguished from the militia. This may be condoned as an emergent and indispensable measure, made necessary by the unfortunate clause under consideration, which was the result of the apprehensions of the Constitution makers that conditions which existed at the close of the war might be reproduced in the future. This was the cause, also, of the wiser provision as to *habeas corpus*.

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portance were amendments of provisions of the Constitution of 1834 on the same subjects.

The militia had recently been called out by the Governor, upon what the disfranchised citizens considered wholly insufficient cause, and the writ of *habeas corpus* had been arbitrarily suspended.

Notwithstanding Judge Nicholson's declaration that the Constitution would have to be renewed in ten years, and the policy of the Convention, in conformity with his opinion, more than twice that time has now elapsed, and not a single change has been made. But this does not prove that Nicholson and his associates were wrong. They foresaw that the new order of affairs would demand a new Constitution, but they did not know that the people of Tennessee would become indifferent to their highest interests; that selfish and absurd demagogues would be heard to oppose a Constitutional Convention on the ground of expense; that powerful corporate interests would band themselves against it; that an innumerable company of Justices of the Peace would take the field against it; that so many who held office would prefer self to duty. The Convention of 1870 recognized its inability to deal with a future of untried conditions. Its members were men of the old régime. They had been born and had passed their lives in slave-holding, agricultural Tennessee, and looking

forward, they saw every thing changed. The slave had become the political equal of his former master; the white man was impoverished; disaster, want, and gloom were on every hand; a new industrial system was to be built up; and a new distribution of lands and a general social, industrial, and political readjustment was to be made. Wisely admitting its own limitations, the Convention left to a new generation the duty of adapting the organic law to the new conditions.

In 1895, there is urgent need for a new Constitution, and this need has been pressing for more than a decade, but the people are indifferent, while the office-holders are fully awake to their own interests.

In 1834, the State had outgrown its old Constitution, and the people demanded a new one. The social and industrial changes between 1870 and 1895 are greater in number and more radical in quality than the changes between 1796 and 1834, and there is more need for a new Constitution in 1895 than there was in 1834, but the State lags behind all her sisters, halting under the burthen of an antiquated and injurious system. The people have been going on, but the Constitution has stood still for sixty years. For the Constitution of 1870 is the Constitution of 1834, especially in those pro-

visions which most directly affect the commercial and manufacturing interests of the State and the prosperity of its cities.

This sketch is intended to be historical, and not polemical, but the discussion of the defects of the Constitution of 1870 can not be out of place in a study of the constitutional history of the State.

The illiberal and obstructive system of taxation which has grown up in Tennessee, is the offspring of legislation produced by constitutional provisions which were well enough in 1834, but are vicious now. There can be no relief in this respect without a constitutional declaration of true principles of taxation.

The history of cities in the United States, proves that the right of local assessment for local improvements is indispensable to healthy municipal development, but the Courts have declared the method unconstitutional in Tennessee.

The County Court as now constituted, is a costly, injurious and absurd survival from ancient times, which Tennessee, almost alone, is tolerating, but it is intrenched by the Constitution.

Local self-government has always been the favorite phrase and theory of the South, but I repeat the statement made above, that the South has less

of local self-government than any other section of our country, and there is no Southern State that has less of it than Tennessee. If the City of Knoxville, situated in sight of the Carolina line, would sell a bond or increase its municipal tax limit it must first ask the consent of the Legislature, and in deciding the question, the members whose homes are on the Mississippi River, four hundred miles away, have as much voice as her own Representatives. By no possibility could a town in Tennessee secure the largest improvement or benefit by an exemption of any thing from municipal taxation.

The Counties which are densely populated, need one kind of road and fence law, and the sparsely settled mountain Counties need another kind, but as it is, the populous suburbs of Nashville and of Memphis, must have the same road and fence laws as the trackless mountains of East Tennessee.

The sheep raising districts need a dog law, but all laws must be general, and the dog is radicated in the affections of the mountain Counties, and dog laws there beget popular uprisings, and the sheep must be eaten by the dogs, because the Legislature dreads the wrath of the mountaineers.

The immigrant to Tennessee from a Northern or Western State, finds to his dismay, that every hon-

est vocation is called a privilege, and is roundly taxed. The privilege tax is essentially unjust, and certainly would not be favorably considered by a modern constitutional Convention.

The Courts declare themselves unfriendly to double taxation, but every lawyer in Tennessee knows, that statutes have been held constitutional which create double taxation in fact, whether it be so in law or not. The Constitution should be made explicit, and double taxation prohibited.

There are many other defects in the Constitution, such as its failure to provide adequately for the gubernatorial succession, and its establishment of grand divisions of the State, with the result of creating much unnecessary and absurd sectional jealousy and prejudice.

It must be obvious, however, that the reforms most needed are in the matters of taxation and of local government. Especially do the cities of Tennessee stand in need of enlarged powers of self-government.

James Phelan, the latest historian of Tennessee, whose best work is upon the subject of our State "Institutes," declares that: "In Tennessee we have within the limits of a century, a picture of national life, as complete as that of England,

through its two thousand years, or that of Rome, from the Kings to the Emperors."

If it be admitted that this is an extreme statement, it is true that the history of Tennessee exhibits a process of natural and orderly social and political evolution. There is probably no State in the Union whose population is more homogeneous. There is no State whose social and political institutions can be more directly or certainly traced to English originals, nor whose development has proceeded more consistently along the lines of the purest Anglo-Saxon principles.

Socially and politically, and we may almost say ethnically, Tennessee is as much Saxon as England itself.

The continued ascendancy of the class which first settled in Tennessee has given to the history of the State a distinct quality, an exceptional unity, and completeness.

The institutional history of the State is exceptionally interesting and important on account of the unique experiments of Watauga, Cumberland, and Franklin, and of the natural and unbroken development of Anglo-Saxon political principles since the establishment of the State.

The Constitution of 1796 was probably the "least

imperfect and most republican" of its time. The Constitution of 1834 was a natural and true expression of the political and social life of the State at that time. If the Constitution of 1870 is to-day justly declared to be insufficient and even positively obstructive, it is because the people have outgrown it, just as in 1834 they had outgrown the Constitution of 1796.

The fact that the organic law of the State is inadequate to existing needs, does not prove a want of progress on the part of the people. The people have simply passed beyond that stage of corporate life, to which the Constitution in its present form is adapted. The coming Convention will amend the Constitution to meet the new and larger requirements of the time. The State has grown in wealth; her commercial relations and activities have increased ten-fold; mines and manufactories multiply constantly; four large and growing cities are centers of important and expanding trade; railroads run in all directions; above all, the gratifying results of an efficient system of education are visible on every hand. The demand which these conditions make for a new and adequate Constitution can not long be resisted.

APPENDIX.

OFFICERS AND MEMBERS OF THE FIRST FRANKLIN CONVENTION, AND OF THE TENNESSEE CONVENTIONS.

I.

THE FIRST FRANKLIN CONVENTION, AUGUST, 23, 1784.

President, John Sevier; Secretary, Landon Carter.

Washington County: John Sevier, Charles Robertson, William Purphey, Jos. Wilson, John Irvin, Samuel Houston, William Trimble, William Cox, Landon Carter, Hugh Henry, Christopher Taylor, John Chisholm, Samuel Doak, William Campbell, Benjamin Holland, John Bean, Sam Williams and Richard White.

Sullivan County: Joseph Martin, Gilbert Christian, Wm. Cocke, John Manifee, William Wallace, John Hall, Saml. Wilson, Stockley Donelson, and William Evans.

Greene County: Danl. Kennedy, Alexander Outlaw, Jos. Gist, Samuel Weir, Asahel Rawlings, Jos. Ballard, John Maughon, John Murphy, David Campbell, Archi-

bald Stone, Abraham Denton, Charles Robinson and Elisha Baker.

II.

The Convention of 1796.

President, Wm. Blount; Secretary, Wm. Maclin.

Davidson County: John McNairy, Andrew Jackson, James Robertson, Thos. Hardeman, Joel Lewis.

Blount County: David Craig, James Greenaway, Joseph Black, Samuel Glass, James Houston.

Greene County: Saml. Frazier, Stephen Brooks, Wm. Rankin, Elisha Baker, John Galbraith.

Hawkins County; Jas. Berry, Joseph McMinn, Thomas Henderson, William Cocke, Richard Mitchell.

Jefferson County: Alexander Outlaw, Jos. Anderson, George Doherty, James Roddye, Archibald Roane.

Knox County: James White, William Blount, Charles McClung, John Crawford, John Adair.

Sullivan County: George Rutledge, Wm. C. C. Claiborne, Richard Gammon, John Shelby, John Rhea.

Sumner County: David Shelby, Isaac Walton, William Douglass, Edward Douglass, Daniel Smith.

Sevier County: Peter Bryan, Saml. Wear, Spencer Clack, John Clack, Thos. Buckingham.

Tennessee County: Thos. Johnston, James Ford, Wm. Fort, Wm. Prince, Robert Prince.

Washington County: John Tipton, Saml. Handley, Leroy Taylor, Landon Carter, James Stuart.

III.

The Convention of 1834.

President, William B. Carter; Secretary, William K. Kill.

From the District composed of the County of Carter, William B. Carter.

From Washington County: Matthew Stephenson.

From Sullivan County: Abraham McClellan.

From Greene County: Robert J. McKinney.

From Knox County: Joseph A. Mabry.

From Hawkins County: John A. McKinney.

From Blount County: James Gillespie.

From Monroe County: Bradley Kimbrough.

From McMinn County: John Neal.

From Roane County: James I. Greene.

From White County: Richard Nelson.

From Jackson County: James W. Smith.

From Warren County: Isaac Hill.

From Franklin County: George W. Richardson.

From Robertson County: Richard Cheatham.

From Montgomery County: Willie Blount.

From Henderson County: John Purdy.

From Carroll County: Ennis Ury.

From Madison County: Adam Huntsman.

From Hardeman County: Julius C. N. Robertson.

From Fayette County: West H. Humphreys.

From Shelby County: Adam R. Alexander.

From Henry County: Peter Kendall.

From the district composed of the Counties of Cocke and Sevier: William C. Roadman.

From the Counties of Rhea and Hamilton: William T. Senter.

From the Counties of Bledsoe and Marion: John Kelly.

From the Counties of Overton and Fentress: Hugh C. Armstrong.

From the Counties of Smith and Sumner: John J. White, Robert Allen, and Isaac Walton.

From the County of Rutherford: William Ledbetter and Henry Ridley.

From the County of Bedford: Joseph Kincaid and Jonathan Webster.

From Maury County: Terry H. Cahal and Robert L. Cobbs.

From Williamson County: Newton Cannon and William G. Childress.

From Davidson County: Francis B. Fogg and Robert Weakley.

From Wilson County: Burchett Douglass and Robert M. Burton.

From the Counties of Lincoln and Giles: James Fulton, Andrew A. Kincannon, and Thomas C. Porter.

From the Counties of Washington, Greene, Sevier, Cocke, Blount, Monroe, and McMinn : John McGaughey.

From the Counties of Campbell, Claiborne, Grainger, and Jefferson: Calloway Hodges, Richard Bradshaw, and Gray Garrett.

From the Counties of Warren and Franklin: William C. Smartt.

From the Counties of Hickman, Lawrence, and Wayne: Boling Gordon and Henry Sharp.

From the Counties of Perry, Hardin, and McNairy: James Scott and Maclin Cross.

From the Counties of Gibson and Dyer: Nelson J. Hess.

From the Counties of Haywood and Tipton: William H. Loving.

From the Counties of Weakley and Obion: G. W. L. Marr.

IV.

The Convention of 1870.

President, John C. Brown; Secretary, T. E. S. Russwurm.

From the County of Bedford: T. B. Ivie.

From the County of Blount: W. H. Finley.

From the County of Bradley: S. P. Gaut.

From the County of Cannon: Warren Cummings.

From the County of Carroll: W. M. Wright.

From the County of Claiborne: P. G. Fulkerson.
From the County of Cocke: M. McNabb.
From the County of Davidson: Neill S. Brown and John C. Thompson.
From the County of DeKalb: Jos. H. Blackburn.
From the County of Dickson: Thomas C. Morris.
From the County of Fayette: E. H. Shelton.
From the County of Franklin: Jesse Arledge.
From the County of Gibson: Sparrel Hill.
From the County of Giles: Thomas M. Jones.
From the County of Grainger: James W. Branson.
From the County of Greene: James Britton.
From the County of Hamilton: Richard Henderson.
From the County of Hardeman: James Fentress.
From the County of Hardin: A. G. McDougal.
From the County of Hawkins: John Netherland.
From the County of Haywood, George C. Porter.
From the County of Henderson: Jno. M. Taylor.
From the County of Henry: James D. Porter, Jr.
From the County of Hickman: Bolling Gordon.
From the County of Jackson: Richard P. Brooks.
From the County of Jefferson: Wm. Sample.
From the County of Knox: John Baxter.
From the County of Lawrence: T. D. Davenport.
From the County of Lincoln: Geo. W. Jones.
From the County of Madison: Alexander W. Campbell.
From the County of Marion: Wm. Byrne.

From the County of Marshall: Richard Warner, Jr.

From the County of Maury: W. V. Thompson.

From the County of McNairy: Jno. H. Meeks.

From the County of McMinn: A. Blizzard.

From the County of Monroe: James A. Coffin.

From the County of Montgomery: D. N. Kennedy.

From the County of Obion: Chas. N. Gibbs.

From the County of Overton: Z. R. Chowning.

From the County of Roane: W. B. Staley.

From the County of Robertson: John E. Garner.

From the County of Rutherford: John W. Burton.

From the County of Stewart: Nathan Brandon.

From the County of Sullivan: W. V. Deaderick.

From the County of Sumner: James J. Turner.

From the County of Shelby: William H. Stephens and Jos. B. Heiskell.

From the County of Smith: John Allen.

From the County of Warren: H. L. W. Hill.

From the County of Washington: S. J. Kirkpatrick.

From the County of Wayne: Robt. P. Cypert.

From the County of Weakley: John A. Gardner.

From the County of White: Geo. G. Dibbrell.

From the County of Wilson: S. G. Shepard and W. H. Williamson.

From the County of Williamson: Samuel S. House.

From the Counties of Carter and Johnson: W. B. Carter.

From the Counties of Greene, Hawkins, Hancock, and Jefferson: A. A. Kyle.

From the Counties of Knox and Sevier: Jos. A. Mabry.

From the Counties of Anderson and Campbell: Henry R. Gibson.

From the Counties of Scott, Morgan, and Fentress: James C. Parker.

From the Counties of Polk, McMinn, and Meigs: T. M. Burkett.

From the Counties of Rhea, Bledsoe, Hamilton, and Sequatchie: D. M. Key.

From the Counties of Grundy, Coffee, and Van Buren: Matt. Martin.

From the Counties of Smith, Sumner, and Macon: George E. Seay.

From the Counties of Davidson, Robertson, and Montgomery: John F. House.

From the Counties of Rutherford and Bedford: John E. Dromgoole.

From the Counties of Lincoln, Marshall, and Giles: Jno. C. Brown.

From the Counties of Williamson, Maury, and Lewis: A. O. P. Nicholson.

From the Counties of Benton and Humphreys: W. F. Doherty.

From the Counties of Perry and Decatur: G. W. Walters.

From the Counties of Carroll, Gibson, Madison, and Henry: James S. Brown.

From the Counties of Dyer and Lauderdale: A. T. Fielder.

From the Counties of Tipton, Shelby, and Fayette: Humphrey R. Bate.

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