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AMERICAN GOVERNMENT*

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Handbooks of American Government

EDITED BY

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PROFESSOR OF HISTORY IN TUFTS COLLEGE

The Government of Maine

•The  Co. •





MAP OF
THE STATE OF
MAINE

SCALE OF MILES
0 5 10 20 30 40 50

71° Longitude West 69° from Greenwich 67°

HANDBOOKS OF AMERICAN GOVERNMENT

The
Government of Maine
Its History and Administration

BY

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PREFACE

THIS book, begun at Bowdoin College, is finished at Brown University. In writing it I have tried to keep in mind the needs of students in high schools and academies, for whose use it is particularly designed, and to avoid overloading the text with relatively unimportant details. I am under obligations to numerous State and local officials for information and assistance in matters relating to their respective offices; to Mr. Edward W. Wheeler of Brunswick, Maine, for light on some points of legal procedure and the organization of the party system in the State; and to Mr. John A. Morrill, of Auburn, for his kindness in furnishing me with advance sheets of his revision of the laws of Maine. For historical data relating to the educational system of the State I have drawn largely upon the annual reports of Hon. W. W. Stetson, State Superintendent of Public Schools, particularly the report for 1900.

The texts of a number of documents in the Appendix are reprinted from my "Select Charters," by permission of The Macmillan Company.

WILLIAM MACDONALD.

AUGUST, 1902.

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CHAPTER I

THE PROVINCE AND DISTRICT OF MAINE

I. REFERENCES

Williamson's *History of Maine*, though old, is still the best account of the early history of the State. It brings the narrative down to about 1820. Sullivan's *History of the District of Maine*, an earlier work, is still valuable. The histories of Abbott and Varney are popular works. The *Collections of the Maine Historical Society* contain much material of general importance. Kohl's *History of the Discovery of Maine* (Vol. I. of the *Documentary History of Maine* included in the *Collections*) treats of voyages before 1600. There is a learned note on the origin of land titles in Maine prefixed to the *Revised Statutes* of 1883. The *Farnham Papers*, forming part of the *Documentary History*, include all important grants, patents, and similar documents. The *Baxter Manuscripts* and *Trelawney Papers*, in the same series, are miscellaneous collections from 1629. Of prime importance for the early period are the *York Deeds*. The volumes include other papers besides deeds, and have useful historical introductions. Town and county histories are numerous and important, but often difficult to use for purposes of general study. Williamson's *Bibliography of Maine*, to 1891, is an exhaustive catalogue of the literature. The best atlas of Maine is Stuart's, 1901, and there are useful county atlases; but the State has not yet been accurately surveyed, and none of the published maps can be implicitly relied upon.

2. PHYSICAL GEOGRAPHY

The State of Maine forms the northeastern corner Situation. of the United States. Its extreme length is about 300 miles, its extreme width about 285 miles.¹ Its

¹ Maine lies approximately between 43° 4' and 47° 27' north latitude, and 66° 56' and 71° 6' west longitude.

- area, 33,040 square miles, is about equal to that of the other five New England States combined. The general shape is triangular, and has been likened to a mountain peak broken at the top. The long south-east side rests on the Atlantic, while New Brunswick and Quebec bound it on the northeast, north, and west, and New Hampshire on the south and south-west. No State has so broken, rugged, and picturesque a coast-line, the actual length of the coast being not far from 2500 miles. Along the coast, and for the most part at no great distance from it, are numerous islands, that of Mt. Desert being the largest, while the many indentations form commodious harbors, some of which are accessible to the largest seagoing vessels.
- Shape.**
- Coast.**
- Surface.** The surface of the State, in general rugged and broken, presents two well-defined slopes or drainage areas. The northern slope, drained by the river St. John and its tributaries, includes about one-third of the area of the State. The southern slope is drained by the rivers which flow southeastward into the Atlantic. The coast rises toward the east. Mt. Katahdin and the northeastern peaks of the White Mountain range are the only considerable mountains.¹ The State is numerously dotted with lakes, large and small, Moosehead and Rangeley lakes being the largest.² A noticeable characteristic of the lakes is their high altitude above the sea. The principal rivers, — the St. John, Penobscot, Kennebec,
- Lakes.**
- Rivers.**

¹ Mt. Katahdin rises imposingly from a plain to a height of 5385 feet.

² The lakes, about 1500 in number, comprise about one-fifteenth of the area of the State.

Androscoggin, and Saco, — though rising far in the interior, are navigable only a short distance from the sea, but they afford excellent and abundant water power, which has long been utilized for manufacturing purposes.

The soil of Maine, save in the Aroostook valley and along the rivers, is not fertile. "The Aroostook valley, which comprises the largest area of fertile farming land in New England, has a deep, porous, yellow loam, especially adapted to the growing of fruits and vegetables."¹ Fortunately, however, Maine does not need to depend upon agriculture alone for its wealth. Its extensive forests of hard and soft wood, its large deposits of granite, slate, and limestone, its fisheries, and its ice afford employment to thousands of persons, and yield, where properly developed, large and increasing returns; while the excellent hunting and fishing, which the State carefully fosters, and the reputation of Maine as the summer resort *par excellence* of eastern North America, form unique and important sources of revenue.

Soil.

Industries.

3. EARLY EXPLORATION AND SETTLEMENT

In 1603 Martin Pring visited Penobscot Bay and followed the coast thence to the southwest. In the same year Henry IV. of France granted to De Monts the region between the fortieth and forty-sixth parallels of north latitude, under the name of Acadie, or Acadia.² De Monts and Champlain visited Passamaquoddy Bay the next year and passed the winter

Early explorers.

¹ Bulletin No. 139, *Twelfth Census of the United States*.

² The patent is in Williamson, *History of Maine*, I., Appendix I.

there, the following year exploring the coast as far as Cape Cod. In 1605 Weymouth coasted north from Cape Cod as far as the Penobscot, where he kidnapped and carried back with him to England five Indians, three of whom subsequently lived for a time in the family of Sir Ferdinando Gorges.¹

Plymouth
Company.

In 1606 James I. of England granted to the Plymouth and London Companies the whole region between the thirty-fourth and forty-fifth parallels.² The northern part of this vast grant, between the thirty-eighth and forty-fifth parallels, was assigned to the Plymouth Company, of which Sir John Popham, lord chief justice, and Sir Ferdinando Gorges, commandant at Plymouth, were influential members. A colony of upwards of a hundred persons under the leadership of George Popham, brother of the chief justice, and Raleigh Gilbert, was sent out in 1607 and established itself at the mouth of the Kennebec, or Sagadahoc, as it was for some time called. Here the colonists built a fort, a church, a storehouse, and some fifty houses, besides a thirty-ton pinnacle. But the winter was severe, Popham died, and the discouraged colonists returned to England.³

Popham
colony.

Further
settlement.

The island of Monhegan, which seems early to have been a landmark for seamen, shortly became an important fishing station and a centre for Indian trade.

¹ See McKeen, "Remarks on the Voyage of Weymouth," in *Collections of Maine Historical Society*, V.; cf. articles by Prince and Cushman, *ibid.*, VI., and Burrage, *ibid.*, 2d Series, II., 225-250.

² The grant is in MacDonald, *Select Charters*, I-11, and in Poore, *Charters and Constitutions*, II., 1888. Extracts are in Appendix B.

³ See Gorges, "Briefe Narration," in *Collections of Maine Historical Society*, II.; Strachey, "Travaile into Virginia Britannia," *ibid.*, III., 286-309.

There were also trading posts at Pemaquid and elsewhere.¹ In 1609 the Jesuits established a fortified mission station on the island of Mount Desert. Argall, under the authority of Virginia, dispossessed the French, but they later returned. In 1614 Captain John Smith made a trading voyage to New England, exploring the Maine coast as far as the Penobscot.

In 1620 Gorges and others, under the name of the Council for New England, obtained a grant of the country between the fortieth and forty-eighth parallels, under the name of New England.² The patent gave the company not only the monopoly of trade but extensive powers of government and control as well. Two years later Gorges and John Mason procured from the council a patent for the region between the Merrimac and Sagadahoc, and sixty miles inland, under the name of the Province of Maine.³ A permanent settlement was shortly begun at Saco, followed within a year by another at Agamenticus, or York. The people of Plymouth, who had been trading on the Kennebec and Penobscot, obtained from the council in 1629 a grant of some fifteen hundred thousand acres on both sides of the former river.⁴ The next few years saw numerous grants of land in Maine, eventually embracing the whole sea-coast from the Piscataqua to the Penobscot, except the region

Council
for New
England.

Province of
Maine.

¹ See Hough, "Pemaquid in its Relations to our Colonial History," in *Collections of Maine Historical Society*, VII.; Thornton, "Ancient Pemaquid," *ibid.*, V.

² The patent is in MacDonald, *Select Charters*, 23-33, and in Poore, *Charters and Constitutions*, I., 921. Extracts are in Appendix B.

³ The patent is in Ballard, *Memorial Volume of the Popham Celebration*, Appendix, 121-123. See extracts in Appendix B.

⁴ Extracts from the patent are in Appendix B.

between the Kennebec and Damariscotta,¹ and most of this last was claimed by Plymouth under the Kennebec patent.

4. GORGES'S PROVINCE OF MAINE

Gorges's
grant.

The monopoly given to the Council for New England by the patent of 1620 had been several times attacked in Parliament, where the opposition to monopolies had rapidly risen, and in 1635 the patent was surrendered. The territory was divided by lot among the twelve patentees,² Gorges receiving the share which, with additions, was confirmed to him by Charles I., in 1639, as the Province of Maine. The grant made by the royal charter included the region between the Piscataqua and the Kennebec, or about one-sixth of the present State of Maine.³ Over this grant Gorges was to rule as lord palatine, after the manner of Lord Baltimore in Maryland and the later proprietors in Carolina. For the government of the province, he "called into existence a staff of officials which might have sufficed for the affairs of the Byzantine Empire."⁴ A code of ordinances provided for a deputy governor and six councillors, to whom the general administration of the colony was intrusted. There were to be four counties, divided into eight hundreds, with later divisions of parishes and tith-

Plan of
government.

¹ Williamson, *Maine*, I., 242, 243.

² Williamson, *Maine*, I., 256, 257, gives the divisions.

³ The patent is in Poore, *Charters and Constitutions*, I., 774-783. Extracts are in Appendix B. The ordinances of government are in Sullivan, *History of Maine*, 413-421. The best account is Baxter, *Sir Ferdinando Gorges and his Province of Maine*. See also Williamson, *Maine*, I., 272-282.

⁴ Doyle, *Puritan Colonies*, I., 289.

ings. A legislative body of eight formed, with the council, the assembly.

The first general court was held at Saco, where an organized government under William Gorges, a nephew of the proprietor, had already been set up. Two counties, later known as Somerset and York, were shortly erected, and in 1642 Agamenticus was made a city under the name of Gorgeana.¹

Government established.

The efforts to establish an independent government in Maine had not been viewed with favor by Massachusetts, and the encroachments of the latter colony were early felt. The Pejepscoot purchase, including the present Brunswick and some adjacent territory, had been assigned to Massachusetts in 1639, and the New Hampshire settlements, which in 1629 had been cut off from Maine and given to Mason, were absorbed in 1642, while a law of 1641 had abolished all feudal tenures and obligations within the jurisdiction of the Massachusetts General Court.² When the New England Confederation came to be formed, in 1643, Maine was not admitted to membership because it maintained episcopacy and sheltered heretics from the other colonies.³ There were troubles between Gorges and Cleeve,⁴ the deputy president of Lygonia, and with the French in Acadia, while the territory of Sagadahoc, east of the Kennebec River, had no established government, and no important settlement as yet except Pemaquid. In 1647 Gorges, who had never seen his province, died.

Encroachments of Massachusetts.

New England Confederation.

¹ The name is often misspelled *Georgeana*.

² *York Deeds*, I., 55-59.

³ Doyle, *Puritan Colonies*, I., 308.

⁴ See Baxter, "George Cleeve of Casco Bay," *Gorges Society Publications*.

5. THE MASSACHUSETTS CLAIM

"Three
mile" claim.

The Massachusetts charter of 1629 gave to that colony the territory between points three miles south of the Charles River, "or of any or every part thereof," and three miles north of the Merrimac.¹ On the authority of this charter, Massachusetts claimed to extend its northern boundary to a point three miles north of the source of the Merrimac, thus including not only Mason's claim in New Hampshire, but the southwestern part of Maine as well. In 1652 commissioners from Massachusetts held a court at Kittery, and the settlements shortly submitted. The Isles of Shoals and the region north of the Piscataqua were erected into the county of York, and two representatives were admitted to the general court. The inhabitants became freemen of Massachusetts on liberal terms, no requirement of church membership being made, and only county and town taxes being levied for some years. The jurisdiction thus established was gradually extended, the people of Lygonia, including Scarboro and Falmouth, submitting in 1658.

Absorption
of settle-
ments.

The Gorges
claim
revived.

On the restoration of Charles II. in 1660, Ferdinando Gorges, a grandson of the original proprietor, claimed the province of Maine. A committee of Parliament decided in his favor, and in January, 1664, a royal order directed Massachusetts to restore the province to him or give reasons for holding it. Commissioners were also sent from England to investigate the affairs of all the colonies. Massachusetts

¹ The charter is in MacDonal'd, *Select Charters*, 37-42, and in Poore, *Charters and Constitutions*, I., 932. Appendix B gives extracts.

refused to yield, and denied the authority of the commissioners to take possession of Maine. The commissioners visited Maine, however, and set up a form of government, but they were shortly recalled, and in 1668 Massachusetts resumed jurisdiction of the province.

In March, 1664, the territory between the St. Croix and Pemaquid, known later under the various names of Newcastle, the county of Canada, and the county of Cornwall, was included in the grant to the Duke of York, notwithstanding the French claim to the same region as forming part of Acadia.¹

A new survey of the northern line of Massachusetts in 1672 extended the boundary of that colony beyond the Kennebec to Penobscot Bay. The claim of Gorges was revived in 1676, and Edward Randolph was active in his prosecution of this and other charges against the colony. The decision of the king in council was against Massachusetts, but in 1677 Massachusetts quietly purchased the Gorges claim for £1250, and thenceforth held Maine as a proprietor.

6. COLONIAL DEVELOPMENT

When Sir Edmund Andros became governor of the Duke of York's possessions in America, in 1674, his jurisdiction included the eastern county of Sagadahoc. Andros took possession of Pemaquid and built a fort there. In 1680 Massachusetts reorganized the administration of Maine. Subject to the

¹ Extracts from the grant are given in MacDonald, *Select Charters*, 136-139, and in Appendix B. The entire document is given in Poore, *Charters and Constitutions*, I., 786.

Government
of Maine.

governor and assistants, the immediate direction of affairs was intrusted to a provincial president, chosen annually, and a legislature composed of a standing council of eight members and a lower house of deputies from the towns. Thomas Danforth, deputy governor of Massachusetts, was chosen the first provincial president. In 1684, however, the charter of Massachusetts was vacated, and for seven years the colony was governed directly by the crown. In 1688 New England, New York, and New Jersey were united under the governorship of Andros, but the arrangement was short-lived, and on the flight of James II. and the accession of William and Mary, Andros was deposed and government under the charter was temporarily resumed. In 1691 a second charter gave to Massachusetts the whole of Maine as far as the St. Croix River.¹

Second
Massachu-
setts charter.

Slow
development.

Under the charter of 1691 the affairs of Maine were, in general, well administered by Massachusetts. Members from Maine sat in both the council and the general court. But the province was still poor and weak, with a population in 1700 of only five or six thousand. In the various French and Indian wars which went on, with but brief intermissions, between 1690 and 1760, the settlements in Maine suffered severely. Attempts were made to extend the Indian trade by the establishment of truck-houses, under agents known as truck-masters, but the trade was not profitable. In 1716 the limits of Yorkshire, then the only county, were extended to the St. Croix, but as the French still

¹ The charter is in MacDonald, *Select Charters*, 205-212, and in Poore, *Charters and Constitutions*, I., 942. Appendix B gives extracts.

claimed everything east of the Penobscot, the English advance was slow. A boundary dispute with New Hampshire was settled in 1740. By this time industry had revived, shipbuilding and the fisheries being in a prosperous state, while the population had grown by 1743 to about twelve thousand.

In the intercolonial war which began in 1744 there were large enlistments from Maine, and the capture of Louisburg, in June, 1745, was achieved by a colonial force under the command of William Pepperell of Kittery. Some of the Acadians deported from Nova Scotia in 1755 were sent to Maine to be supported by the towns, while others eventually made their way to the upper St. John, where many of their descendants now reside. The capture of Quebec in 1759, and the subsequent surrender of all Canada to the English, at last brought peace to the disturbed province. New grants of land were made both east and west of the Penobscot, while the erection of Cumberland and Lincoln counties in 1760 testified to the growth of population and the extension of the settled area.

Intercolonial wars.

7. MAINE DURING THE REVOLUTION

The growing opposition in the colonies to the policy and acts of the mother country, which shortly brought about the Revolution, was early manifested in Maine. In 1771 the attempt of the comptroller of customs at Falmouth to enforce the revenue laws by seizing a schooner in the harbor led to a personal attack on the officer. In 1774 the Falmouth town meeting declared "that neither the Parliament

Falmouth resolutions.

of Great Britain, nor any other power on earth, has a right to lay a tax on us without our consent, or the consent of those whom we might choose to represent us"; and it was resolved to give up the use of tea, to refuse licenses to innholders and merchants who should sell tea, and to appoint a committee of correspondence.¹ Similar action was taken by other towns and measures of defence adopted. Of the Revolutionary War itself, however, Maine saw but little. The bombardment and burning of Falmouth in 1775 was in part atoned for by the capture of a British armed vessel off Machias, but the British established themselves at Castine and remained there throughout the war.² Arnold's unsuccessful expedition to Quebec followed the Kennebec and Dead rivers, and thence across the divide to the Chaudière.³

Falmouth
burned.

8. THE DISTRICT OF MAINE

In 1778 the Continental Congress, having assumed jurisdiction of maritime cases, divided Massachusetts into three districts, of which the northern, comprising the counties of York, Cumberland, and Lincoln, became known thereafter as the District of Maine. The Massachusetts constitution of 1780 gave Maine four senators, and one-tenth of the revolutionary debt of the State was allotted to the district. Upon the close of the war there was a considerable immigration into Maine, and new towns were rapidly incorporated.

District of
Maine.

¹ Williamson, *Maine*, II., 409-411, gives the resolutions.

² See Kidder, *Military Operations in Eastern Maine and Nova Scotia during the Revolution*.

³ See Codman, *Arnold's Expedition to Quebec*.

On the adoption of the Constitution of the United States, Maine was made a representative district, the number of representatives being thereafter gradually increased. The representation of the district in the General Court, as the legislature of Massachusetts was called, was also added to as the population grew. The growth of population, indeed, was remarkably rapid. In 1800 it was 151,719, an increase of more than 55,000 in ten years; in 1810 it was 228,687. Hancock and Washington counties were established in 1789, Kennebec County, formed from Lincoln County, in 1799, Oxford County, comprising parts of the counties of York and Cumberland, in 1805, and Somerset County, taken from Kennebec County, in 1809. Bowdoin College, the oldest college in the State, was chartered in 1794.

Growth of the district.

Counties.

The embargo and non-intercourse laws had borne heavily on Maine, where shipbuilding and fishing were leading industries, and there were large enlistments for the War of 1812. On the fifth of September, 1813, the British brig *Boxer* was captured by the American brig *Enterprise* off Portland. In July, 1814, however, the British took possession of Eastport, and in August occupied Castine and Belfast and plundered Hampden and Bangor. Machias also fell into their hands. Castine was made a port of entry and a provincial government proclaimed over the region between the Penobscot and New Brunswick. The British occupation ceased in April, 1815.

War of 1812.

Boxer and Enterprise.

British at Castine.

CHAPTER II

THE STATE OF MAINE

9. REFERENCES

Information regarding the history of Maine as a State must be sought chiefly in the annual or biennial volumes of statutes, the messages of the governors and reports of State officers and departments, and the decisions of the supreme court. The original constitution, with the amendments to 1876, is in Poore's *Charters and Constitutions*, I., 788-809. The amended constitution of 1876 is in the *Revised Statutes* of 1883, the annual *Maine Register*, and other places. The journal of the constitutional convention of 1819-1820 was printed at Augusta in 1856. For the period from 1861 onward Appleton's *Annual Cyclopædia* is of great usefulness. The growth of population and industry is best traced in the reports of the decennial censuses of the United States. Town and county histories are usually most valuable for the period before 1820.

10. ADMISSION TO THE UNION

Early movements for separation.

Although the general policy of Massachusetts in its treatment of Maine had been just and liberal, the geographical separation of the district, differences of opinion between Maine and Massachusetts regarding national politics, and a desire to avoid the burden of the State debt, had early bred a desire for political independence.¹ As early as 1786-1787 conventions had been held at Falmouth, but the representation of

¹ For a list of grievances, 1786, see Williamson, *Maine*, II., 523-525. The *Falmouth Gazette*, the first newspaper in Maine, was established in 1785 mainly to advocate separation.

towns was small and the opposition strong. Massachusetts also granted substantial concessions, and the agitation subsided. The events of the War of 1812, however, impressed many persons with the expediency of a separate government, and the discussion of the question was resumed with earnestness. In February, 1816, the General Court directed the towns and plantations to vote on the question of separation, but the returns showed that a majority of the voters had not voted.¹ A law was, however, passed prescribing terms of separation, directing the towns to vote again on the question in September, and calling a convention to meet at Brunswick to canvass the vote. The vote did not show the majority that the law required, and the convention was dissolved.²

Action of
Massachu-
setts.

The matter rested until June, 1819, when a large number of towns having petitioned the General Court for a separation, a law was again passed prescribing terms substantially as in the former act.³ This time the popular vote showed a large majority in favor of separation. In October a convention met at Portland and drew up a State constitution, which was ratified by town meetings in December.

Separation.

The admission of Maine was an important element in the great struggle whose outcome was the Missouri Compromise.⁴ The relative growth of population in the free States and slave States had, ever

Admission.

¹ See Williamson, II., 662 *seq.*

² Minutes of William Allen, in *Collections of Maine Historical Society*, 2d Series, II., 129-142.

³ Important parts of the act are in the Appendix. The act is given in full in *The Journal of the Constitutional Convention*, 3-14.

⁴ On the struggle over Maine and Missouri, see MacDonald, *Select Documents*, 219-226, and references there given.

since 1790, given the free States a majority in the House of Representatives, but in the Senate the balance had been, on the whole, preserved.¹ The memorial of the convention at Portland praying for the admission of Maine was presented to Congress December 8, 1819, and on January 3 a bill for admission passed the House. The addition of another free State would, however, destroy the balance between the sections in the Senate. The Senate accordingly added to the Maine bill, as an amendment in the nature of a "rider," provisions for the admission of Missouri without any restriction regarding slavery. The House not only refused to concur in the amendment, but passed a Missouri bill of its own with a prohibition of slavery, while the Senate refused to recede. The result was a deadlock. Excitement both in Congress and in the country ran high. The difficulty was settled by a compromise. The Maine and Missouri bills were passed separately, while slavery, which was permitted in Missouri, was prohibited in the rest of the Louisiana territory north of 36° 30'. On the third of March Maine became a State of the Union.²

II. THE NORTHEAST BOUNDARY

History.

The northeastern boundary of the United States, as defined by the treaty of peace in 1783, was long a subject of controversy between the United States and Great Britain. In 1794 so much of the boundary as

¹ Johnston, *American Politics*, Appendices E and F, gives tables showing the population and representation of the sections.

² The act of admission is in the Appendix. Maine was the twenty-third State. Missouri was not admitted until 1821.

had to do with the St. Croix River was fixed, but the joint claim to the interior remained unsettled. An award by the king of the Netherlands in 1831 was rejected by both parties. "In 1838-1839 the territory between New Brunswick and Maine, claimed by both parties, became the scene of a small border war. Maine raised an armed posse, erected forts along the line which she claimed as the true one, and the legislature placed \$800,000 at the governor's disposal for the defence of the State; an act of Congress, March 3, 1839, authorized the President to resist any attempt of Great Britain to enforce exclusive jurisdiction over the disputed territory, and armed conflict was only averted by the mediation of General Scott, who arranged a truce and a joint occupation by both parties."¹ The controversy was settled by the Ashburton treaty of 1842.² Maine lost by the treaty about 5500 square miles of territory which the State had claimed, receiving therefor a small compensation from Congress.

"Aroostook war."

Treaty of 1842.

12. MAINE IN THE CIVIL WAR

Immediately on the outbreak of the Civil War the legislature was convened in extra session. Provision was made for raising ten thousand men, and a loan of \$1,000,000 was authorized. Measures were also taken for the defence of the State. Early in 1862, after the seizure of the Confederate commissioners, Mason and Slidell, the permission given to Great Britain to send across the State some troops destined

State action.

¹ Johnston in Lalor's *Cyclopædia*, II., 805.

² See the treaty in MacDonald, *Select Documents*, 335-343, and references there given.

for Canada gave rise to some criticism of the Federal Government. Fear of rebel refugees in Canada also caused uneasiness for a time on the northern border, which was increased by an unsuccessful attempt in July, 1864, to rob a bank in Calais. In 1864 a law was passed allowing soldiers in the field to vote for Presidential electors, while a constitutional amendment shortly extended to soldiers in service, except those in the regular army, the right to vote for governor and other State and local officers. The total number of men furnished by Maine to the Union armies was about seventy-two thousand. The total expenditure of the State on account of the war was about \$7,000,000, while that of towns and individuals was over \$11,000,000. Yet notwithstanding this great increase in debt, the credit of the State was not impaired.

Men
furnished.

13. THE ELECTION OF 1879-1880

Party history.

Notwithstanding the circumstances of its admission to the Union, Maine was for the most part a Democratic, or, as the term was at first used, a Republican State until 1853.¹ In 1856 the great question of slavery worked a readjustment of party lines. Maine became Republican, and chose Republican governors until 1878, when the Democratic candidate was chosen by the Democratic and Greenback members of the legislature, the popular vote having resulted in no election. The election of 1879 also went to the legis-

¹ The gubernatorial vote since 1820 is in the *Maine Register* for 1901-1902, 118-123. The electoral vote was given for John Quincy Adams in 1824 and 1828, and for Harrison by a minute majority in 1840.

lature. The governor and council, acting as a returning board, refused certificates of election to several Republican members of the legislature on the ground of alleged irregularities in the returns, at the same time failing to give the usual opportunity for the correction of the irregularities. The effect of this action was to give the Democrats and Greenbacks, or Fusionists, a majority in the legislature, while the situation was further complicated by charges of bribery against certain Republicans. There were rival claimants for the governorship and rival legislatures. Disorder and possible bloodshed were averted by the firmness and moderation of General Joshua L. Chamberlain, himself a former governor, who was temporarily in command of the militia. Decisions of the supreme court condemned the action of the governor, sustained the Republican claimant, and recognized the Republican legislature as the only legal legislature.¹ Since 1883 the Republicans have carried the State by large majorities.

Election of
1879.

14. GROWTH AND OUTLOOK

While the economic development of Maine in recent years has been less rapid than that of more favored States of the Union, there have nevertheless been substantial gains. A large part of the State is still covered with forests, but the growth of population is continually widening the settled area, and the extension of railroads is making all sections readily acces-

Resources
and industries.

¹ On this controversy, familiarly known as the "State steal," see particularly Appleton's *American Cyclopædia*, 1879, 1880, article "Maine." For the opinions of the judges see *ibid.*, 1879, article "Public Documents."

sible. The decline of agriculture and shipbuilding has been more than offset by the development of the timber wealth of the State and the growth of manufactures, particularly of cotton, around the water powers of the rivers. Opinions differ as to the net value of the immense summer business of Maine, but there can be no question that the summer visitors, together with the large numbers who at other seasons resort to Maine for hunting and fishing, bring into the State many millions of dollars annually, and create a demand for the higher grades of farm and dairy products. The future prosperity of Maine depends upon the skill and vigor with which its natural resources are used, the wisdom and impartiality with which its laws are made and enforced, the liberality with which it fosters education and material well-being, and the public spirit with which its affairs, whether State or local, are administered.¹

The future.

¹ A chronological list of important events in the history of Maine is given in the Appendix.

CHAPTER III

THE ORGANIZATION OF THE STATE

15. REFERENCES

The general organization of State government is discussed in most books on civil government. Bryce, *American Commonwealth*, I., Chaps. 36-39, 44-46; Wilson, *The State*, 483-524; Hinsdale, *The American Government*, Part III.; and Ashley, *American Federal State*, Chap. I, are important general references. The constitutions of all the States to 1876 are collected in Poore, *Charters and Constitutions*. Many States publish the texts of their constitutions in pamphlet form for free distribution.

16. THE POWERS OF THE STATE

Every State which has come into the Union since the adoption of the Constitution of 1787 has been admitted with the general understanding that its government should be republican, and that it should accept and conform to the provisions of the Constitution of the United States. Many States have had, in addition, certain specific conditions imposed upon them, as was the case with Missouri in 1821. In the case of Maine, however, there were no expressed conditions, the State being received into the Union "on an equal footing with the original States in all respects whatever." The terms of the Massachusetts act of separation of course constituted a limitation, and while many of the provisions of that act ceased to be directly

Conditions of admission.

operative after the State was once admitted, others, such as the provision for the freedom from taxation of lands held at the time by religious, charitable, and literary institutions, and the guarantee of the powers and privileges of Bowdoin College, continue to operate as restraints on the legislative power. The United States, though expecting the State to maintain a republican form of government, has never defined wherein a republican form of government consists, but in the absence of such a definition a republican form is understood to be one in which "the people's representatives make the laws and their agents administer them." The admission of a State by Congress is *ipso facto* a decision that its government is republican in form.¹

Republican
form of
government.

States as
members of
the Union.

The privileges and obligations of a State as a member of the Union are set forth in the Constitution of the United States, or result from a fair interpretation of that instrument. By section 10 of Article I of the Constitution, no State "shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility." The States are further forbidden to lay any imposts or duties on imports or exports without the consent of Congress, or lay tonnage duties, or keep troops or ships of war in time of peace, or enter into any agreement or compact with another State or with a foreign power.

On the other hand, the United States guarantees

¹ See Cooley, *General Principles of Constitutional Law*, Chap. 11.

to every State a republican form of government, protection against invasion and domestic violence, privileges and immunities for its citizens when in other States, the preservation of the territorial limits of the State from change without its consent, equal representation in the Senate, and the continuance of the Constitution without change save by amendments approved by three-fourths of the States.

National
guarantees.

The constitution of a State is the document which embodies the fundamental law of the State. Unlike ordinary statute law, it is beyond the amending power of the State legislature. The constitution will be found to provide a way by which the people may, if they see fit, change its provisions, but no act of the legislature or of any department of the State government can alter it. Being the fundamental law, the constitution is thus, in connection with the Constitution of the United States, the measure of the powers of the State, the source to which we go for a definite statement of the things which the State may or may not do.

Nature of the
constitution.

17. THE CONSTITUTION

The constitution of Maine was framed by a convention of delegates from the towns, assembled at Portland, October 29, 1819, and was subsequently ratified, December 6, by the people in town meetings. The convention followed a popular vote in July on the question of separation, in accordance with a provision of the act of separation, and the constitution itself was framed and adopted before Maine was admitted to the Union,—a procedure which has been followed by a number of other States. Of the

Formation of
the constitu-
tion.

24,223 votes legally returned as a result of the July balloting, 17,091 were in favor of separation, and but 7132 against.

Comparison
with other
constitutions.

The constitution of Maine is not noticeably different, in either form or contents, from most of the state constitutions which were put into effect in the first third of the nineteenth century. While, as a rule, longer and more elaborate than the constitutions prior to 1800, they are still comparatively simple frames of government, free from the multiplicity of details which characterizes the constitutions of the last twenty-five years, and dealing with general fundamental principles rather than with the minute points of administration which are more properly matters of statute law. In the more limited powers of the governor, the fixed terms of the judges, and the increased powers of the legislature they show the influence of the democratic spirit which developed rapidly in the United States after the downfall of the Federalists. An instructive view of the problems—political, economic, and social—which have arisen in the history of Maine may be had from a comparison of the State constitution with the constitution of almost any of the older States which have adopted new frames of government since the Civil War.¹

Democratic
spirit.

18. THE PREAMBLE AND DECLARATION OF RIGHTS

Preamble.

The preamble sets forth in general terms the objects for which the constitution is framed. "To establish justice, insure tranquillity, provide for our mutual defence, promote our common welfare, and

¹ On the development of State constitutions, see particularly Bryce, *American Commonwealth*, I., Chap. 38.

secure to ourselves and our posterity the blessings of liberty, acknowledging with grateful hearts the goodness of the Sovereign Ruler of the Universe in affording us an opportunity so favorable to the design, and imploring his aid and direction in its accomplishment," — such are the spirit and purposes expressed. The phrases, the earlier ones evidently suggested by the preamble to the Constitution of the United States, have long since become common property, but their dignified and reverent spirit fittingly expresses the high and serious purpose of those who were framing the State government, and the benefits which they planned for those who should live under it.

The declaration of rights, sometimes prefixed as a bill of rights to State constitutions, forms Article I of the constitution of Maine. The original sources of the declarations contained in American bills of rights are partly in the great foundation principles of political freedom which our English ancestors embodied in Magna Charta, the Bill of Rights, the Habeas Corpus Act, and other constitutional documents, partly in the principles worked out in America through the long struggle with the mother country, and partly in theories borrowed from French political philosophy and embodied by Jefferson in the Declaration of Independence. The use of all these sources is evident in the declaration of rights in the Maine constitution.

Declaration
of rights.

Sources.

There is first the declaration of the natural right to life, liberty, and property, and the assertion that all power is inherent in the people. Perfect religious freedom is guaranteed. In the declarations regarding freedom of speech and of the press, unreasonable

searches or seizures, the rights of accused persons, bills of attainder and *ex post facto* laws, keeping and bearing arms, quartering soldiers, and the like, the rights and immunities claimed are the familiar ones observed throughout the United States. Following, apparently, the constitution of Massachusetts, the declaration provides, as further guarantees, that "the laws shall not be suspended but by the legislature or its authority," that "right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay," and that "no tax or duty shall be imposed without the consent of the people or of their representatives in the legislature."¹

19. AMENDMENTS

Early
amend-
ments.

Maine has had but one constitution, but the text of the document as we now have it is not quite the same as that adopted in 1819. In the course of fifty years and more following the admission of the State, twelve amendments were submitted to the people and adopted.² In 1875 the governor, by authority of the legislature, appointed a commission to suggest further amendments. Of the changes reported by the commission as advisable, nine were accepted by the people at the annual election in September. The twenty-one amendments thus in force were then, by direction of the legislature, incorporated by Chief Justice Appleton in the text of the constitution, and the amended draft became "the supreme law of the

New draft.

¹ *Constitution of Massachusetts*, Part I., Arts. XI., XX., XXIII.

² These amendments are in Poore, *Charters and Constitutions*, I., 803 *seq.*

State." The method was unusual, securing as it did a revised constitution without a constitutional convention.

Since the acceptance of the revision of 1876, nine additional amendments to the constitution have been made.¹ The first, in 1877, limited the amount of municipal indebtedness. In 1879 provision was made for biennial instead of annual elections; the next year the terms of senators and representatives were correspondingly changed, and election of the governor by plurality instead of by majority vote was established. The prohibitory amendment was adopted in 1884, and an educational qualification for voters prescribed in 1892. Other amendments concerned the eligibility of the State treasurer, the appointment of the adjutant-general, and the election of senators to fill vacancies.

Later amendments.

Under the constitution, amendments passed by a two-thirds vote of both houses of the legislature are to be transmitted to the selectmen of towns or to other municipal officers, and by them submitted to the voters at the next September election. If a majority of the votes cast on the question are in favor of the amendment, it is adopted.² The legislature may also, by a two-thirds concurrent vote of both houses, call a constitutional convention, but this power, first granted by one of the amendments adopted in 1875, has never been exercised.³

Method of amendment.

¹ These amendments are differently numbered. Cf. the text in the *Revised Statutes* and *Maine Register*.

² *Constitution of Maine*, Art. X., Sec. 2.

³ *Constitution of Maine*, Art. IV., Part III., Sec. 15.

20. THE FORM OF GOVERNMENT

Three
departments.

The general form of government which the constitution prescribes is substantially the same as that now found in all the States of the American Union. There is the usual division into three departments, — legislative, executive, and judicial; and while in practice the several departments must occasionally overlap, their respective spheres of action are for the most part distinct.

Legislature.

The legislature consists of two houses, the House of Representatives and the Senate. Members of both houses are chosen by popular vote, but representatives are elected from towns or cities according to population, while senators are chosen from districts established from time to time by law. The maximum number of members in each house is fixed by the constitution. Many of the constitutional provisions defining the powers of the legislative department are borrowed, sometimes in the same phraseology, from the Constitution of the United States. The Senate has the right of trying cases of impeachment, thus exercising a judicial power which in this country has always belonged to the upper house of the legislature.

Executive.

The executive department is represented by the governor and council, together with such other officials as are chosen to coöperate with them or are appointed by them from time to time for executive duties. Upon the governor devolves the general duty of seeing that the laws of the State are enforced and the will of the people at these points carried out; but the administrative system in this respect is not highly centralized, and the control of the gov-

ernor over local executive officials is either imperfect or else does not exist at all. The secretary of state, treasurer, and attorney-general are the only other civil executive officials especially provided for by the constitution, other offices being created from time to time by law.

The judicial power of the State is vested in a Judiciary. supreme judicial court and in such other courts as the legislature from time to time thinks well to establish. The judges of all the courts, except probate judges, are appointed by the governor, and all hold office for stated terms. The jurisdiction of the several grades of courts is carefully regulated by statute. Unlike the Supreme Court of the United States, but in accordance with the duty imposed on the highest court in Massachusetts, the justices of the supreme judicial court are "obliged to give their opinion upon important questions of law, and upon solemn occasions," when required so to do by either of the other departments of the State government.¹

The constitution makes no provision for the establishment of any particular form of local Local government. government. The existence of local governments is, indeed, recognized in the provisions for the election of members of the House of Representatives, and elsewhere, but nothing is said about the organization of the counties, districts, towns, and plantations into which the State is by law declared to be divided.² The omission is doubtless due to the fact that, when the constitution was framed, local governments had been for many years established throughout the whole settled area

¹ *Constitution of Maine*, Art. VI., Sec. 3.

² *Revised Statutes* (1883), Chap. I, Sec. I.

of Maine, and that it was assumed that the system already in satisfactory operation would not be affected by the change from a district to a State.

Town type.

The important subject of local government — everywhere the least understood subject in American history — will be discussed somewhat in detail later. It will be sufficient here to say that the local government of Maine represents the type, general still throughout New England, in which the town is the political unit and performs most of the functions of local administration, while the county, with little independent life of its own, serves as a useful administrative division, chiefly for judicial purposes, between the government of the town and that of the State. This was the system worked out at an early period in Massachusetts, and naturally extended to Maine as settlements multiplied and the authority of Massachusetts increased. The relatively slow growth of population has tended to preserve the old form of local government in many of its original characteristics. The larger towns, of course, tend on the whole to become cities, thus introducing a new and important type of local organization, but this movement has not yet threatened the town system as the prevailing form of government in the State.

Working of departments.

The purpose of such a scheme of government as has just been outlined is, of course, that the governing power of the State may be suitably exercised throughout the whole territorial area subject to its jurisdiction, and upon all the persons, property, and interests subject to its control. The legislature, representing the whole body of voters, makes laws which, while sometimes local and sometimes general in their

immediate application, are intended to serve the common good. The safety and welfare of the people are primarily in the keeping of the legislature. The proper enforcement of the laws, or their execution, as it is called, is intrusted to the executive department, represented for the whole State by the governor, for towns by the selectmen, and for cities by the mayor. In practice, however, the State makes a great deal of use of local officials in the execution of its laws, as, for example, in the assessment and collection of taxes, the local government thus becoming an assistant to the central government as well as a means of benefiting the community immediately subject to it. In the same way the judicial department, whose duty it is to interpret the law in cases of controversy, to punish those who disobey the law, and to protect all persons in the enjoyment of the rights guaranteed to them by the State, exercises its authority through local courts, constables, and police officers, as well as through the county and State courts.

Use of local government.

Thus the various parts of the government work together. Each is necessary to the other. Each is affected by what affects the other. Each works with all the others to bring about that for which all popular government, whether in town, city, county, State, or nation, exists, namely, the welfare of all the people through the agency of good laws.

The end of government.

CHAPTER IV

THE CENTRAL GOVERNMENT

21. REFERENCES

The principal authorities, besides the constitution, for the organization and work of the central government are the *Revised Statutes* and the annual or biennial *Acts and Resolves*, the latter often cited as *Laws of Maine*. The *Revised Statutes* of 1883 is supplemented, to 1895, by a volume usually known as Freeman's *Supplement*. A new revision of the statutes was authorized by the legislature in 1901. The *Maine Register* contains much information about the State government not easily found elsewhere. The biennial reports of the executive departments may usually be obtained on application. Important general references are: Wilson, *The State*, Secs. 1126-1208; Cooley, *Constitutional Limitations*, Chaps. 5, 6; Hinsdale, *American Government*, Chaps. 51-53.

22. THE THREE DEPARTMENTS

Three
departments.

Sections one and two of the third article of the constitution of Maine provide that "the powers of this government shall be divided into three distinct departments, the legislative, executive, and judicial," and that "no person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted."

This division of the powers of government into three departments or groups is found in the constitutions of all the States of the Union, and in the Constitution of the United States as well, and has long been regarded as one of the essential characteristics of popular representative government. Government is not a definite, tangible something

which can be seen or handled. One might travel over the whole State without finding "the government." The government of a State is rather the name applied to certain powers over individuals and property, exercised by certain officials chosen by the people and acting under the authority of the constitution and laws. The legislative department, represented by the Senate and House of Representatives, makes laws, subject to the restrictions of the constitution. The executive department, represented by the governor and a large number of other officials, elected or appointed, is charged with the duty of seeing that the laws are faithfully applied and obeyed; while the judicial department, represented by the courts, decides upon the meaning of the laws in case of dispute, and the rights and duties of individuals under the laws.

Nature of
"the govern-
ment."

While the spheres of the three departments are, in general, distinct, and the encroachment of one upon the other is carefully guarded against, they do in practice occasionally overlap. For example, laws are passed by the legislature, but the approval of the governor is necessary before they can go into operation;¹ so that the governor becomes to this extent a part of the legislative power. The Senate sits as a court of impeachment, thus exercising judicial powers, as do the governor and council in granting pardons to persons convicted of crimes or misdemeanors. Such instances, however, form exceptions to the general rule, while the natural jealousy between departments helps to keep each within its proper sphere.

Overlapping
of depart-
ments.

¹ Except, of course, when a bill is passed over the veto.

Departments
in local
government.

It must not be thought that the division into three departments exists in the State government only. The same principle is found in the local governments, where the town meeting or city council represents the legislative department, the selectmen or mayor the executive departments, and the municipal or police courts the judicial department. The powers of local departments are, however, much restricted as compared with those of the State departments, and are subject to frequent change at the will of the legislature.

The central
government.

By the central government we mean the State government, as represented by the governor and council and other executive officers, the legislature, and the system of State courts. The central government operates over the whole State, serving the interests of the whole people. By local government we mean the government of counties, towns, cities, and plantations. Local government, accordingly, operates over a small area only, and is in addition subject to the State or central government. In studying the organization and work of government within the State it is convenient first to consider these two parts of the government separately. We begin with the central government.

23. THE EXECUTIVE

Governor.

The governor is the only officer of the executive department of the central government who is elected by popular vote. Until 1880 a majority of all the votes cast was necessary to a choice, but the effect of this was to throw a number of elections into the legis-

lature, and a constitutional amendment in 1880 provided for election by plurality, *i.e.* the highest number of votes cast. Elections were annual until 1879, when a constitutional amendment substituted biennial elections.

The qualifications, powers, and duties of the governor are in the main laid down in the constitution.¹ He must be, at the commencement of his term, at least thirty years old, must have been born in the United States, and have resided in the State five years, and must further be a resident of the State at the time of his election and during his term of office. He may not hold any other office under the United States or the State while he is governor. The compensation to which he is entitled for his services may be neither increased nor diminished during his term.

Qualifica-
tions.

The constitution directs that the governor "shall from time to time give the legislature information of the condition of the State, and recommend to their consideration such measures as he may judge expedient." This duty is performed by sending to the legislature a written message at the beginning of each biennial session, and special messages during the session as circumstances may warrant.² The governor may also summon the legislature in extra session.³ He is by virtue of his office commander-in-chief of the military forces of the State, though it is not expected that he will take the field in person in case the troops are called out for active service. Acts of the legislature require his approval before

Duties.

Powers.

¹ *Constitution of Maine*, Art. V., Part I.

² The messages will be found at the end of the biennial volumes of laws.

³ There were extra sessions in 1840, 1842, 1853, and 1861.

they have the force of law, unless they are passed over his veto, and he is to "take care that the laws be faithfully executed."

Appointing
power.

The appointing power of the governor is large. Under the constitution he nominates and appoints, with the advice and consent of the council, all judicial officers, coroners, and notaries public, and all other civil and military officers whose appointment is not otherwise provided for by the constitution or laws. He is also empowered by the constitution to remit forfeitures and penalties of convicted persons, and to grant pardons, reprieves, and commutations in all cases except impeachment. The exercise of the pardoning power is, however, somewhat regulated by law, and an account of each case in which "executive clemency," as it is called, is exercised must be submitted to the legislature.

Penalties.

Comparison
with Presi-
dent.

It will be seen that the powers of the governor are similar to those of the President of the United States. The governor is the "chief magistrate" of the Commonwealth, the official representative of the State on public occasions, and the person especially authorized to speak for it at home and abroad. Although he has no legal control over the legislature save through his possession of the veto power, he is to a large degree held responsible for what is done, and for the success or failure which attends the two years of his administration.¹

¹ The same political responsibility attaches to the President of the United States.

24. THE COUNCIL

Maine is one of the few States that still retain a council as a part of the executive department. In colonial times the council, under various names, was found in all the colonies, and not only acted as a body of advisers to the governor, but also shared to some extent the legislative power with the lower or popular house of the assembly. But as the council, as a legislative body, developed into the Senate, few States cared to perpetuate it as an advisory body, and Maine and Massachusetts are now the only ones of the older States that have a council with most of its ancient power.

Colonial
council.

The council in Maine is created by the constitution "to advise the governor in the executive part of government,"¹ a phrase taken almost *verbatim* from the Massachusetts constitution of 1780.² The seven members, all of whom must be citizens of the United States and residents of the State, are chosen biennially by joint ballot of the senators and representatives, not more than one councillor, however, being elected from any senatorial district. No member of Congress or of the State legislature, nor any person holding office under the United States, except postmasters, nor under the State, except justices of the peace and notaries public, may be elected, nor may any councillor be appointed to any other office during the time for which he has been chosen. Councillors have the same immunity from arrest as is accorded to senators and representatives.

Constitutional
provisions.

¹ *Constitution of Maine*, Art. V., Part II., Sec. I.

² *Constitution of Massachusetts*, Part II., Chap. II., Sec. III., Art. I.

Powers and
duties.

The council acts as a general advisory body to the governor, and its consent is necessary to most of his acts. Thus, all appointments vested in the governor are made "with the advice and consent of the council,"¹ and pardons and other remissions of penalties require similar consent. The governor and council may also remove any State officer on the address—that is, at the request—of both houses of the legislature, and the tenure of all offices not otherwise provided for is during their pleasure. The warrant of the governor and council is necessary to authorize the payment of any money from the State treasury.² The important power of examining the returns of elections of senators and representatives, and issuing summonses to such as appear to be elected, is also committed to the governor and council.

Journal.

In order that the action of the council may not be secret, the constitution directs that a journal shall be kept of its proceedings, and signed by the members agreeing thereto, and that the record may be called for by either house of the legislature. Any councillor is privileged to enter on the journal his dissent from the decision of the majority. For the more convenient performance of its duties the council divides

Committees.

itself into committees, the standing committees being those on warrants, accounts, taxation and expenditures, election returns, State beneficiaries and pensions, State prison and pardons, reform school, insane hospital, public lands and buildings, public instruction, military affairs, Indian affairs, library, and pay-roll.

¹ *Constitution of Maine*, Art. V., Part I., Sec. 8.

² *Ibid.*, Art. V., Part IV., Sec. 4.

25. OTHER EXECUTIVE OFFICERS

Of the other executive officers of the central government, three — the secretary of state, the treasurer, and the attorney general — are chosen by the Senate and House of Representatives on joint ballot, while the remainder are appointed by the governor and council.

The secretary of state has fewer independent powers and responsibilities than the treasurer or attorney general, but acts in the main as a sort of chief clerk to the executive and legislative departments. The records of the State, including those of the governor, the council, and the legislature, are in his care, as is also the great seal.¹ He prepares and issues commissions to persons holding State offices, causes the public laws to be printed and distributed, and purchases the stationery required by the several departments. The preparation and distribution of ballots and election blanks is devolved upon him, and the returns of elections are transmitted to him. A great variety of other duties, principally of a clerical nature, are further assigned to the secretary of state by law.

Secretary
of state.

The treasurer, like the secretary of state, is chosen biennially by the Senate and House of Representatives on joint ballot, but is not eligible more than six years in succession. As custodian of the money of the State, his position is one of great responsibility. The proceeds of State taxes are paid to him, and all money appropriated by the legislature is paid by him on warrants from the governor and council. To pro-

Treasurer.

¹ *Constitution of Maine*, Art. V., Part III.

tect the State, he is required to give a bond, and during his term of office he is forbidden to engage in trade or commerce, or act as agent for any merchant, or as a broker. Detailed accounts are kept of all money received and paid out, and a report made to the legislature at the beginning of each regular session.¹

Attorney
general.

The attorney general is the legal adviser of the State, and is chosen in the same way as are the secretary of state and the treasurer.² Besides prosecuting in the name of the State certain classes of offenders against the laws, and representing the State in suits to which the State is a party, he has general supervision of the county attorneys and may himself take charge of important cases.

Superin-
tendent of
schools.

The duties of a number of the other officers of the executive branch of the central government will be discussed later, but a brief statement of the duties of some of the more important may be given here. The superintendent of public schools has general supervision over the school system of the State, including academies and other educational institutions which receive financial aid from the State. All local school officers must make report to him before the school money apportioned to the town or city may be received. The insurance commissioner supervises insurance companies doing business in the State. Banks, loan and building associations, and loan and trust companies are subject to inspection by the bank examiner. The extensive wild lands of the State are under the oversight of an officer known as the land agent and forest commissioner. The commissioner

Insurance
com-
missioner.
Bank
examiner.

Land agent.

¹ *Constitution of Maine*, Art. V., Part IV.

² *Ibid.*, Art. IX., Sec. 11.

of industrial and labor statistics, commonly known simply as the labor commissioner, collects and publishes statistics and other information regarding the industries of the State, while a factory inspector sees that factories, workshops, and mines conform to the laws regarding their construction and arrangement, the employment of women and children, and similar matters. The commissioner of agriculture, provided for in 1901, is charged with the furtherance of the agricultural interests of the State. All the executive officers whose terms are not otherwise provided for by law hold office during the pleasure of the governor and council,¹ but reappointments are frequent.

Com-
missioner of
labor.

Factory
inspector.

Commis-
sioner of
agriculture.

26. BOARDS AND COMMISSIONS

Some of the most important duties of the executive department are performed, not by individual officials, but by boards or commissions. The members of these bodies are appointed by the governor and council, and vacancies are filled as they occur, but an entire board rarely retires at the same time. All of the State institutions — the insane hospital, reform school, normal schools, etc. — are in charge of boards of trustees. The railroad commissioners have general supervision of steam and electric railroads, including the duty of approving charters, determining locations, granting permission for one road to cross another, investigating accidents, etc. The State assessors apportion the State tax among the counties, towns, cities, and plantations, and confer with local authorities for the purpose of equalizing the rate and method of taxation

State
institutions.

Railroad
com-
missioners.

Assessors.

¹ *Constitution of Maine*, Art. IX., Sec. 6.

Board of
health.

throughout the State. The board of health, in connection with local boards, guards the State against disease, especially such as is contagious or peculiarly dangerous. The important fishing and hunting interests of the State are carefully looked after by the commissioners of inland fisheries and game, the registration and licensing of guides being one of the most recent steps in this direction.

Fisheries and
game.

27. THE LEGISLATURE

Two houses.

The legislature of Maine, like the legislatures of all the States, consists of two houses, the Senate and the House of Representatives. In the adoption and maintenance of this bicameral, or two-house, system the States have obviously been a good deal influenced by the Constitution of the United States, although of course there can never be in a State the fundamental difference between the Senate and House that exists in the national government.

House of
Representatives.

The organization and duties of each house, and the qualifications of members, are prescribed in considerable detail by the constitution.¹ The House of Representatives consists of one hundred and fifty-one members, chosen every two years by popular vote. The qualifications are simple: the representative must be twenty-one years old, a citizen of the United States, and a resident of the State one year, and of the town or district three months, before the election.

Representatives are apportioned among the towns,

¹ *Constitution of Maine*, Art. IV., Parts I.-III.

cities, and plantations according to population. Each town having 1500 inhabitants is entitled to one representative, each town of 3750 inhabitants to two, and so on until we reach places of 26,250 inhabitants, which may choose seven. Towns and organized plantations with less than 1500 inhabitants are grouped in districts of approximately that number, care being taken not to divide a town. In order to provide for changes in population, a new apportionment is made every ten years.

Apportionment.

The Senate consists of thirty-one members, elected at the same time, in the same manner, and for the same term as representatives. The qualifications of members of the two houses are the same, except that senators must be twenty-five years of age. For the election of senators the State is divided by the legislature into districts formed by grouping towns, and conforming as near as possible to county lines.

Senate.

It will thus be seen that there is no essential difference between the two branches except in the size of the district which the individual member represents. Both are chosen by popular vote and represent their constituents in the same way.

The powers and duties of the two houses as stated in the constitution are largely identical with those which are prescribed for Congress by the Constitution of the United States. Each house is the judge of the elections and qualifications of its own members, chooses its president, secretary, and other officers, and makes its own rules of procedure. Each must keep a journal and publish it from time to time. Except in cases of treason, felony or breach of the peace, mem-

Powers and duties.

bers are privileged from arrest during their attendance upon or going to or from the session, and further may not be sued or otherwise legally "called in question" for anything said in debate. Each member is entitled to a compensation for his services, together with traveling expenses for going to and from the place of meeting once each session.

Restrictions.

In order that the action of the legislature may be disinterested, the constitution provides that no member of Congress, no person holding any office under the United States, except that of postmaster, and no one holding an office of profit under the State, except justices of the peace, notaries public, coroners, and officers of the militia, shall sit in either house of the legislature of Maine; nor shall any senator or representative be appointed during his term to any office which has been created, or the emoluments of which have been increased, during that term.

Bills and resolutions.

The various items of business on which the legislature takes action are in the first instance brought before it in the form of bills or resolutions. A bill is a draft in legal form of the proposed law. It begins with the words, "*Be it enacted by the Senate and House of Representatives in Legislature assembled,*" and follows the style, phraseology, and formal arrangement such as appear in the statutes printed in the biennial volumes of laws. By the constitution, bills, orders, and resolutions, except bills for raising revenue, may originate — that is, be first presented — in either house, and be altered, amended, or rejected in the other. The procedure conforms to the ordinary rules of parliamentary law, modified by such special regulations as either house may see fit to

adopt.¹ A bill of a private nature is introduced by some member specially interested in it, and is at once referred to a committee. If favorably reported by the committee, it is printed and placed on the calendar, or printed order of business. A bill or resolve of a public nature must usually be presented by some committee, the bill being then printed and distributed to the members. The subsequent procedure on both public and private bills differs somewhat according to the nature of the bill; in general, however, every bill before being passed must receive three readings, at least one of which must be a reading of the text of the bill in full, and it must be referred to some committee for further examination and report. Opportunity is given the members to propose amendments to any bill or resolve, the adoption of the amendment being determined by vote of the house. When a bill has been read three times it is then "passed to be engrossed," that is, printed in its final form, and sent to the other house, where a similar procedure is gone through with. If the two houses disagree, the bill may be referred to a committee of conference, consisting of three members from each house, which undertakes to adjust the matter. Neither house, of course, is obliged to approve a bill merely because it has been passed by the other, and unless the two houses can agree the bill fails. If the houses agree, the bill is finally passed "in concurrence," and receives the signatures of the president of the Senate and the speaker of the House of Representatives.

¹ The rules of the houses, lists of committees, etc., are in the "legislative edition" of the *Maine Register*.

Revenue
bills.

Bills for raising revenue may originate only in the House of Representatives, though the Senate may propose amendments as in other cases. But the Senate may not, under color of an amendment, introduce new matter which does not relate to raising a revenue; nor in either house may a motion on a subject different from that under consideration, or one proposing to ingraft a general provision of law upon a private bill, be offered under guise of an amendment.

Amend-
ments.

Approval
and veto of
bills.

Every bill or resolution, having the force of law, which has passed the Senate and House of Representatives is presented to the governor for his consideration and approval. If he approves of the bill, he signs it; if not, he returns it with his objections to the house in which it originated. There the objections are entered on the journal and the bill is reconsidered. If both houses by a two-thirds vote, which must be taken by yeas and nays and recorded in the journal, again pass the bill, it is said to pass "over the veto," and becomes a law without the governor's signature; otherwise it fails. If a bill is not returned by the governor within five days (Sundays excepted) after it is presented to him, it becomes a law the same as if he had signed it, while if the legislature by adjournment prevent the return of the bill, it becomes a law without the governor's approval unless returned within three days after their next meeting.

Publication
of laws.

When a bill has become a law, the engrossed copy of it is deposited in the office of the secretary of state, under whose direction the laws are subsequently printed, first in the newspapers and after-

wards in a bound volume.¹ The laws are classified as "public laws" and "private and special laws," according to their nature. From time to time the provisions of a permanent character are compiled under a topical classification, and are then known as "revised statutes."

Each house of the legislature determines its organization for itself, though naturally the organization of the two houses is essentially the same. The presiding officer of the Senate is called the president, and that of the House of Representatives the speaker, each being chosen from the members of the house. Other officers are, for the Senate, the secretary, for the House of Representatives, the clerk, and for both houses, messengers, door-keepers, reporters, pages, etc. Most important business is now done through committees, a committee being created for each principal class of public business. Most of the committees are joint committees, that is, committees composed of members from each house, but there are also standing committees of each body. Each joint committee consists of ten members, three from the Senate and seven from the House of Representatives.² The members are named by the presi-

Officers.

Committees.

¹ Only public laws are printed in the newspapers.

² The following are the titles of the joint committees: on the judiciary, legal affairs, financial affairs, federal relations, education, railroads, telegraphs and expresses, commerce, mercantile affairs and insurance, banks and banking, manufactures, agriculture, military affairs, interior waters, State lands and State roads, ways and bridges, inland fisheries and game, shore fisheries, counties, towns, Indian affairs, claims, pensions, insane hospital, reform school, State prison, public buildings, the library, University of Maine, mines and mining, temperance, labor, taxation.

dent or speaker, who are thus able to exercise a great deal of influence on the course of legislation. On bills of special importance or unusual public interest committees often give public hearings, at which persons interested in the proposed measures may appear and speak for or against them.

Impeach-
ment.

The judicial power of impeachment is vested in the legislature. Impeachment is a legal proceeding against an official who is charged with political misconduct, but whose violation of the laws of the State is either not clear, or else not such as of itself to cause his removal from office. In a case of impeachment, charges are preferred by the House of Representatives and tried by the Senate. Punishment, however, may not extend further than to removal from office, and disqualification for any office of honor, trust, or profit under the State, but the accused person, whether convicted or acquitted, is liable to trial and punishment according to law. There has been no case of impeachment in Maine. The frequent elections, together with the power of the governor and council to remove any person from office on the address of both houses of the legislature, have made the slow and uncertain process of impeachment unnecessary. Woodbury Davis, a justice of the supreme court, was removed from office by address in 1856 for refusal to recognize the authority of a sheriff who claimed to be legally elected, but the proceeding had a partisan character, and Judge Davis was shortly afterwards reappointed.

Time and
place of
meeting.

The legislature of Maine met in Portland until 1831, since which time it has met at Augusta. Sessions were annual until 1881, when they became bi-

ennial, the sessions thus falling in the odd-numbered years. The time of meeting is the first Wednesday in January. The length of the session is unlimited, the average for recent years being about ten weeks. The longest session was that of 1850, which continued for one hundred and fourteen days.¹

28. THE JUDICIARY

While the three departments of the central government — legislative, executive, and judicial — are assumed to be not only independent, but coördinate as well, a peculiar importance attaches to the judicial department. It is to this department that we look for a definition of our rights and duties, and for protection against injury or oppression from others or from the government itself. The relation between the judicial department of the State and the affairs of the town or city, while not in fact closer than that which exists in the executive and legislative departments, is sometimes more obvious, while we sometimes attribute to the courts a degree of learning, judgment, and honesty greater than that accorded to the other departments. All that will be given here is an account of the organization of the central judicial system, the organization of local courts and the general principles of legal procedure being reserved for later chapters.

Importance
of the
judiciary.

At the head of the judiciary is the supreme judicial court, consisting of a chief justice and seven associate justices.² The members of the court are appointed

Supreme
judicial
court.

¹ *Maine Register*, 1901-1902, III.

² *Constitution of Maine*, Art. VI., relates to the judiciary.

by the governor and council, and hold office for seven years.¹ No member of the court may hold any other office under the United States or any State, nor any State office in Maine except that of justice of the peace. Justices are entitled to a compensation, which may not be diminished during their term, but are forbidden to receive any other fee or reward; they are exempted from military service; and they may be removed only by impeachment or on the address of both houses of the legislature. Attached to the supreme court is a reporter of decisions, who is required to take accurate reports of cases argued and decided before the court, and to publish them in volumes from time to time.

Reporter.

Law court.

As a "law court" — that is, a court for the consideration of questions of law rather than for the trial of ordinary questions of fact — the supreme judicial court holds three sessions annually, — at Augusta on the second Tuesday of December, at Bangor on the first Tuesday of June, and at Portland on the fourth Tuesday of June. Meetings of all the justices are also held annually at Augusta and Portland for the decision of all undecided questions of law and equity previously submitted.²

Trial terms.

The justices of the supreme judicial court also hold court in the several counties of the State two or three times a year for the trial of such cases, civil or criminal, as by law either come before the court in the first instance or are appealed to it from lower courts. These sessions are known as trial or *nisi prius* terms.

Clerk.

In each county there is a clerk of the supreme

¹ *Constitution of Maine*, Art. V., Part I., Sec. 8.

² *Public Laws*, 1901, Chap. 246.

judicial court, who keeps the records and papers of the court, and a county attorney, who represents the State and conducts the cases to which the State is a party. County clerks and attorneys are elected by the people of the county, the former for four and the latter for two years.

County attorney.

In the counties of Cumberland and Kennebec, where the amount of legal business is considerable, there are additional courts, known as superior courts, with both civil and criminal jurisdiction. The criminal jurisdiction of these courts is exclusive, the trial terms of the supreme judicial court in those counties being for civil business only. The judges are appointed by the governor and council for seven years.

Superior courts.

There is also in each county a court of probate and insolvency, dealing with the administration and settlement of estates of deceased persons and bankrupts, and having certain care over orphan children. The register of probate keeps a record of the business which comes under the jurisdiction of the court. These officers are elected for four years by the people of the county.

Probate court.

Register of probate.

Subordinate to the foregoing courts are the justices of the peace, justices of the peace and quorum, trial justices, and notaries public, all appointed by the governor and council for seven years. The justice of the peace and quorum¹ may perform a variety of duties, such as calling meetings of corporations, administering oaths, taking depositions, and solemnizing

Justice of the peace and quorum.

Trial justice.

¹There is no longer any practical distinction between a justice of the peace and a justice of the peace and quorum. Commissions issue under the latter title, although both titles are recognized by statute.

Notaries
public.

marriages. Trial justices have in addition jurisdiction of civil suits where the value in controversy does not exceed twenty dollars. Trial justices have power only in their county; justices of the peace and quorum may exercise their authority in any county. Notaries public may administer oaths and attach their certificate to a great variety of legal documents, besides doing, in general, anything that justices of the peace and quorum may do.

CHAPTER V

LOCAL GOVERNMENT

29. REFERENCES

For the details of local government in Maine the *Revised Statutes* (1883), *Freeman's Supplement*, and the biennial session laws are the most important sources of information. The more important towns now print their annual reports, and some print their by-laws. Cities usually print their charter and ordinances together in a volume, as well as their principal official reports. On local government in the colonies the standard authority is Howard's *Local Constitutional History of the United States*, Vol. I. The discussions in Bryce, *American Commonwealth*, I., Chaps. 48 and 49, Wilson, *The State*, 995-1045, and Fiske, *Civil Government*, Chaps. 2, 3, and 5, are valuable.

30. THE TOWN

The constitution of Maine, as has already been pointed out, makes no provision for any particular form of local government, but assumes, in some of its provisions, the existence of local government in the region to which the constitution applies. During the early years of Maine the local government was far more important than the central government. Each settlement had its own independent form of organization and administration, and governed itself in all essential respects. As the control of Massachusetts spread over the province and district, the settlements were gradually incorporated as towns by the General Court, with a form of government such as prevailed in Massachusetts and elsewhere in New

Beginnings
of local
government.

England. By the time that Maine was admitted as a State, two hundred and thirty-six towns had been incorporated,¹ while incorporations since 1820 have increased the number of towns to about four hundred and twenty-five.

Town
system.

In Maine, as in the other New England States where the town system prevails, the town absorbs most of the functions of local government.² Other forms of local government are either rudimentary towns, like the plantation, or outgrowths from towns, like cities, or, like counties, useful administrative divisions between the town and the State. In the statutes, the word *town* includes cities and plantations unless the contrary is expressed or implied,³ and the term *municipal officer* includes not only the selectmen of towns, but also the mayor and aldermen of cities and the assessors of plantations.⁴

Incorpora-
tion.

The inhabitants of each town are a body corporate, capable of suing and being sued, and with the right of appointing attorneys and agents.⁵ The act of incorporation by the legislature defines the boundaries of the town, and the boundaries may be subsequently changed by the legislature with or without the consent of the town. The municipal officers are required to perambulate the boundaries once in five years, save in cases where the lines have been marked with suitable stone monuments, when perambulation is required only once in ten years.⁶ Disputes between

Boundaries.

¹ Williamson, *Maine*, gives the dates and circumstances of incorporations. Some facts are also given in the *Maine Register*.

² On the "village corporation," see Section 78, *post*.

³ *Revised Statutes* (1883), Chap. I, Sec. 6, Par. XVII.

⁴ *Ibid.*, Chap. I, Sec. 6, Par. XXIII.

⁵ *Ibid.*, Chap. 3, Sec. I.

⁶ *Ibid.*, Chap. 3, Secs. 65, 66.

towns regarding their boundaries are settled by the courts. As the town owes its status as a body corporate to an act of the legislature, so also it may surrender its charter of incorporation and cease to be a town.

The governing body of the town is the town meeting, in which every inhabitant qualified to vote for governor, senators, and representatives is entitled to participate. Subject to the laws of the State, the town meeting chooses all the elective officers of the town, raises and appropriates money for all town charges, and makes regulations for the conduct of all town business. The town is thus an example of pure democracy or popular government. The regular town meeting is held in March, at which time officers are chosen and the annual business of the town transacted; but special meetings may be called from time to time as occasion requires.¹ The call for the meeting is in the form of a warrant drawn up by the selectmen and posted by a constable in some public place in the town. The warrant specifies in separate articles the various items of business to be performed, and only such matters as are stated in the warrant can legally be considered and acted on by the meeting.² The warrant must be posted at least seven days before the date of the meeting.

The conduct of a town meeting conforms in general to the familiar rules of parliamentary law. The meeting is called to order by the town clerk, who

Town
meeting.

Warrant.

Conduct
of town
meeting.

¹ The selectmen are to call a special town meeting on the request of ten or more legal voters, and on the request of the same number are to insert an article in the warrant.

² *Revised Statutes* (1883), Chap. 3, Sec. 5.

reads the warrant. Next in order is the choice of a moderator, the town clerk presiding and administering an oath to the person chosen. A town clerk for the ensuing year is then chosen, and sworn before the moderator or a justice of the peace. The meeting being thus organized, the remaining articles of the warrant are taken up one by one, the election by ballot of the town officers being the first business in order. The moderator presides throughout the meeting, and is empowered by law to preserve order. The proceedings of the meeting, including the results of all votes taken, are recorded by the clerk.

Selectmen.

The chief executive officers of the town are the selectmen, usually three in number, chosen by ballot at the annual town meeting. In addition to the general oversight of the affairs of the town, a great variety of other duties are devolved upon them. They supervise the expenditure of money voted by the town for particular or general purposes, and have charge of the buildings and other property of the town. If the town does not elect assessors of taxes and overseers of the poor, the selectmen may perform the duties of those officers, and they commonly appoint a number of minor officers. They prepare a list of registered voters and act as supervisors of elections. They license auctioneers, victualers, itinerant vendors, etc., provide armories for militia companies, lay out or locate ways and bridges, and grant the use of the town ways to railroad, telegraph, telephone, and lighting companies. In general, any duties not by law devolved upon some other officer of the town may be performed by the selectmen. A detailed report of all their financial transactions must

be submitted, in writing or in print, to the annual town meeting.

The town clerk is the recording and registering officer of the town. In addition to his duties in connection with the town meetings, he issues licenses and permits, and keeps a record of marriages, births, and deaths. Town clerk.

The valuation of the real and personal property of the town, and the assessment upon individuals and corporations of their proportion of the annual tax, is entrusted to a board of assessors, who are further required to make various statistical returns to the State. When the assessment is completed, the list is committed to the collector, whose duty it is to collect the tax. The treasurer receives all the money collected by the town, whether from taxation or from other sources, and pays it out on orders from the selectmen. Assessors.
Collector.
Treasurer.

For the care and maintenance of roads and bridges the town may elect a road commissioner, to hold office for one year and to have entire charge of the repairs of highways and bridges.¹ Towns are usually divided into a number of road districts, each in charge of a road overseer under whose direction repairs, especially such as need immediate attention, are made. Sixty-five per cent. of the highway taxes assessed must be expended on the roads before July 15 in each year, the balance being used at the discretion of the commissioner. If the town fails to elect a road commissioner, the money raised for ways and bridges is expended under the direction of the selectmen.² Roads.

¹ *Public Laws, 1899*, Chap. 32, Sec. 3.

² *Ibid.*, Chap. 32, Sec. 5.

Schools.

The schools of the town are under the immediate control of a superintending school committee, who are elected by the town, and through whom the money available for the support of schools is expended. The powers and duties of the committee will be explained in a later chapter.

Minor officers.

Besides the foregoing principal officers of the town, a considerable number of other officers are chosen at the annual town meeting. Among these are constables,¹ police officers, auditor, town agent, fire wards, fence viewers, surveyors of logs and lumber, measurers of wood, bark, and coal, surveyors of shingles, clapboards, staves, and hoops, viewers and cullers of staves and hoops, and sealers of leather.² Others, such as inspectors of flour, milk, fish, and petroleum, are appointed by the selectmen. The duties of all these officers, together with those of the overseers of the poor and board of health, are sufficiently indicated by their titles. The selectmen are often themselves overseers of the poor.

Powers of the town.

The powers of the town are now minutely regulated by statute, most of the regulation, however, taking the form of general laws rather than of special laws for particular places. In general, of course, the powers of a town are commensurate with the duties or obligations laid upon it; for example, it may raise money by taxation to meet the cost of doing anything which the law requires it to do. As a municipal corporation it may receive gifts or bequests in trust for benevolent, educational, or religious purposes,

¹ On the powers of constables, see *Public Laws, 1901*, Chap. 238.

² Towns are still nominally required by law to elect tythingmen (*Freeman's Supplement*, Chap. 3, Sec. 12).

take private land for public parks or squares, establish a public library, erect soldiers' monuments, and cause its history to be written and published.¹ But no selectman may vote on any question in which he has either a direct or indirect pecuniary interest, and in which his vote may be decisive.

For the better regulation of local affairs in certain respects, towns are permitted to make laws for themselves, known as by-laws or ordinances, but as the town owes its existence and its privileges to the State, the right of local legislation is strictly guarded. Among the subjects on which by-laws may be made are the ordinary matters of law and order in the community, and the general regulation of social intercourse; infectious diseases and health; the location of sidewalks, curbstones, monuments, trees, hydrants, etc.; the erection of wooden buildings; the regulation of public vehicles, including the rates of fare; and the designation of streets on which coasting and bicycle-riding shall be allowed.² By-laws must be adopted by the town in town meeting, and if they relate to the "prudential affairs" of the town, — that is, to the general welfare or protection of the community, — must further receive the approval of the county commissioners or of a judge of the supreme judicial court. By-laws.

31. THE PLANTATION

In the early history of the American colonies the term *plantation* was often used as synonymous with settlement or colony.³ Now, however, the use of the

¹ *Revised Statutes* (1883), Chap. 3, Sec. 47.

² See *Public Laws*, 1897, Chap. 188; *ibid.*, 1899, Chap. 118.

³ See, for example, the first charter of Virginia, Sec. I. (MacDonald, *Select Charters*, 2, and Poore, *Charters and Constitutions*, II., 1888).

word to denote any kind of political subdivision seems to have passed entirely out of use, with the single exception of Maine, where the organized plantation forms an important element in the system of local government.

Organiza-
tion.

The plantation may be described as a rudimentary town. Once in five years the county commissioners return to the secretary of state a list of all the unincorporated townships in the county containing at least two hundred inhabitants. They then issue a warrant to one of the principal inhabitants of each such township, commanding him to notify the inhabitants qualified to vote for governor to assemble on a day and at a place named in the warrant, and choose a moderator, clerk, three assessors, treasurer, collector of taxes, constable, superintending school committee, and other necessary officers. A record of the proceedings, together with a description of the boundaries of the plantation, is transmitted by the clerk to the secretary of state, and the organization is complete.

Officers.

The assessors of plantations, in addition to making an inventory of the polls and a valuation of the property, perform also the duties which in towns belong to selectmen. With this exception, the powers and duties of the plantation are almost identical with those of the town, and the laws relating to towns apply also, so far as possible, to plantations. The annual meeting is held in March, but fewer minor officers are chosen than is the case with towns. Plantations, like towns, may raise money for schools, for the support of the poor, and for other legal expenses, and their proportion of the State and county taxes is assessed upon them.

Where an unincorporated township contains less than two hundred inhabitants, it may nevertheless be organized as a plantation on the application of three or more of the inhabitants who are voters. Plantations so organized, however, are not required to pay State or county taxes except by special order of the legislature. The county commissioners may also, when any State or county tax is levied on an unincorporated township, cause it to be organized as a plantation even though its population be less than two hundred.

Organized plantations may not comprise more than one township, and former organizations, if any, cease on the establishment of the new one. The incorporation of the plantation may also be surrendered as in the case of towns. There are now about seventy-five organized plantations in Maine, more than half of them being in Aroostook and Washington counties.

32. UNINCORPORATED PLACES

Besides the town and organized plantation, there are in Maine a large number of places which, while having fixed territorial limits, have no political organization. Most of these are known as *townships*, but a number are still designated as *plantations*, while the terms *grant* and *surplus* are also used. A few islands along the coast belong to this class. Unincorporated places usually comprise wild land with few or no permanent inhabitants, but their boundaries have been surveyed, and entire districts are often owned by individuals or corporations. Wild lands are valued by the board of State assessors and are subject

to State and county taxes. In such matters as the laying out and maintenance of roads the county commissioners have supervision. Inhabitants of unincorporated places who pay taxes may vote, and children may attend school, in adjacent towns or plantations. By the census of 1900, there were in Maine 348 unorganized townships and 12 unorganized plantations, besides 11 districts known as "grants," 3 known as "surpluses," 3 "gores," and 1 "tract."¹

33. CITIES

Character of
cities.

Maine is preëminently a State of towns rather than of cities, and the cities themselves are distinctly outgrowths of towns. There being no law, as there is in many States, either requiring a certain minimum population before incorporation as a city can take place, or erecting a town into a city whenever it has attained a prescribed population, cities have been formed whenever the people of the town desired it and the consent of the legislature could be obtained. The cities of Maine are in fact larger than most of the towns of the State,² but there is no legal connection between population and incorporation. In the counties of Aroostook, Franklin, Lincoln, Oxford, Piscataquis, and Somerset there are as yet no cities.

Charter.

The act of the legislature incorporating a city is called its charter.³ The charter is usually drawn up

¹ See the list in the *Twelfth Census of the United States* (1900), I., 188-195.

² But the town of Brunswick is larger than nearly half of the cities of the State, and the town of Eden, in Hancock County, is larger than the city of Ellsworth.

³ In the printed volumes of statutes, city charters are included in the Private and Special Laws.

by a committee of the inhabitants of the town and presented on behalf of the town to the legislature, the consent of the town to the change in its form of government having been previously given in a town meeting. The charter defines the boundaries of the proposed city, outlines its form of government, and provides for putting the new government into operation. The charter takes the usual course of a bill, and may be amended in any way that the legislature thinks best; but since the laws of the State prescribe no form of charter and make no requirement as to what the charter shall contain, legislative amendments are as a rule limited to minor points. When the charter has passed the legislature, it is submitted to the people of the town for acceptance or rejection, and if accepted by popular vote, the new government is put into operation.

When a town is incorporated it is admitted by a legislative act to a particular set of privileges, and assumes certain specific duties, all of which it shares with all the other towns of the State. The large body of statutes relating to towns applies, save in a few minor particulars, to all towns equally, thus bringing them to essential uniformity in their organization and methods. With the city, on the other hand, the case is quite different. The particular form of government and method of administration of the city is laid down in its charter, and since the law of the State makes no special requirements as to what a city shall be like, the provisions of no two city charters are quite the same. The charter, therefore, stands as a sort of constitution or fundamental law for the city, differing from the constitution of the State, of course, in that

Law of cities.

the legislature may change it or take it away,¹ but serving, while it lasts, as the main statement of what the city is to be and do.

Representative government.

Between the government of a city and that of a town there is always one fundamental difference. City government is representative government, while town government is popular government. The governing body of the town is the town meeting, an assembly in which every voter has a personal voice and share. The governing body of the city is the aldermen or council and the mayor, who are elected by the people for the purpose of administering the city's affairs. If public business goes wrong in the town the people have only themselves to blame, since they are the legislators and the governing power; while if public business goes wrong in the city the fault is immediately with the elected representatives of the people, and only secondarily with the people themselves. Or, to put the difference in another way, selectmen do only what the people of the town decide to have done, having little discretionary power themselves, while the mayor, aldermen, and councilmen of a city decide what shall be done, as well as the way in which it shall be done.

Aldermen and common council.

The legislative branch of the city government is represented by a board of aldermen or a common council, or by both.² The practice in Maine is not uniform at this point. Of the twenty cities, eight — Brewer, Calais, Eastport, Ellsworth, Hallowell, Old Town, South Portland, and Westbrook — have a board of aldermen but no common council; the others have both. The number of aldermen varies from five to

¹ In 1899 the city of Deering was annexed to Portland.

² The principal officers of cities, as of towns, are given in the *Maine Register*.

ten, the number of councilmen being either two or three times as many. For electoral purposes each city is divided into districts, called wards, which are numbered. Each ward elects one alderman and, if there be also a common council, either two or three councilmen; in Brewer, Eastport, Old Town, and Westbrook, where there is no common council, two aldermen are chosen from each ward. Where two or more members of either body are elected from each ward, they are commonly divided into classes, so that but one member will be chosen each year. Wards.

The powers and duties of the aldermen and council embrace in general the oversight and direction of all the affairs of the city, as the powers and duties of the legislature extend to all the affairs of the State. They comprise most of the powers and duties of towns, including those exercised by selectmen. The most important powers, naturally, are those over taxation and finance; but the aldermen and council share with the mayor considerable powers over appointments to office and the granting of privileges and franchises. For the more systematic performance of its duties each body chooses a presiding officer and clerk, and commonly appoints from its own number various committees, each of which is given special oversight of some department of the municipal business. Matters brought before the aldermen and council go through a procedure similar to that through which a bill passes in the legislature, but the votes are generally spoken of as orders, resolutions, or ordinances, not as bills or acts. Legislative powers.

At the head of the executive department of the city government is the mayor, who is elected annually Mayor.

by popular vote. He usually has the right of appointing a number of officials, among them the heads of the fire and police departments, but his appointments generally require the confirmation of the board of aldermen. His annual message is a review of the municipal administration for the year with suggestion of changes which he deems advisable. Measures passed by the aldermen or common council require his approval, and he may veto them.

Other executive officers.

Of the executive officers associated with the mayor, many have titles and duties corresponding more or less closely to those of similar officers of towns. Such are the treasurer and collector, auditor, city physician, marshal or chief of police, assessors, chief of the fire department, overseers of the poor, board of health, and inspectors. Others either have no exact counterpart in the town, or are made necessary by the larger population and increased amount and variety of public business. Such are the city engineer or commissioner of public works, the water commissioners, the street commissioners, and the police examining board. The city solicitor is the legal adviser of the city and its representative in the courts, while the registration of voters is intrusted to a board of registration.

Municipal court.

The judicial part of the city government is represented by the municipal court. The municipal court is created by special act of the legislature,¹ which also defines the jurisdiction of the court and its duties so far as these are not provided for by general laws. The judge of the court is appointed by the governor and council and holds office for four years.

Laws.

As has already been said, the cities of Maine have

¹ These acts are included in the Private and Special Laws.

sprung from towns, and numerous traces of their origin are still to be seen. The municipal laws of the State have been made primarily for towns, with their relatively small populations and popular government. So far as applicable, also, the same laws apply to cities, but with the result, of course, of legislating for the city often as though it were only a larger or better developed town, while in fact it is a wholly different kind of political organization. There is no well-worked-out body of law in Maine particularly designed for cities, and the city charters, while as a rule fairly effective instruments, are in some respects elementary and present few novelties. The social, economic, and political problems of city administration, which in more populous States have pressed so hard for solution in recent years, have not thus far attracted much attention in Maine, largely, no doubt, because the conditions of dense population and concentrated wealth are as yet lacking. The conditions are favorable, however, for the development of an effective and economical form of government for small cities, in which the essential difference of type between city government and town government shall be clearly recognized, and into which the best results of municipal progress elsewhere shall be incorporated.¹

34. THE COUNTY

The popular government of the town, admirably adapted to communities having a small area and a

Colonial
county.

¹ An important step in advance, particularly in the increased power of the mayor, was indicated in the proposed charter of Portland in 1897 (*Private and Special Laws*, Chap. 450), which, however, was not accepted at the polls.

compact population, became from the beginning the predominant type of local government in New England. The county, which in the southern English colonies absorbed most of the functions of local government and in the middle colonies shared some of the most important of those functions with the town, never attained any large development in colonial New England, or had much independent political life of its own. The New England county in colonial times served as a useful intermediate organization, principally for judicial purposes, between the town and the colony, performing certain functions which, for one reason or another, could not be so effectively or economically performed by each town for itself. The lapse of years has naturally perfected somewhat the organization of the county and added to its work, but it is still, in most essential respects, the relatively subordinate part of local government that it was during the colonial period.

County
organization

The county is organized as such by act of the legislature. The boundaries, defined by the act of organization, are not infrequently changed, large counties being subdivided to form new ones as population expands.¹ Some town or city in the county is designated as the shire town, or county seat, and it is here that the county buildings are erected, the administration of county affairs carried on, and the sessions of the supreme judicial court in the county held. County lines do not divide towns, but they project into the sea so as to include all islands belonging to the State. Every part of the State, whether otherwise organized or not, is within the limits of some county.

¹ The *Maine Register* notes changes in boundaries.

The administrative body of the county is a board of county commissioners, elected by popular vote of the people of the county in the same way that representatives in the legislature are chosen. The term of office is six years, the terms being so arranged that one commissioner retires every two years. The determination of the result of the election rests with the governor and council, who are allowed considerable freedom in reaching a decision in doubtful cases. The clerk of the supreme judicial court in each county is clerk of the board, and two members constitute a quorum. The board holds regular sessions at stated times — usually three or four times a year — at the shire town.

County commissioners.

The duties of the county commissioners are numerous and varied. They make the county estimates, cause the county taxes to be assessed, and supervise the receipts and expenditure of county money; have the care of county property and the management of county business; and provide jails, court-houses, and suitable buildings or places for the offices of the probate court and register of deeds. Their powers over roads, or "ways," as they are called in the statutes, are in certain cases considerable. They may lay out, alter, or discontinue all county roads, and must attend annually to the repair of such roads in unincorporated places. Ferries are licensed, and may be established, by them.

Duties.

The county treasurer, chosen every two years by popular vote, has the care of the money of the county, much as the treasurer of the town has the care of the money of the town. Most of the county receipts, however, do not come from individuals, but

County treasurer.

from the towns, who pay county taxes to the treasurer, and from the sheriff and clerk of courts, who are required to turn over to the treasurer the proceeds of fines and other legal charges received by them. As the duties of the treasurer thus touch both the financial and the judicial side of the county business, he makes reports to both the attorney-general and the State treasurer. A set of standard beams, weights, and measures is required to be kept in the treasurer's office.

Register
of deeds.

Another county officer whose duties, though confined to a single branch of public business, are nevertheless of great importance, is the register of deeds. The register of deeds is elected every four years by the people of the county. In his office are recorded all deeds, mortgages, and attachments, together with a few other kinds of legal papers. For convenience, the counties of Aroostook and Oxford are each divided into two registry districts.

Judicial
functions.

Most of the duties just described may be classed under the general head of administration. The other main part of the business of the county is judicial. A number of the features of the judicial system as applicable to counties have already been described — the sessions of the supreme judicial court in each county several times a year, the county attorney, and the probate court. Crime means punishment, and so the county jail and workhouse are parts of the judicial machinery of the county.

Sheriff.

In many respects the sheriff, chosen for two years by popular vote, is the most important judicial officer of the county. His duties include both civil and criminal business. As the executive officer of the

court, he serves a great variety of legal papers on the persons and corporations to whom they are directed, and sells property at auction on the order of the court. He is particularly charged with the enforcement of certain laws, especially the prohibitory liquor laws, and has the powers of a game warden. The ordinary maintenance of law and order is the duty of the town, not of the county, but the sheriff may suppress any unlawful assembly, and arrest and detain any person found violating any law. He has charge of the county jail and its inmates. For the better performance of his duties he appoints deputies in the more important towns.

If the various things which the county does are examined carefully, they will be found to consist mainly of things which could not be so efficiently or economically done if each town or city acted for itself, yet which the central government, constructed as it is, could not on its part very well do without the aid of some intermediate organization. For example, each town must be provided with some means of imprisoning or punishing those who break the law within its limits, but as no one town is likely to have any large number of offenders, it would be unwise to require each town to maintain a jail.¹ Disputes often arise in towns which are too important to be settled by the local court, yet it would be impossible for the supreme judicial court to hold sessions in every town in the State. So, too, when a highway connects several towns, it may be an advantage to all concerned that the control of it should be shared with a power

Nature of
county
functions.

¹ The town house of correction and city police station are intended to be places of temporary detention only.

greater than that of either of the towns through which the road passes. It is to perform these functions of an intermediate organization that the county exists. But the county is not a fully developed political unit, for the important reason, among others, that it has no power of making laws, or of enforcing generally the laws of the State. These duties are performed by the town or city, the county coming in only where experience has shown that it is better to group towns together. In other words, the county is, in Maine, a supplementary organization used by both the town and the State for certain executive and judicial purposes, rather than an organization with all the essential powers of local government, as in many western and southern States.

35. GENERAL OBSERVATIONS

Absence of
State control.

The direct control of local affairs by the executive branch of the central government, such as prevails in the countries of Europe,¹ has thus far found little favor in the States of the American Union. The legislature, to be sure, passes such laws as it pleases for the conduct of the public business and the regulation of social intercourse, but the execution of such laws is left largely to the local authorities; and so long as the laws are not flagrantly neglected or openly violated, the central government does not, as a rule, concern itself particularly about them. Moreover, no branch of the central government except the judiciary has the authority to interfere and compel a town

¹ Compare, for example, the powers and duties of the English Local Government Board.

to do this or that, and since a considerable degree of discretion must always be allowed to local as to State officials, judicial proceedings against a town, save in cases where the laws are openly disregarded, are likely to be uncertain, slow, and cumbersome.

It may often happen, accordingly, that a town or county official may virtually neglect his duty, or even be half-hearted or corrupt in the performance of it, and yet the central government be powerless to intervene. For example, the sheriff may be lax in the enforcement of the prohibitory liquor laws, or so enforce them as to turn the system into a system of practical license; yet the governor and council cannot remove the sheriff from office. In other words, the local official, though bound by his oath of office to enforce the laws of the State relating to his office, is only indirectly responsible to the central government, and the only remedy for his misconduct often is to choose some one else in his place at the next election.

Local neglect possible.

Local government in all its branches, however, is the creation of the State legislature, and may, in consequence, be altered by the legislature at its discretion. A town may be incorporated as a city, the incorporation of a plantation may be taken away, or a city charter may be altered without the consent in either case of the people of the community. The public interest will, of course, dictate that such changes shall not be made arbitrarily or from caprice, but the legislative right to make them is undoubted, as is the right to refuse to make changes which the people desire. Thus far, however, the government of Maine has, on the whole, jealously

Legislative control.

guarded local rights, and has progressed slowly in the direction of what is called centralization; and although the result is a rather loose connection between the local and the central governments, the same principle may be expected to continue so long as the people in the local communities continue to show their ability to govern themselves wisely and progressively, and obey the spirit as well as the letter of the laws.

CHAPTER VI

NOMINATIONS AND ELECTIONS

36. REFERENCES

In addition to the statutes, reference may now be made to the decisions of the Supreme Judicial Court, printed in a series known as *Maine Reports*. The proceedings of conventions are best followed in the newspaper accounts. The best discussion of American political methods, though mainly from the national point of view, is in Bryce, *American Commonwealth*, II., Chap. 53-75. Other valuable references are Dallinger, *Nominations for Elective Office*; Remsen, *Primary Elections*; Lawton, *The American Caucus System*; Ashley, *American Federal State*, Chap. 22 and 23.

37. QUALIFICATIONS OF VOTERS

The second article of the constitution of Maine relates to electors, by whom are meant those inhabitants of the State who are legally entitled to vote at elections. The first section of the article is as follows:—

“Every male citizen of the United States of the age of twenty-one years and upwards, excepting paupers, persons under guardianship, and Indians not taxed, having his residence established in this State for the term of three months next preceding any election, shall be an elector for Governor, Senators, and Representatives, in the town or plantation where his residence is so established; and the elections shall be by written ballot. But persons in

Who are
electors.

the military, naval, or marine service of the United States, or this State, shall not be considered as having obtained such established residence by being stationed in any garrison, barrack, or military place, in any town or plantation; nor shall the residence of a student at any seminary of learning entitle him to the right of suffrage in the town or plantation where such seminary is established. No person, however, shall be deemed to have lost his residence by reason of his absence from the State in the military service of the United States, or of this State."

To these provisions of the constitution an amendment adopted in 1892, and following almost exactly the language of an amendment to the constitution of Massachusetts,¹ added the following:—

Educational
qualification.

"No person shall have the right to vote, or be eligible to office under the constitution of this State, who shall not be able to read the constitution in the English language, and write his name; provided, however, that the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any person who shall be sixty years of age or upwards at the time this amendment shall take effect."²

¹ *Constitution of Massachusetts*, Amendments, Art. XX., ratified in 1857. Poore, *Charters and Constitutions*, I., 979.

² Section 15 of the law relating to boards of registration and the registration of voters provides that the applicant for registration shall be required "to read in the English language other than the title, so much as may be necessary, from an official edition of the constitution, in such manner as to show that he is neither prompted nor reciting from memory, and to write his name in a book kept for the purpose."
—Freeman, *Supplement*, 45.

A careful reading of the provisions just quoted shows that the constitution defines the classes of persons who may vote, with the addition of some expressed limitations on the exercise of that privilege, but leaves to the legislature the right and duty of deciding how these general provisions may best be carried into effect. Voting is a privilege rather than, in the ordinary sense, a right. All the inhabitants of the State, though allowed to hold property, required to pay taxes, and protected by law in their persons or occupations, are not thereby entitled to vote, nor may a voter exercise his privilege in more than one place in the State at the same election. The privilege of voting is granted by the State to those persons or classes of persons only whom the State thinks may properly be allowed to exercise it, and is a right, consequently, of those persons only who fulfil the conditions laid down by the State. The same is true of the right to hold office. The constitution and laws, therefore, are the sources to which we look for a statement of the privileges and duties of the voter.

Voting a
privilege.

The determination of those who, out of the entire population of the State, are allowed to vote is reached by a process of exclusion. Certain classes of persons are denied the right of suffrage: all others vote. The exclusions are made by the constitution itself. Women may not vote in Maine, though allowed to hold certain minor offices. Minors are also excluded, as are also paupers, Indians not taxed, and persons under guardianship,—the latter class including the insane and the feeble-minded. Citizenship of the United States, by either birth or naturalization, is indispensable, while the amendment of 1892 further

Excluded
classes.

provides a simple educational test. Upon the class of adult male inhabitants, citizens of the United States, who are left is imposed the further condition of an established residence in some town or plantation in the State for at least three months before the election at which the person offers to vote. By this system of exclusions the voters are reduced to about one-fifth of the total population of the State.¹

General
character of
the restric-
tions.

None of these restrictions are peculiar to Maine, nor are they burdensome or vexatious to the people. Maine has not, to be sure, extended the suffrage to resident foreigners not yet naturalized, as have a number of western States, nor has it seen fit to confer the suffrage upon women; but since the wisdom of both of these steps is still under debate, the State is to be charged with nothing more than conservatism in this respect. The educational restriction is neither arbitrary nor burdensome, since the simple qualifications it demands are essential to good citizenship and are not difficult of attainment.

Voters in
local
elections.

The qualifications laid down in the constitution for voters in State elections apply also to voters in local elections. All persons, accordingly, who are entitled to vote for governor, senators, and representatives in any town, city, or plantation may vote in all elections in those same communities.²

¹ Not all vote who are entitled to vote. The population of Maine in 1900 was 694,466. In the gubernatorial election in that year 117,878 votes were cast; that is, a little more than one-sixth of the population voted.

² *Revised Statutes* (1883), Chap. 3, Sec. 11.

38. REGISTRATION

In order to determine who, under the constitution, have a right to vote, and to prevent fraudulent voting, provision is made by law for the registration of voters, and only those persons whose names are on the voting list thus prepared are allowed to vote.

The regulations are naturally most elaborate in cities.¹ There is in each city a board of registration. Of the three members, one, who is chairman of the board, is appointed by the governor and council for four years, and the others are appointed by the mayor on the nomination of the city committees of the two political parties which polled the highest and next to the highest number of votes, respectively, for governor at the last State election. No member of this board may hold at the same time any other State, county, or city office, whether elective or appointive. To the board is given the exclusive authority to decide upon the qualifications of the voters of the city and to prepare the voting list. Once a year the assessors, or their representatives, visit every building in the city and make a list of all occupants liable to be assessed for a poll-tax. This list, transmitted to the board of registration, becomes the basis of the voting list, but names are stricken off if it is found that errors have been made, and may be added on proof that the applicant is entitled to vote. Lists of voters in the several wards are required to be prepared by the board at least thirty days before the election, and the board is further in session a specified number of days before the election for the purpose of correcting the list, but

Boards of
registration.

Powers and
duties of the
board.

¹ The law is in Freeman, *Supplement*, 41-50.

no names may be either added or removed on election day, nor may any one vote whose name is not on the lists. A man does not, however, lose his right to vote by moving from one ward to another.

Voting lists
in towns.

In towns the list of qualified voters is prepared by the selectmen in August of each year and copies posted in one or more public places.¹ Opportunity is given for the correction of the list at stated times, and in towns containing less than five hundred voters the selectmen may add names to the list on the day of the election.²

39. NOMINATION

System of
committees.

To understand how candidates for office are nominated it is first necessary to notice the way in which a political party in a State is organized. The organization comprises a series of committees. In Maine, the State committee consists of a chairman, a secretary, and sixteen other members, one from each county, chosen by the delegates from the county at the State convention.³ This committee has general oversight of the party interests throughout the State, directing its work and shaping its policy. The county committee, each with its chairman and secretary, is usually composed of one member from each State legislative district in the county, selected biennially at the county convention. The county committee looks after the interests of the party in the election of county officers.

¹ *Revised Statutes* (1883), Chap. 4, Sec. 1 and 2.

² *Ibid.*, Chap. 4, Sec. 9.

³ The Republican and Prohibition State committees have also a treasurer. The Prohibition State committee has (1902) one member from each of eight counties.

Town and city committees are usually small bodies, chosen by the voters of the party; in cities there are also ward committees. Finally, in each congressional district there is a district committee, the members of which are usually chosen through a nominating committee at the district convention.

The members of these various committees, together with the holders of important offices under the State, local, and national governments, make up what is popularly called "the machine," or the working organization of the party. It is the particular business of the committees to organize, instruct, and interest the members of the party, to see that voters register and vote, and to collect from office-holders and others the necessary funds for campaign expenses. In practice, however, the different committees have less to do with one another than their systematic organization might seem to imply. Save in State and national elections, each committee exercises a large measure of independence, the county committee being the most independent of all. Whatever business the State committee has in any county is done through the member of the committee from that county, and not through the county committee; while in such work as making a canvass of voters previous to a State or national election, the members of the State committee communicate directly with the town committees in their respective counties. In cities, on the other hand, the connection between the ward committees and the city committee is naturally close.

One of the most important duties of the party organization is to bring forward candidates for the various offices to be filled. While in local affairs it

"The machine."

Nominations.

not infrequently happens that men offer themselves as candidates at the request of their friends or upon their own responsibility, or "run" as independent candidates,¹ far the larger number of candidates voted for are nominees of organized political parties.

Nominating
convention.

State and county officers and representatives in Congress are nominated by State, county, and district conventions. The members of the convention, known as delegates, represent counties, towns, or legislative districts, as the case may be, the number of delegates being usually determined in part by the number of votes cast in the preceding election. For example, in a Republican county convention each city, town, and plantation is entitled to one delegate, and for every seventy-five votes cast for the nominee of the party for governor at the election in the preceding presidential year an additional delegate, and for an excess of forty votes over the multiple of seventy-five votes, still another delegate. Nominating conventions are called by the appropriate committee, the call specifying the time, place, and object of the meeting, and the number of delegates to which the respective constituencies are entitled.

Procedure in
convention.

A nominating convention is usually called to order by the chairman of the committee which issued the call, or by some one selected by the committee for that purpose. The call having been read, a permanent chairman, a secretary, and other necessary officers are chosen,² and the credentials of the delegates examined. Nominations are then in order,

¹ The announcement of such candidacy is usually made in some local newspaper.

² The temporary organization may be made permanent.

the highest office, if there are several to be filled, being usually taken first. There may, of course, be several candidates for the same nomination. When the nominations for an office have all been made, a vote is taken, and the successful candidate becomes the nominee of the convention. State conventions also usually adopt a statement of party principles, called a platform. Platform.

Elective officers of towns and cities are nominated in mass meetings of the voters of the party, called caucuses. In cities a beginning has been made in the regulation of caucuses by statute.¹ The right of calling ward and city caucuses of a party is vested in the city committee of the party, the call being posted in public places at least six days before the time of holding the caucus. A copy of the list of voters used at the last election is furnished to the committee by the board of registration, and the list must be used as a check list in voting at the caucus if fifty voters request it. No person may vote in a caucus called by a committee of a party of which he is not a member, under penalty of a fine. The committee may designate in the call the times for opening and closing the polls. Caucus.

This act, passed in 1897, did not apply to the city of Portland.² A special act of 1901 for the regulation of caucuses in Bangor, while incorporating the main provisions of the general law of 1897, added the important provision that the assessors of that city, in making the annual list of persons liable to the pay- Bangor.

¹ *Public Laws, 1897*, Chap. 310.

² That is, the act did not apply to cities of more than 25,000 inhabitants.

ment of the poll-tax, shall ascertain as far as possible the politics of the voters, and that each voter shall be notified that such party designation or lack of designation will appear upon the voting list unless the voter asks to have it changed.¹

Biddeford.

The most elaborate plan for the regulation of caucuses is that embodied in an act applying only to the city of Biddeford, passed in 1899.² This act provides for the choice of a city committee of eleven members, one from each ward and four at large, who shall hold office for two years. No two caucuses for the nomination of candidates for mayor may be held on the same day. In voting for the nomination of a mayor, the voting list prepared in accordance with the general ballot law of the State is to be used, and it may be used if ten voters of the ward request it. The check lists used are placed in the custody of the city clerk, provision being made for the use of the same list by different political parties, but with a different system of checking the names.

Caucuses in towns.

None of the provisions of the general caucus law apply to towns. Caucuses in towns are called by the town committee and conducted under such regulations as the committee, with the approval of the voters of the party, may prescribe. No one, of course, is entitled to vote at a caucus of any party except that to which he belongs. It is usual to use the town voting list as a check list if any considerable number of voters request it.

Certificate of nomination.

In cities, when candidates have been duly nominated by a convention or caucus, a certificate of nom-

¹ *Private and Special Laws, 1901*, Chap. 497.

² *Ibid.*, 1899, Chap. 199.

ination, setting forth the name of the nominee, the office for which he is nominated, the political party which he represents, and his place of residence, together with the written consent of the person nominated, is drawn up and signed by the chairman or secretary of the convention or caucus. If the nomination is for a State or county office, the certificate must be filed with the secretary of state not later than August 10, and if for a city office, with the city clerk at least seven days before the election. Names thus certified are entitled to appear on the official ballot.¹

While the effect of the regulations just given is in practice to confine nominations to members of organized political parties, it would be highly undesirable that the right of any voter to offer himself as a candidate for an office, or the right of the voters to vote for whom they please, should ever be materially restricted. It is accordingly provided that "nominations of candidates for any offices to be filled by the voters of the State at large may be made by nomination papers signed in the aggregate for each candidate by not less than one thousand qualified voters of the State," and that "nominations of candidates for electoral districts or divisions of the State, or for municipal or ward officers," may be similarly made by nomination papers, "signed in the aggregate for each candidate by qualified voters of such district or division not less in number than one for every one hundred persons who voted at the next preceding gubernatorial election in such district or division, but

Nomination
by petition.

¹ The provisions of this paragraph do not apply to towns.

in no case less than twenty-five.”¹ The names of persons thus nominated appear on the official ballot.

Self-nomination.

In addition, any person who has the constitutional or legal qualifications may offer himself as a candidate for any office, and may be voted for by the electors; but such a course, though occasionally successful in local elections, is usually impracticable in State or county contests.

Political qualifications.

It remains to consider a general aspect of the nominating system. Qualifications for office are of two kinds, legal and political. The legal qualifications are to be found in the constitution and laws of the State, and relate mainly to such matters as citizenship, age, term of office, and the like. The political qualifications have to do with the important questions of whether a candidate will make a good official and whether he can be elected. While the men chosen under the present system are probably as well qualified as those who would be likely to be chosen under any other, we do not always get the best men in the community for office holders, and we sometimes get men who are obviously unfit. Acknowledged membership in a party and the performance of some active party service are generally necessary to insure a nomination, while acceptability to the party leaders and the public is essential to a satisfactory vote at the polls. Where the duties of an office require no special training, but can be performed well enough after a little experience by any intelligent person, there is always a disposition to “pass the office around” in order that as many as possible may

¹ Freeman, *Supplement*, 52, Sec. 4.

enjoy the income and honor of it, but the towns of Maine still show a commendable willingness to keep the same men in office as long as they perform their duties properly. The larger the number of voters, the more machinery is required to organize them and make their votes effective, but politics becomes corrupt, a means of evil rather than good to the people, when those who control the party organizations use their power for personal and selfish ends rather than for the public good.

40. ELECTIONS

At all elections in Maine the votes are given by printed or written ballots. Maine, in common with most States of the Union, has adopted for State, county, and city elections a modified form of the so-called Australian or secret ballot.¹ The names of all the candidates to be voted for in any polling place at the election are printed on one ballot, the names of the candidates nominated by a particular party being grouped together by themselves, with the name of the party above the group. With the name of the candidate is printed also the name or title of the office for which he is a candidate, while below the name is left a blank space in which the voter may, if he wishes, write another name in place of the printed one. To vote, the voter may mark a cross (X) in a square above the name of the party group or ticket, in which case he votes for all the persons in the group: this is commonly spoken of as voting a "straight" ticket. If he does not wish to vote for all the names

Ballots.

¹ For the ballot law, see Freeman, *Supplement*, 51-62.

on the ticket, he may erase the names of those whom he does not wish to vote for and mark a cross opposite the names he does wish to vote for.

If he wishes to vote for other names than those printed on the ballot, he may erase the names of those for whom he does not wish to vote and write the names of other candidates in the blank spaces below the printed names, marking a cross after each name thus written in. Those who vote for other names than those in the party group, or make up their list from the names in two or more groups, are said to vote a "split" ticket. "Pasters" or "stickers" — small strips of paper with names printed thereon — may be pasted upon the ticket in the blank space below a name, instead of writing in the name, the name on the ballot being erased, and a cross marked after the inserted name, in either case. If a constitutional amendment is to be voted on, the amendment is printed on the ballot, the cross being marked in a square after it above the words "Yes" or "No."

Voting
places.

In each city, town, and plantation the municipal officers are required to equip the polling places with a specified number of voting shelves or compartments in which the voter shall mark his ballot. The compartments, placed within an enclosed space surrounded by a guard rail, must be at least six feet from the rail and in full view of persons outside the rail, but so placed that the marking of the ballot is screened from the observation of others. The ballot boxes and ballots are all kept within the enclosed space, and no one except the election officers and the voters are allowed inside the guard rail. For the supervision of the election the municipal officers

FORM OF BALLOT FOR STATE ELECTIONS

REPUBLICAN	DEMOCRAT	PROHIBITION	SOCIALIST
For Governor <u> </u>	For Governor <u> </u>	For Governor <u> </u>	For Governor <u> </u>
For Representative to Congress <u> </u>	For Representative to Congress <u> </u>	For Representative to Congress <u> </u>	For Representative to Congress <u> </u>
For Senators <u> </u>	For Senators <u> </u>	For Senators <u> </u>	For Senators * <u> </u>
For County Attorney <u> </u>	For County Attorney <u> </u>	For County Attorney <u> </u>	For County Attorney* <u> </u>
For Judge of Probate <u> </u>	For Judge of Probate <u> </u>	For Judge of Probate* <u> </u>	For Judge of Probate* <u> </u>
For Register of Probate <u> </u>	For Register of Probate <u> </u>	For Register of Probate <u> </u>	For Register of Probate* <u> </u>
For Sheriff <u> </u>	For Sheriff <u> </u>	For Sheriff <u> </u>	For Sheriff* <u> </u>
For County Commissioner <u> </u>	For County Commissioner <u> </u>	For County Commissioner <u> </u>	For County Commissioner* <u> </u>
For County Treasurer <u> </u>	For County Treasurer <u> </u>	For County Treasurer <u> </u>	For County Treasurer* <u> </u>
For Representative to the Legislature <u> </u>	For Representative to the Legislature <u> </u>	For Representative to the Legislature <u> </u>	For Representative to the Legislature* <u> </u>

Resolve Providing for a State Auditor.

" Shall the Constitution be so amended so as to provide for a State Auditor, as proposed in said resolve."

YES

NO

NOTE. — The names of candidates are omitted. In the original ballot from which the above form is printed (election of Sept. 10, 1900), four senators and one representative were to be chosen. Where the title of the office is starred (*), no name of a candidate appeared on the ballot.

appoint two or four clerks of election, according to the population, the clerks representing equally the two political parties which at the last election cast the highest number of votes for governor. Two of the clerks are detailed to act as ballot clerks, and as such have charge of the ballots and their distribution, being furnished with a duplicate of the check list of registered voters of the town or polling district.

A person who desires to vote approaches the guard rail and gives his name to one of the ballot clerks, who is required to "announce the same in a loud and distinct tone of voice, clear and audible." If the name is duly entered on the check list, the person is admitted within the enclosure, and is given a ballot, folded in a manner prescribed by law, the name being checked on the check list. The voter then enters one of the compartments, opens and marks his ballot, folds it, and goes to the part of the enclosure in which the ballot box is placed. Here he gives his name to the selectmen or other officers of the election, his name is checked, and the ballot, with the official indorsement uppermost, is deposited in the ballot box. A voter who cannot read, or who is physically unable to mark his ballot, may receive the assistance of two of the election clerks, one from each party. Heavy penalties are provided for any voter who allows his ballot to be seen "with an apparent intention of letting it be known how he is about to vote," or who makes a false statement as to his inability to mark his ballot, or who in any way interferes with the voters or with the conduct of the election.

How a vote
is cast.

Counting
and preserv-
ing ballots.

After the polls are closed, the ballots are sorted and counted in open town or ward meeting in such manner as to allow the electors to see the operation. The ballots, including those not cast, and the check lists are sealed in open meeting and delivered to the clerk of the city, town, or plantation, who keeps them for six months as a public record.¹

Printing and
distribution
of ballots.

The ballots are printed and distributed under the direction of the secretary of state. Cities, towns, and plantations pay the cost of distributing the ballots, and cities pay also for the printing of such as are used in municipal elections; the remainder of the expense is defrayed by the State. Two sets of ballots are furnished each town or voting precinct, and great care is taken to insure their safety and prompt delivery, and to guard against fraud. With the ballots are also furnished printed instructions as to how the ballots shall be marked, and illustrative sample ballots. Ballot boxes, voting compartments, guard rails, and other necessary furnishings are provided at the expense of the town, which also pays the officers of the election.

Municipal
expenses.

Ballots in
town
elections.

The use of the secret ballot is not required in the annual town elections, and the whole process of voting at such elections is, in consequence, much simplified. The check list of voters is used, however, and the election is in charge of the municipal officers. The ballot used is the ordinary form of printed slip containing the names of the candidates nominated by a particular party for the offices to be filled.

¹ The legislature in 1901 (*Public Laws, 1901*, Chap. 169) authorized the use of voting machines approved by the secretary of state, the attorney-general, and a member of the council.

The biennial election of State officers is appointed by the constitution for the second Monday in September, the terms of office of the persons so chosen beginning on the first Wednesday of the following January. Officers of towns hold office for one year from the date of the town meeting at which they are chosen. The date of the annual election of a city is fixed by its charter, March being the usual month. When a person is chosen to fill a vacancy he holds the office only for the unexpired portion of the term. In the case of many officials the law directs that they shall hold their offices until their successors are elected and qualify.

Times of elections.

The general regulations which govern the conduct of elections for State officers apply also to the elections held once in four years, at which electors of president and vice-president of the United States are chosen. The presidential electors, as they are called, in number equal to the number of senators and representatives which the State is entitled to in Congress, are chosen by popular vote in the cities, towns, and plantations, on the Tuesday after the first Monday in November in the year in which the election takes place. A return of the votes cast is made to the secretary of state, and the votes are counted by the governor and council, who issue certificates of election to the successful candidates. If the returns show that a majority of the whole number of electors to which the State is entitled have not been elected, the governor must at once convene the legislature, and the two houses in joint session choose electors to complete the quota. On the Saturday preceding the second Monday of January, the electors meet in

Presidential electors.

the Senate chamber at Augusta,¹ and on the Monday following vote by ballot for president and vice-president. Three identical certificates of their choice are prepared, one of which is sent to the president of the Senate at Washington by special messenger, another is forwarded to the same person by mail, and the third is delivered to the judge of the district court of the United States for the district of Maine.

Safeguards
and penal-
ties.

What are known in general as "corrupt practices" in elections have happily not been prevalent enough in Maine, as yet, to call for any large amount of special legislation to prevent or punish them, while the secret ballot law itself acts as a check against fraud and a safeguard to the voter. Severe penalties are, however, provided by law for illegal voting or interference with an election, while the offering or acceptance of a bribe are alike punishable, not only by fine or imprisonment, but also by ineligibility to any office for ten years. Around the voter, also, important safeguards are thrown. In all cases except treason, felony, or breach of the peace, electors are privileged from arrest on the days of election, and during their attendance at, going to, and returning from the polls.² No elector may be compelled to do duty in the militia on election day, nor may the militia be paraded on that day, save in time of war or public danger.³ The arrest and

¹ "And if any elector so chosen is not present, the electors then present, by a majority of votes, shall forthwith elect the requisite number of persons qualified to supply such deficiency." — *Public Laws, 1889*, Chap. 150, Sec. 1.

² *Constitution of Maine*, Art. II., Sec. 2.

³ *Ibid.*, Art. II., Sec. 3; *Revised Statutes (1883)*, Chap. 4, Sec. 73.

detention of a voter, on either a real or a fictitious charge, might easily be made use of to affect the result of an election, while the presence of troops in arms, in a community in which an election is going on, suggests intimidation, and is not to be tolerated.

While the secret ballot law of Maine is neither so perfect nor so strict as are the ballot laws of some other States, it has nevertheless been criticised both for what it does and for what it does not do. Objection to the law has been made on the ground, first, that it did not secure secret voting, second, that its provisions were so difficult to observe that many ballots were wrongly marked and those who cast them, in consequence, were virtually disfranchised, and, third, that the expense was too great for the result accomplished. As to the first charge it may be said, that while the law probably does not insure absolute secrecy, it has insured a degree of secrecy quite impossible under the old system, has made bribery very uncertain, and has unquestionably increased the amount of independent voting. As to the disfranchisement of voters through the imperfect marking of ballots, it must be remembered that one of the objects of the law is to insure a greater degree of intelligent carefulness on the part of the voter. Carefully prepared instructions, accompanied by sample ballots showing the proper way of marking, are conspicuously posted in every polling place, and the voter who marks his ballot incorrectly is either careless or needlessly ignorant. The elector who, being directed to mark a cross within the square, chooses to mark the cross outside of it, cannot com-

Criticism of
secret ballot
law.

plain if the law holds his ballot to be invalid.¹ As to the cost of the system, that is in fact small, less than \$11,000 being expended by the State on this account in 1900. The great aim of all election laws is to secure not only effective and orderly voting, but pure, honest, and independent voting as well, and while these results cannot be attained unless the people themselves want them, all laws which aim to bring them about should receive hearty sympathy and support.

¹ As to the marking of the cross, see the case of *Curran v. Clayton*, 86 *Maine Reports*, 42; as to the insertion of names by the voter, see *Waterman v. Cunningham*, 89 *Maine Reports*, 295.

CHAPTER VII

THE ADMINISTRATION OF JUSTICE

41. REFERENCES

In the *Revised Statutes* (1883), Titles VIII., IX., and XI. relate to the courts, civil rights and remedies, and crimes and criminal procedure. Verrill, *Maine Civil Officer*, is exceedingly useful in matters of procedure. The printed blank forms used in legal proceedings are very instructive, and may be had at moderate cost. Large parts of Cooley's *Constitutional Law* and *Constitutional Limitations* may be read with profit by those without special legal training. Of general references, Bryce, *American Commonwealth*, I., Chap. 42, and II., Chaps. 101 and 102, is especially important.

42. THE LAW

We have already seen how, in the division of the powers of government into three departments, the legislative department makes the laws, the executive department administers or enforces them, and the judicial department explains such as are of doubtful meaning or application, and tries and punishes those who disregard or break them. If all the people of a State were perfectly wise and perfectly good, or even always as good as they are wise, the last of these three departments would have little or nothing to do, since the laws of the State would be everywhere obeyed. But we know that people are not only neither perfectly wise nor perfectly good, but that some of them either unintentionally, carelessly, or deliberately violate the law from time to time, and thus render them-

Necessity of courts.

selves liable to penalties for wrong-doing, while others, though wishing to observe the law, are in doubt as to precisely what this or that provision of law means. Hence it comes about that the judicial department, while the equal in independence of either of the other two, is in some respects more important for the citizen than either of them, since upon it devolves the duty of preserving order and punishing law-breaking in every part of the State, and thereby of securing to every person, whether man, woman, or child, all his or her just rights and privileges.

Law.

When we speak of the rights and duties of a citizen, we mean the privileges and obligations which the whole people of the State, in their capacity as an organized government, accord to or lay upon the individual. The formal statement of such privileges and obligations we call the law. Law, accordingly, is the expression of the will of the people, acting through their representatives, in regard to particular matters at particular times. In its attempt to regulate the affairs of the community for the best interests of all concerned, the law in modern civilized countries aims to be just and equal in its operation, but law is not the same thing as abstract or theoretical justice or equality, and may even be at times or under particular circumstances unjust or unequal in its effect. Moreover, the people may change their minds about matters of social conduct, in which case they are likely sooner or later to change their laws to agree with the new opinion. At any given time, however, the law of the State or country in which we live represents the decision of the people as to the things which it wishes us to do or to refrain from doing.

In an American State there is more than one kind of law. All of the States except Louisiana have inherited, directly or indirectly, the English common law. The common law of England is not a formal code or precisely stated body of rules, but a mass of legal principles, customs, decisions, definitions, and the like, many of them handed down through many centuries, which together form a more or less orderly body of legal doctrine on which the English system of law rests. Some of these common law principles have been from time to time embodied in great acts of Parliament. Some are drawn from decisions of the courts. Some represent legal usages of very ancient origin. Because the common law has never been reduced to a definite body of formal statements, it is often spoken of as the unwritten law; in European countries other than England the phrase is customary law. To this common law, which forms the basis of the law of the State, is added statute law, comprising the acts passed from time to time by the legislature in addition to or in modification of the common law. Statute law is sometimes spoken of as the written law. Besides common and statute law we have also the State constitution, which is a great legislative enactment of the people rather than of the legislature, limiting and restraining the powers of every department of the government.¹ Finally, we have the law of the United States, or Federal law, which operates in every State and has often to be considered by the courts. With Federal law we have in this book hardly anything to do.

Kinds of
law.

¹ "The enumeration of certain rights shall not impair nor deny others retained by the people." — *Constitution of Maine*, Art. I., Sec. 24.

Civil and
criminal law.

The whole body of law drawn from these various sources is commonly divided into the two great classes of civil law and criminal law. Civil law deals with cases affecting the rights and duties of individuals, but in which the State is not aggrieved at the misconduct of one of the parties. Thus, a man who fails to pay his debts may be sued by his creditor and compelled to pay, but no suit will be brought unless the creditor brings it, for the reason that if the creditor does not insist on the payment of the debt, there is no reason why the State should interfere to compel him to receive it. In a civil suit, or action, the person suing is called the "plaintiff," and the person who is sued, the "defendant," both together being called the "parties" to the action. Criminal law, on the other hand, deals with offences in which the State, as the guardian of the welfare of the community, has an interest in addition to the interest of the person who suffers. When a man creates a disturbance in a public place, as by striking or ill-treating others, his offence is first of all against the community, whose good order he has violated, and it is the community, therefore, that undertakes to see that he is punished. Such offences are known as crimes or misdemeanors, and the action in court against them is called a prosecution.

43. RIGHTS AND DUTIES

Since the protection of rights and the enforcement of obligations is the business of the judicial department of the State, we may next inquire as to the nature of these rights and duties. A full answer to the question would, of course, necessitate a minute exam-

ination of the constitution and laws of the State, but some of the most important general points can here be stated.

With regard to the person of the individual, the law undertakes to protect the life of every individual within its jurisdiction, and to punish those who endanger or attack any one's person. While every individual, under circumstances of extraordinary danger, may protect himself and those under his charge from assault, even to the extent of taking the life of the assailant if necessary, the duty of protecting one's person under ordinary circumstances is assumed by the State. Nothing but anarchy would result if every one were left to protect himself and his family in his own way, or to enforce in his own fashion what he believed to be his rights. Where an injury is inflicted upon a person with evil intent, the act is criminal, and as such is punished by the State as an offence against the community. Where the injury is unintentional, or arises from the wrongful negligence of others, the injured party is entitled to compensation, or "damages," for the injury suffered. In most States the crime of murder is punishable by death, the State thus asserting its right to take away the life of the individual in cases of heinous crime, but in Maine capital punishment, as it is called, is no longer inflicted.¹

Individual
rights.

In the family relation, while the mother and children are in some respects subject to the will of the father, they are entitled to support from him, and to a share of his property after his death, while he in

¹ The extreme penalty for capital crimes is now imprisonment for life (*Public Laws, 1883, Chap. 133*).

turn is responsible for their debts and must refrain from ill-treating them. Towns and cities must care for paupers settled within their limits, and protect the community against sickness, accident, or death by reason of dangerous occupations, infectious or contagious diseases, defects in roads and bridges, etc. The lives of children are protected equally with those of their parents or guardians, and the lives of the insane, the feeble-minded, the blind, and the deaf and dumb equally with the lives of their more fortunate fellows whose faculties are unimpaired.

Freedom of
action.

The individual is also guaranteed a large degree of freedom of personal movement or action. In general, he may fix his residence or place of business wherever he pleases, and move freely about the country at his discretion. He may also choose his occupation, provided it be not one which is prohibited, like the manufacture or sale of intoxicating liquors, and provided also that he has the qualifications which the State in some cases, such as those of doctors, lawyers, pharmacists, and dentists, insists upon in the interest of the community. But he must pay any special fee or tax imposed upon his particular business by the State or town, must build and equip his mill or railroad in conformity with law, and if his business is dangerous or offensive, may be required to locate it in a particular part of the town or city or carry it on under special restrictions.¹

Rights of
property.

A most important class of rights are those connected with property. Property is anything which a person may legally appropriate to his own use or

¹ Buildings or other structures may, in certain cases, be abated as "nuisances."

profit. An individual may hold property himself, enjoying full powers of control over its use and disposition, or he may hold it jointly with others; in the former case he is a private or sole proprietor, in the latter usually a member of a corporation or partnership. Land and buildings are classed as "real" property; animals, furniture, stock in trade, and movable articles in general as "personal" property. The two kinds of property are governed by different laws, based upon their essential difference of nature.

When a person holds real property without restriction as to its use or disposition, he is said to hold it in "fee simple." He may not, however, have unrestricted possession of it or own the whole of it. For example, he may be entitled to the use of it only while he lives, but without the right of transmitting it to others at his death. Property is often held subject to a mortgage, in which case the mortgagor and the mortgagee both have what is known as an "interest" in it.

Tenure of property.

Property may be acquired by purchase, or by gift, or by inheritance. The State does not attempt to fix the value of property for purposes of sale or transfer, but it does regulate minutely by law its passage from one owner to another. For example, in the case of a transfer of land it insists upon a deed, while in the case of a transfer of personal property a receipt or bill of sale is necessary in order to prove ownership. Property is supposed to be sold "for value received," it being a legal maxim that "a contract without consideration is void," but the legal consideration may be only nominal. The law is also precise in defining the conditions under which property may

Transfer of property.

be inherited or transferred by will, as also regarding its disposition where the owner dies "intestate," that is, without leaving a will.

Personal
property.

Personal property includes not only things which have intrinsic value, like books, machinery, or farm animals, but also things which, though of no appreciable value in themselves, are legal evidence of property. Deeds, mortgages, notes, stocks, bonds, receipts, and similar papers belong to this latter class. Quite the largest portion of the personal property of the State is represented by these paper evidences of ownership.

Contracts.

The State further extends its protection to contracts or agreements made between individuals, provided they are made in the way the law directs. Hardly any business transaction but involves a promise or obligation on the one side, and the right to receive the thing promised or agreed on the other. So vital is it to the prosperity of the community that promises shall be kept, that both the Constitution of the United States¹ and the constitution of the State² expressly declare that no law shall be passed impairing the obligation of contracts.

Power to
make con-
tracts.

Every adult person of sound mind may, in general, make a contract with others, so long as the contract is not immoral in its nature or forbidden by law. But husbands and wives in some cases cannot make lawful contracts independently of each other, nor is an agreement valid if made under compulsion. The law is very detailed in its explanation of the different kinds of contracts and the obligations of the parties to them, and frequently requires them to be certified to before designated officials, such as notaries public, or attested

¹ Article I., Sec. 10.

² Article I., Sec. 11.

by impartial witnesses. Legal actions for breach of a contract are civil in their nature.

The State further undertakes to protect the individual against injury to his reputation or good name, and also against annoyance or malicious interference from others. A man's reputation for honesty or ability has a great deal to do with his success in his business or profession, and is not to be assailed by the circulation of false reports about him, nor yet by the unnecessary publication of the truth concerning his affairs. The same right of privacy extends also to papers, accounts, letters, and the like. The truth of a statement, therefore, is not always a sufficient legal justification for its publication; the statement must also be made without malice and under proper circumstances. An exception to this general rule, however, is made in the case of candidates for public office. Any one who offers himself as a candidate for a public office is assumed to put in question his fitness for the position, and anything which tends to show that he is unfit may be freely published, so long as the publication does not take the form of personal slander or abuse.

Protection to name and reputation.

In all of these respects that have been mentioned, the duties of the citizen are commensurate with his privileges. The rights which the law guarantees to one individual it is his duty to refrain from denying to his neighbor. The rights of one are the rights of all; the duties of one are the duties of all. Liberty, in other words, is not absolute liberty or license, but freedom under the law to do whatever may be done without impairing the same freedom of action in others.

Commensurate duties.

44. CONSTITUTIONAL GUARANTEES

Most of the rights and duties mentioned in the preceding section are to be found in the common or statute law of the State. Certain other privileges and obligations have come to be looked upon as of such fundamental importance that the people have chosen to embody them in the declaration of rights in the State constitution. The most important of these constitutional guarantees may now be stated.¹

Religious
freedom.

The constitution guarantees to all men the right to worship God according to the dictates of their own consciences, puts all religious sects on an equality before the law, and prohibits any religious test as a qualification for public office; but religious observances must be so conducted as not to disturb the public peace or the rights of others, and without practices which are immoral or illegal. While there is no established church or State religion, the courts recognize Christianity as the prevailing religion of the country.

Assembly
and petition.

The people have a right at all times to assemble in a peaceable and orderly manner, and to petition any branch of the government for a redress of grievances.

Freedom of
the press.

Every citizen may freely express his opinion on any subject, laws regulating or restraining the freedom of the press being expressly forbidden; but the author or publisher is, of course, liable for the issuance of libellous or scandalous matter.

Search and
seizure.

The persons, houses, papers, and possessions of the people are secured against unreasonable searches and seizures. Search warrants may be issued only on

¹ These general guarantees are stated at length in Article I. of the constitution.

probable cause, supported by oath or affirmation, and must particularly describe the place to be searched and the thing to be searched for.¹ Every citizen has a right to keep and bear arms for the common defence, but this does not include the right to carry concealed weapons, or such as are primarily designed for personal encounters. A standing army may not be kept up in time of peace without the consent of the legislature, nor may soldiers in time of peace be quartered in any house without the consent of the owner or occupant. Private property may not be taken for public use without just compensation, nor unless the public need requires it.² No tax may be laid on the people without their consent, given directly or through their representatives in the legislature, and only the legislature may suspend the operation of a law.

Arms.

Standing
army.

Taxation.

In all of these cases the guarantee is extended to the people as against their government rather than against each other. The infringement of these constitutional guarantees, however, is taken notice of by the courts as much as is the violation of a statute, the judicial department of the central government having authority to sit in judgment on the acts of the executive and legislative departments as much as upon those of individuals.

45. THE COURTS

In order that the laws may be authoritatively interpreted and systematically enforced, and the rights of the citizen at all times effectually and impartially

Courts and
the constitu-
tion.

¹ "General warrants," in which these particulars are lacking, are illegal in both this country and Great Britain.

² The right to take private property for public use is known as the right of "eminent domain."

safeguarded, a system of courts is created, each with its judges and other necessary officers. The constitution of the State vests the judicial power in "a supreme judicial court, and such other courts as the legislature shall from time to time establish."¹ The supreme judicial court is thus the only court directly provided for in the constitution, all others being created by the legislature from time to time as circumstances may make necessary or expedient.² The powers of all the courts, and the classes of cases that shall be allowed to be brought before each, are also subject to legislative determination; and since the legislature has full authority in these respects, courts (except the supreme court) may be abolished, or their organization and jurisdiction changed at any time.

The main outlines of the judicial system have already been given in the chapter on the central government. A few points of general importance may more properly be treated here.

Jurisdiction.

The most important question which comes before a court, and the one which it must always consider, directly or indirectly, at the outset, is the question of jurisdiction. Jurisdiction, in its legal use, means the right of a court to consider or try a case. Jurisdiction may be either original or appellate, exclusive or concurrent. Original jurisdiction is the right to try the case in the first instance; appellate jurisdiction, the right to try a case appealed to it from another, usually a lower, court; exclusive jurisdiction, the sole right to try the case; and concurrent jurisdiction, the right of two or more courts to try the same case.

¹ *Constitution of Maine*, Art. VI., Sec. 1.

² The number of members of the supreme court is fixed by statute.

Jurisdiction is further classified as common law jurisdiction, the right to try offences recognized by the common law, as distinct from those recognized by statute only; civil jurisdiction, the right to try civil cases; criminal jurisdiction, the right to try criminal cases; and jurisdiction to consider questions of law as distinguished from questions of fact.

The jurisdiction of a court is determined by statute, the boundaries of the legal territory which each may occupy being carefully drawn. Thus, for example, the superior courts of Cumberland and Kennebec counties have exclusive criminal jurisdiction in their respective counties, the supreme judicial court having in those counties civil jurisdiction only, while in all the other counties the latter court considers both civil and criminal cases. Trial justices and justices of the peace and quorum have jurisdiction of civil actions when the debt or damages demanded do not exceed in value \$20, and of assaults and batteries, breaches of the peace, violation of town by-laws, and a variety of minor offences and misdemeanors. Municipal courts in cities and towns, being established by special act of the legislature in each case, have their special jurisdiction carefully defined in addition to any powers they may enjoy under the general laws of the State.

In regulating the jurisdiction and procedure of the various classes of courts the legislature has regard, not only to the rights and interests of the people and the community, but also to the different degrees of importance which the various kinds of cases commonly present. While questions of the utmost seriousness — such, for example, as the constitutionality of a

statute — may arise in a court of any grade, it is proper that such questions should be finally considered and determined only in the higher courts, and provision is accordingly made for the appeal of such cases from the lower courts in which they may arise. Municipal and police courts are mainly occupied with minor criminal cases, such as assaults or breaches of the peace, and in practice few such cases are carried to the higher courts, though the right of appeal is carefully preserved for any who care to avail themselves of it. As no great knowledge of law is commonly thought necessary for the proper decision of such cases, the judges of municipal courts are often men without special legal training ; but the judges of the higher courts are always lawyers.

46. CIVIL PROCEDURE

Wrongs.

In making a difference between civil cases and criminal cases the law distinguishes between what are otherwise called private wrongs and public wrongs, between unlawful acts which inflict injury upon the individual and those which the State regards as injurious to itself. Both classes of wrongs are equally within the judicial cognizance of the State, but the procedure in the two classes of cases is different. To afford a basis for a civil suit, the act complained of must be not only illegal, but also injurious to the person who suffers it. Since, however, the matter primarily concerns the individuals involved rather than the community, the aggrieved party is left to bring action in the courts himself.

The parties to a civil action, or "suit," are called Parties. respectively the plaintiff and the defendant. The plaintiff is the party who claims to have suffered the injury. The defendant is the party who is charged with having done the wrongful act, and from whom satisfaction or damages are sought. Any number of persons, if similarly situated in reference to the matter in controversy, may appear jointly as plaintiffs or defendants; a corporation may sue or be sued; and parents or guardians may appear in behalf of the persons under their care.

As the object of a civil action is to obtain a judicial Pleadings. decision on the precise point at issue, the claims of plaintiff and defendant must be accurately set forth. A civil suit is begun by an application to the court, by the plaintiff or his attorney, setting forth in writing the facts regarding the wrongful act complained of and the legal rights claimed by the plaintiff. A "writ" is then issued, directed to the defendant, embodying the claims of the plaintiff and summoning the defendant to answer or justify himself. This writ is made "returnable" at some future date, and is "served" on the defendant by the sheriff or some other officer of the court. When the court is ready to try the case, the claims of the parties are formally stated. The plaintiff makes his "allegation" or "complaint." To this the defendant may "answer," either denying the facts alleged or offering other facts or counter claims in justification; or he may "demur" by denying that the facts, though admitted, make him culpable. The plaintiff may "reply" to the answer, alleging other facts as an offset to the counter claim of the defendant, or he may "join in demurrer," in

which case the legal claims of the defendant's demurrer are controverted. This process of assertion and denial, modified in detail by the particular nature of the case, continues until the issues are exactly and fully presented.

Trial.

The court tries the case as presented in the pleadings. The trial may, with the consent of both parties, be before the judge alone, otherwise before a jury. There are two kinds of jury, the traverse jury and the grand jury. The functions of the grand jury will be explained in the following section. The traverse jury consists of twelve men, chosen by lot from lists prepared once in three years by municipal officers.¹ It is the business of the jury to hear the evidence submitted at the trial, and to render a decision for the plaintiff or the defendant. In order that the members of the jury may not be personally objectionable to either party, each side is allowed to "challenge" such as they object to, and to have others designated in their place.² When the evidence has all been submitted, the attorneys for the plaintiff and defendant usually review the case and present the arguments for their respective sides. The judge then "charges" the jury, instructing them in regard to the law, and pointing out the relative importance of the statements offered in evidence. The conclusion of the jury is

¹ Each county is divided by the county commissioners into a number of jury districts of approximately equal population, and grand and traverse jurors are drawn so as to represent all parts of the county. The number of traverse jurors drawn for a term of court is sufficient to form two or more juries of twelve, in order that other cases may be heard while one jury is deliberating.

² But the number of "peremptory" challenges, that is, challenges for which no reason need be given, is limited.

embodied in a "verdict." If the verdict awards "damages" to the plaintiff, the amount involved must be paid within a specified time; otherwise an "execution," or order of the court, is issued to the sheriff or some other officer, empowering him to seize upon the property of the defendant and "satisfy" the "judgment." Certain classes of property, chiefly necessities of life, are by law exempted from seizure on execution.

Many civil cases are tried before a judge alone, without the intervention of a jury. The supreme judicial court, sitting as a law court, also acts without a jury. In such cases the opinion of the court is embodied in a "decision."

A civil suit is not always settled at a first trial. If the verdict of the jury is contrary to the law or the evidence, the judge may set it aside and order a new trial. A new trial must also be had if the jury disagree, unless the parties agree to discontinue proceedings. The attorney for the losing party may take "exceptions" to points in the decision, and a new trial be granted. Where either party is dissatisfied with the decision, an "appeal" may commonly be taken to a higher court, the supreme judicial court sitting as a law court being the "court of last resort" for the State.

47. CRIMINAL PROCEDURE

When a wrongful act is of such a nature that it Crime. affects injuriously the whole community, irrespective of the injury it may inflict upon any individual, the law classes it as a crime. In criminal proceedings

the State, through its duly appointed agents, appears as the prosecutor of the criminal. To make an act a crime, it must not only be a violation of some provision of law, but must also exhibit a criminal intent — that is, it must be done under circumstances which, given ordinary intelligence, make it reasonably clear that the person who committed the act knew that it would, and therefore intended that it should, produce the unlawful result.¹ To commit a crime, accordingly, a person must be mentally responsible; hence, insane or feeble-minded persons and young children are not regarded by the law as capable of committing crimes. But a person rendered temporarily irresponsible by some voluntary act of his own, as, for instance, an intoxicated person, is criminally liable. A wrongful act which is punishable by imprisonment in the State prison is known as a felony; other wrongful acts are known as crimes, offences, or misdemeanors. If a person has been the leader in committing an offence he is called the "principal"; those who have assisted him are called "accessories." The law punishes both the principal and those who aid him.

Arrest.

The first step in criminal proceedings is usually to "arrest" the alleged offender. Any sheriff, police officer, or constable may arrest a person whom he sees violating the law, and arrests may sometimes be made on suspicion; otherwise, the arresting officer must first procure from a court a "warrant," setting forth the name of the offender, if known, and the offence

¹ "Intent" is determined by the circumstances of the case. It would, of course, be impossible to ascertain precisely what were the thoughts of a person at a particular time.

which he is alleged to have committed. If an officer is physically unable to make an arrest himself, he may call upon bystanders to assist him. Further, any citizen may arrest a person whom he finds committing a crime, but he must at once deliver the offender to an officer. When an offender flees into another State, he may be returned on the request of the governor of the State from which he fled, this process being known as "extradition."

A person arrested on a criminal charge is entitled to an early hearing before a court having jurisdiction of the offence. If the offence is of a minor sort, such as those which ordinarily come before police and municipal courts, the trial usually proceeds at once, and the case may be disposed of by the imposition of a fine or a short term of imprisonment. In more important cases the prisoner is given a hearing, or preliminary examination, before the judge, who may, if he sees fit, summon witnesses to testify. If the preliminary examination does not show "probable cause,"—that is, a sufficient presumption of guilt to warrant a trial,—the prisoner is discharged. If probable cause appear, then the accused is either committed to jail to await trial before the proper court, or else is released on "bail." Bail is a money security, given by some person on behalf of the prisoner, as a pledge that the accused person will present himself at the proper time for trial, the amount being forfeited to the State in case the accused does not appear. The constitution forbids the requirement of excessive bail, that is, an amount greater than is probably necessary to secure the appearance of the accused

Hearing.

Bail.

person.¹ Persons of good standing in the community are sometimes released on their own "recognizance," or promise to appear. A person committed to jail to await trial may, if there is reason to question the legality of the proceedings, have the cause of his detention inquired into by a higher court on a "writ of habeas corpus." A writ of habeas corpus is directed to the jailor or other custodian of the prisoner, directing him to bring the prisoner into court and show why he detains him. If, upon an examination of the facts and proceedings, the court concludes that the grounds of detention are insufficient, the prisoner is discharged; otherwise he is remanded to await trial.

Habeas
corpus.

Prosecution.

The prosecution of an offender before the supreme judicial court, or the superior courts of Cumberland and Kennebec counties, is conducted by the county attorney in the name of the State. Prosecution is generally based on an "indictment" or "true bill" found by the grand jury. The names of persons charged with, or suspected of having committed, offences are submitted to the grand jury by the county attorney. The grand jury does not itself listen to the trial of cases and render verdicts, as does the traverse jury, but its office is to examine the evidence submitted to it by the county attorney and decide whether the presumption of guilt is sufficient to warrant a trial of the case. In the conduct

¹ "That bail is reasonable which, in view of the nature of the offence, the penalty which the law attaches to it, and the probabilities that guilt will be established on the trial, seems no more than sufficient to secure the party's attendance" (Cooley, *Constitutional Limitations*, 310). Capital offences, so called, are not bailable.

of its investigations the grand jury may summon witnesses and examine them under oath.¹

When an alleged offender is "arraigned," or put upon trial, the indictment or charge is read to him, and he is required to "plead" guilty or not guilty. If the accused pleads guilty, he is usually sentenced without further proceedings. The plea of not guilty is equivalent to a legal request to be tried.² The trial is before a jury, and the accused is always to be allowed the services of an attorney, counsel being furnished at the expense of the State if he is unable to pay for it himself. Every person is assumed to be innocent until proved guilty, consequently all the material facts adduced in support of the charge must be proved in order to secure a conviction. The arguments of counsel follow the submission of the evidence, as in a civil action. The judge then charges the jury, being bound to refrain from expressing any opinion of his own as to the guilt or innocence of the accused. The case is then given to the jury, who consider it in secret session, and return a verdict of guilty or not guilty, as the case may be. Trial.

If the verdict is one of guilty, sentence is pronounced by the judge, and the execution of the sentence is at once proceeded with by the proper officers. If the accused is adjudged innocent, he is at once discharged, and may never again be tried for the same offence. A disagreement of the jury, however, is occasion for a new trial, and a new trial may also be granted by the court, if the verdict is against the accused, for certain causes, such as the discovery of Verdict and sentence. New trial.

¹ Persons held for trial and not indicted are, of course, discharged.

² A plea of not guilty is entered if the accused refuses to plead.

new evidence, irregularities in the proceedings, or defects in the charge to the jury. Appeal may also be taken to a higher court, particularly by the so-called "writ of error," which is a process calling for an examination by a higher court of the questions of law, as distinguished from questions of fact, involved in the case.

Constitutional guarantees.

The whole course of procedure, in both civil and criminal cases, is, of course, minutely regulated by statute, with the constant object of securing justice. There are also important guarantees extended to accused persons by the constitution of the State. In all criminal prosecutions, the accused may appear either in person or by counsel. He is to be confronted by the witnesses against him, and is to have compulsory process for obtaining witnesses in his favor. He cannot be compelled to give evidence against himself.¹ No person for the same offence may be "twice put in jeopardy of life or limb." Penalties and punishments must be proportioned to the offence, excessive fines² and cruel or unusual punishments being expressly prohibited.

Procedure and justice.

The statements given in this chapter form, naturally, only a general outline of the judicial system of the State. Each class of offences has, of course, its own particular rules of procedure, which are subject to change by the legislature from time to time. A large part of the statutes relate to the definition of offences and the prescription of the ways in which they are to be dealt with. Every citizen, therefore, who has occasion to invoke the judicial power of the

¹ Refusal to testify is not to be construed against him.

² Maximum and minimum fines are often fixed by statute.

State, should do so with the aid of a duly recognized attorney.¹ It should not be forgotten, however, that the object of law is to bring about justice through the accurate discrimination of right from wrong. Rarely does a law get into the statute book whose evident effect is to produce injustice. Legal proceedings, it is true, are not always speedy, and the "law's delays" sometimes seem to favor an accused person of whose guilt there is no reasonable doubt, but even here it will commonly be found that the difficulty arises from a technical perversion of privileges and immunities of which, nevertheless, no individual could with ultimate safety to the community be deprived.

¹ It is to protect the citizen that the State fixes special requirements for admission to the bar.

CHAPTER VIII

EDUCATION

48. REFERENCES

Besides the statutes, the principal authorities for the history and administration of the school system in Maine are the annual reports of the State superintendent of public schools, the reports of school committees and superintendents of towns and cities, and the catalogues and other publications of colleges, normal schools, and academies. A pamphlet containing decisions by the State superintendent on questions of school law is printed from time to time for general distribution. The *Report of the State Superintendent* for 1900 contains especially valuable historical data; some additional local information can be gleaned from town and county histories.

49. HISTORICAL DEVELOPMENT

Colonial
schools.

Until 1820 the system of education in Maine was substantially identical with that of Massachusetts. The system slowly worked out in the Puritan colony aimed to provide, at public expense, an elementary education for all persons of designated age, but the actual standards were low, the training of teachers imperfect, and the supervision by the central government slight. In 1789 an act of the General Court undertook to codify the laws and usages of a century and a half, and provided for the establishment of school districts,¹ but it was not until 1800

District
system.

¹ The act is reprinted in the *Report of the State Superintendent, 1900*, 66-70.

that the districts were erected into municipal corporations, with power to lay taxes for the establishment and maintenance of schools, and the duty of expending school money through responsible officials duly elected for the purpose. The district system thus installed continued in existence until 1893, when it was abolished by the legislature.¹

The first school law passed by the legislature of Maine, in 1821,² gave the towns the right to fix the number of school districts within their limits and prescribe their boundaries, laid down certain qualifications for teachers, indicated certain subjects to be taught, and required each town to raise annually for school purposes not less than forty cents for each inhabitant, the money thus available to be apportioned among the districts. A school committee for the town was also provided for, and for each district a school agent, who was to hire the teachers and provide furniture and fuel for the schoolhouse. In 1833 provision was made for the distribution among the towns of the income of certain State school funds, regular statistical returns from towns being also required as data for the apportionment.

The schools being still without special supervision by the State, an act of 1846 created a board of education with supervisory powers. The board was composed of one member from each county, chosen by the school committees of the towns and the clerks of

Law of 1821.

State
and local
supervision.

¹ Portland in 1822, Bath in 1828, and Bangor in 1832 had been authorized by the legislature to abolish school districts. In 1834 the privilege was extended to all towns.

² See the act in full in *Report of the State Superintendent, 1900, 71-77.*

plantations. The board was abolished in 1852, and a commissioner of schools for each county, to be appointed annually by the governor and council, was substituted. In 1854, before the new system had been fairly tried, the law was repealed and a State superintendent of common schools provided for.

Legal
changes.

The school laws, in the meantime, had been, as they continued to be, subject to frequent amendment and alteration, most of the changes having in view a clearer definition of the powers and duties of school officers, a closer relation between the town or district and the State in educational matters, and the improvement of the quality of instruction. The insistence upon regular and detailed statistical reports, the enlargement of the school funds, and the establishment of teachers' conventions and normal schools all tended to the attainment of these results. In 1869 a system of county supervisors was put in operation, but was abolished in 1872. In 1870 towns were authorized to abolish school districts and take over the control and management of the schools, and in 1873 the establishment of free high schools was provided for. The Madawaska training school for teachers was established in 1878. The abolition of the district system was foreshadowed by an act of 1880, providing for the transfer of pupils from a district in which the numbers were too few for the profitable maintenance of a school to adjoining districts. In the same year the free high school system, from which State aid had been temporarily withdrawn, was restored. The provision of free text-books was made compulsory on the towns in 1889, while the abolition of the district system in 1893 was accom-

Free high
schools.

panied by a provision for the election by the school committees of a superintendent.

Abolition
of district
system.

It will be seen from this brief sketch that the history of public education in Maine is one of slow but steady growth, new ideas being adopted as old ones were abandoned. Maine came into the Union when public school administration in the United States was in its infancy, and the spirit of local independence fostered by the town system of government has retarded the development of control by the central government over local school interests. The financial interest of the State in education is now so great, however, that the strict exercise of its supervisory power is increasingly demanded, and continued growth in the direction of uniformity of administration and standard, and enlarged control by the State, may probably be anticipated.

50. LOCAL ORGANIZATION AND MANAGEMENT

When, in 1893, the school district system was abolished,¹ the schoolhouses and other school property of the districts were transferred to the ownership and custody of the town, and the schools themselves were placed under the supervision and control of the superintending school committee. A few districts, incorporated from time to time by special acts of the legislature, retained their property and corporate powers, but otherwise their schools are, in general, on the same footing as other schools in the town for purposes of administration.

The management of the schools and the custody and

¹ *Public Laws, 1893*, Chap. 216; amended by *ibid.*, 1895, Chap. 120.

Superintending school committee.

care of the school property of the town are devolved upon the superintending school committee. The members of the committee, three in number, are elected by the town for three years, the terms of office being so arranged that one member retires annually.¹ Women, as well as men, may serve on school committees and as superintendents. Unless otherwise voted by the town, the members serve without pay.

Superintendent of schools.

The executive officer of the committee is the superintendent of schools. The superintendent may be chosen by the town at its annual meeting, or may be appointed by the committee if the town does not elect; but he may not be a member of the committee.² Towns having not less than twenty-five nor more than fifty schools may unite in the employment of a superintendent, the State in such case making an additional grant for salary.³ Superintendents chosen by a union of towns must devote all their time to the duties of their office. The term of office of the superintendent, whether for a town or for a group of towns, is one year, and the compensation voted by the town may not be less than \$2 a day for the time actually employed. The superintendent is *ex officio* secretary of the committee, and makes all reports and returns relating to the town schools which are not by law required to be made by the committee. He does not hire teachers, but in practice his advice is followed in their selection. He is expected to familiarize himself with the work of the schools, supervise and direct the method of instruction and discipline, and act in general as the educational

¹ *Public Laws, 1897*, Chap. 327.

² *Ibid.*, 1897, Chap. 332.

³ *Ibid.*, 1897, Chap. 296.

leader of the community. In order that all parts of the town may have the benefit of his services, he is required to visit each school at least twice each term. The annual school census is taken by the superintendent, or under his direction.

Text-books, apparatus, and supplies are provided by the town without cost to the pupils. The compulsory free text-book law dates from 1889,¹ such provision having previously been optional with the towns. The selection of books rests with the committee and superintendent. An old law of 1862, forbidding the change within five years of a text-book once adopted, save by vote of the town, is still in force, the penalty for violation being the forfeiture of \$500.² The building and repair of schoolhouses are under the direction of the committee, and the fixing of sites for school buildings requires their approval. Text-books.

The minimum length of the school year is fixed by statute at twenty weeks, but any town may, and many do, provide for the maintenance of schools for a longer period.³ In connection with the abolition of the district system, it was especially provided that "the school moneys of every town shall be so expended as to give as nearly as practicable the same aggregate annual length of terms in all its schools." Where, however, a school has too few pupils "for its profitable maintenance," the committee, unless otherwise instructed by the town, may suspend its operation for one year, but any school which fails to maintain an School year.

Discontinu-
ance of
schools.

¹ *Public Laws, 1889*, Chap. 268.

² *Revised Statutes* (1883), Chap. 11, Sec. 87, Par. IV.

³ Freeman, *Supplement*, 139. State aided academies must provide instruction for at least thirty weeks (*Public Laws, 1901*, Chap. 148).

average attendance of eight for the year is thereby suspended, unless the town by vote instructs the committee to continue it. The superintendent is obliged to procure the conveyance of pupils to and from the nearest suitable school, if the pupils reside at such a distance from the school as, in the judgment of the committee, to make such transportation necessary. Under certain circumstances, also, children in one town may be sent to school in another, the town which receives them charging a small tuition.

Compulsory
attendance.

The privileges of the public schools are offered to all persons between the ages of five and twenty-one years, but not all such persons are required to avail themselves of them.¹ The law relating to compulsory attendance has undergone a number of changes in recent years, the aim being to secure from every child a certain amount of regular attendance, while allowing to such as must contribute by their labor toward the support of themselves or others some opportunity to do so. The provision of the present law, enacted in 1901, is as follows:—

Law of 1901.

“Every child between the ages of seven and fourteen inclusive shall attend some public day school during the time such school is in session; provided that necessary absence may be excused by the superintending school committee or superintendent of schools, or teacher acting by direction of either; provided, also, that such attendance shall not be required if the child obtain equivalent instruction, for a like period of time, in an approved private school or in any other manner approved by the superintending school committee; provided, further, that children shall not

¹ *Public Laws, 1893, Chap. 162.*

be credited with attendance at a private school until a certificate showing their names, residences, and attendance at such school, signed by the person or persons having such school in charge, shall be filed with the school officials of the town in which said children reside; and provided further, that the superintending school committee may exclude from the public schools any child whose physical or mental condition makes it inexpedient for him to attend.”¹ A penalty of fine or imprisonment is provided for those who, having children under their charge, violate the foregoing law.

A child who is absent without excuse six or more consecutive sessions during any term is regarded as an “habitual truant,” and as such may be arrested and taken to school, the persons responsible for the absence being also liable to prosecution. For the enforcement of the truancy laws, towns are required to elect annually one or more truant officers. On complaint of the truant officer, an habitual truant, if a boy, may be committed to the State reform school, or, if a girl, to the State industrial school for girls.

Truancy.

The so-called “labor law” of 1887, regulating the hours of labor and employment of women and children, forbade absolutely the employment in any mechanical or manufacturing establishment in the State of any child under twelve years of age, and also prohibited the employment of any child under fifteen years of age at any time except during vacations of the public schools, unless the child had attended school for at least sixteen weeks during the preceding year.² As the law of 1899, to which the

Children in factories.

¹ *Public Laws, 1901*, Chap. 185, amending *ibid.*, 1899, Chap. 80.

² *Freeman, Supplement*, 291-294.

law of 1901 was an amendment, repealed all legislation inconsistent with its provisions, it would appear that, as the law now stands, no child less than fifteen years old can be employed in any manufacturing or mechanical industry, except during vacations, unless excused by the school authorities from attending school.

Cities.

While most of the general provisions of law regarding schools apply to cities as well as to towns, the special provisions of the city charter create numerous exceptions. The most important of these exceptions has to do with the number and method of election of the school committee. School committees in cities are usually larger than those in towns, and are elected, sometimes from wards, sometimes on a general ticket, the former being the prevailing method.

Unincorporated places.

The provision of school facilities in unincorporated places is devolved upon the State superintendent, who may establish schools if the population is sufficient to warrant it, or send children to schools in adjoining places. The expense is met, first, from the income of the reserved fund of the township, and, second, from the proceeds of a *per capita* tax of twenty-five cents on each inhabitant of the township. If these resources are insufficient, the remainder is provided for out of a regular State appropriation of \$1500.¹ Persons of school age, living at any light station not embraced within the limits of any school district, are admitted without tuition charge to any public school in the State.

¹ *Public Laws, 1899*, Chap. 89, superseding all previous acts on the subject.

51. STATE SUPERINTENDENT

The supervision of public education by the State is mainly conducted through a State superintendent of public schools.¹ The State superintendent is appointed by the governor and council for three years, and has his office at the seat of government. Upon him are devolved a great variety of duties, directive, advisory, and clerical. Aside from the general obligation to see that the school laws of the State are obeyed, — by no means a slight task, as the educational history of the State has shown, — he prepares and issues numerous blanks for reports by school officers, and presents the resulting statistics in tabulated form in his annual reports. His approval of the town reports of enrolment, for example, is necessary before the amount of State money due the town can be paid. His authority extends to academies and other schools which receive State aid, and to schools in unincorporated places, while in the general interests of educational progress he visits schools in all parts of the State, and confers with and advises teachers in county institutes and other meetings. The State examinations of teachers required by law are conducted under his supervision.

Appointment
and duties.

Since the repeal of the law providing for county supervisors of schools, in 1872, the county, as a political organization, has ceased to be a factor in the educational system of the State. There is no parallel in Maine to the county superintendent, with his extensive powers of direction and control, such

¹ For the change of title see *Public Laws, 1897, Chap. 237*.

as is found in many western States. The State, through the State superintendent, deals directly with towns, cities, and plantations. As a result, school administration has imposed upon the State superintendent a very large burden of essentially clerical duty, at the same time that local ambitions and jealousies, together with the uneven development of different parts of the State, have made the attainment of uniformity of method and standard less rapid than the apparently highly centralized system of administration would seem to imply.

52. GRADES, STUDIES, AND TEACHERS

Grades.

The law of Maine recognizes a general classification of public schools into two groups, known respectively as common schools and high schools, the basis of distinction being the studies pursued in each. The division of the common schools into grades, however, is left for each community to decide for itself; whether or not a school shall be graded depends upon such considerations as the number of pupils and teachers, and the amount of money available for salaries and other expenses. Schools in country districts and the smallest towns are usually ungraded, a single teacher, often, teaching all the subjects in the curriculum, and dividing the pupils into classes as circumstances may indicate.

In the larger towns and the cities the schools, except those in rural neighborhoods, are graded, the division into primary, intermediate, and grammar grades being practically universal. Evening schools may also be established for instruction in elementary

branches, but a special appropriation must be made for the purpose.

The act of 1868, defining the duties of the State superintendent, gave him authority "to prescribe the studies that shall be taught in the common schools of this State, reserving to town committees the right to prescribe additional studies." By subsequent acts, however, the legislature itself assumed the right of prescribing subjects to be taught, and of fixing the minimum requirements for free high schools. Thus, all schools are required to give instruction in physiology and hygiene, with special reference to the effects of alcoholic drinks, stimulants, and narcotics upon the human system;¹ and all teachers are required "to devote not less than ten minutes of each week of the school term to teaching to the children under their charge the principles of kindness to birds and animals."² The course of study in free high schools embraces the "ordinary English academic studies which are taught in secondary schools, especially the natural sciences in their application to mechanics, manufactures, and agriculture"; but the ancient or modern languages and music are not required to be taught unless the superintending school committee so direct.³ Any town may also provide free instruction in drawing, in either day or evening schools, and may establish a manual training school.

The spirit and aims which should characterize the instruction in schools of whatever grade are admirably set forth in the following paragraph, reenacted

¹ *Public Laws, 1885*, Chap. 267.

² *Ibid.*, 1891, Chap. 29.

³ *Freeman, Supplement*, 132.

with only slight change from the first school law of 1821:—

“The presidents, professors, and tutors of colleges, the preceptors and teachers of academies, and all other instructors of youth, in public or private institutions, shall use their best endeavors to impress on the minds of the children and youth committed to their care and instruction, the principles of morality and justice, and a sacred regard for truth; love of country, humanity, and a universal benevolence; sobriety, industry, and frugality; chastity, moderation, and temperance; and all other virtues which ornament human society; and to lead those under their care, as their ages and capacities admit, into a particular understanding of the tendency of such virtues to preserve and perfect a republican constitution, secure the blessings of liberty, and promote their future happiness; and the tendency of the opposite vices, to slavery, degradation, and ruin.”¹

Examination
of teachers.

In order to teach in a public school the teacher must first obtain a certificate of proficiency. Two sets of examinations, State and local, are provided for. The local examination, given under the direction of the school committee, embraces reading, spelling, English grammar, geography, history, arithmetic, civil government, bookkeeping, physiology with special reference to the effects of alcohol and narcotics, the elements of natural science, and such other branches as the committee may desire to have taught. The candidate who passes the examination receives a certificate good for one year. State examinations on a similar range of subjects, but designed to test the

¹ Freeman, *Supplement*, 133.

professional as well as the scholastic abilities of the teacher, are held in different parts of the State under the direction of the State superintendent. The certificate given for the State examination is either probationary or permanent, and indicates the grade of school in which the holder is qualified to teach. The State certificate is to be accepted by school committees in place of the local examination.¹

Local school authorities may also, by endorsement, render valid a certificate of proficiency issued by one of the State normal schools.²

The professional training and interest of the teacher are further aided by teachers' institutes and summer schools. After several years of experiment, the legislature in 1885 provided for the organization of county teachers' associations, under the direction of the State superintendent, allowing teachers to suspend their schools for not more than two days in order to attend, and appropriating \$1000 annually from the school fund for their maintenance.³ In 1895 authority was given for the establishment of summer schools for teachers, and an appropriation made for the necessary expenses.

Institutes
and summer
schools.

53. SCHOOL FINANCES

The money available for the support of schools in any community comes mainly from three sources: first, from appropriations by the town or city; second, from appropriations made by the State; and third, from the income of certain funds held by the State

Sources of
school
money.

¹ *Public Laws, 1895, Chap. 152.*

² *Revised Statutes (1883), Chap. 11, Sec. 87, Par. III.*

³ *Freeman, Supplement, 135, 136.*

as school funds. Something is also received from the tuition fees of pupils resident in other towns, and a community occasionally receives gifts or bequests for educational purposes, but the amount derived from these sources is small.

Town appro-
priations.

The amount of money which a town, from its own resources, expends for schools depends, in general, on its wealth and its willingness to foster the educational welfare of its citizens. Every town must, however, raise annually for schools a sum equal to at least eighty cents for each inhabitant, exclusive of the income which it may receive for school purposes from any other source.¹ Moreover, what is raised for schools must be spent for schools, and neither withheld nor used for any other purpose. Heavy penalties are provided for towns which neglect or refuse to raise or expend the amount required by law.

The estimates of necessary school expenses are prepared by the superintending school committee, and the money raised and appropriated by the town in town meeting. Text books and apparatus, repairs and insurance, compensation of superintendent and committee, and free high school are provided for in special items of the appropriation, money raised for the support of common schools not being available for these purposes. Money voted for schools is assessed and collected like other town taxes. The money raised by taxation, together with what is received from the State or from other sources, is expended under the direction of the superintending school com-

¹ The amount of *per capita* tax has varied. In 1821 it was forty cents; in 1853, fifty cents; in 1854, sixty cents; in 1866, seventy-five cents; in 1868, one dollar; since 1872, eighty cents.

mittee, payment being made by the town treasurer on warrants drawn by the municipal officers.

The principle items of State appropriation, directly available for the support of schools in towns, are those for the payment of superintendence in towns that have united for that purpose, and for free high schools. The former has been already referred to.¹ Any town which establishes and maintains a free high school for at least ten weeks in the year, out of money raised for that purpose in excess of what is raised for common schools, receives from the State one-half of the amount expended for instruction, the total grant to any one school, however, not exceeding \$250. The same reimbursement is made where a town contracts with the trustees or directors of a private high school or academy in the town for the tuition of pupils.

State appropriations.

The school fund of the State is made up of several items. As early as 1788 a law of Massachusetts set apart one lot of 320 acres in every township of public land as a "school lot," the proceeds of its sale to constitute a fund for the benefit of common schools. The policy thus inaugurated of using the land and timber wealth of the State as a basis of State aid to schools has been followed by Maine throughout its history as a State, the lands reserved for school purposes having been materially added to from time to time.

School funds.

The money received from the sale of school lands, together with any money appropriated by the legislature for the fund, constitute what is known as the permanent school fund. The income of this fund, at the rate of six per cent. per annum, together with

Permanent fund.

¹ The appropriation for 1902 was \$3000.

one-half of the proceeds of the tax on savings banks,¹ is annually appropriated to the support of common schools, and distributed among the towns according to their respective number of persons between four and twenty-one years of age.

Mill tax.

In addition to the income from the permanent school fund and the bank tax, a tax of one mill on a dollar is annually assessed on all the property in the State according to its valuation, for the support of common schools. This is known as the "mill tax," and is apportioned among the towns, cities, and plantations according to the number of pupils of school age. Any portion of the fund not distributed or expended during the year is added to the permanent school fund.

Special appropriations.

The money granted by the State to academies and free high schools is provided for by special appropriation, while that for normal schools is a charge on the common school fund. Appropriations for the office of State superintendent, teachers' institutes, printing and distribution of educational literature, etc., call for no special mention, the purpose in each case being sufficiently indicated by the name.

54. ACADEMIES

History of academies.

Previous to the separation of Maine from Massachusetts there had been incorporated in the district twenty-five academies, with endowments aggregating more than two hundred and fifty thousand acres of wild land. Between 1820 and 1851, forty-four academies were chartered, and since 1851, twenty.² Most

¹ Freeman, *Supplement*, 96, Sec. 3.

² For the list, see *Report of the State Superintendent, 1900*, 138-140.

of these institutions, though poorly endowed, did good work, and formed, in the absence of high schools, the only connecting link between the common schools and the college. But the establishment of free high schools, in 1873, "was a death blow to all but the stronger of the old academies. Many of them transferred their buildings and funds to the towns in which they were located and became free high schools."¹ Others, while retaining their corporate existence, did the work of high schools for the towns in which they were situated, deriving their support mainly from special appropriations made by the legislature, in addition to what was received under the free high school law.

It was inevitable that the virtual support of academies by special legislative grants should tend, in many cases, to foster grave abuses, and to hinder rather than help the progress of education in the State. Accordingly, the legislature in 1901 enacted a general law governing the appropriation of money in aid of academies, seminaries, and institutes.² Such schools were divided into three classes, and the amount which they received was made dependent upon the kind of instruction offered. If an academy gives instruction equivalent to that required of high schools, it is entitled to receive annually from the State \$500; if, in addition, it maintains a college preparatory course, it receives \$750; and if it further maintains a training school for teachers, it receives the maximum stipend, \$1000. Every academy receiving aid under the act must enroll a prescribed minimum number of students, give instruction for

Legislative
reform.

Law of 1901.

¹ *Report of the State Superintendent, 1900*, 138.

² *Public Laws, 1901*, Chap. 148.

not less than thirty weeks in each year, and have its courses of instruction approved by the State superintendent. Moreover, the stipulated grant may not exceed the total income of the institution from all other sources, nor is any grant to be made to an institution whose income from invested funds exceeds \$1600, nor more than \$500 where such income exceeds \$1000. Academies incorporated subsequent to the date of the act are excluded from its provisions.

For aid to academies under this act the legislature appropriated for each of the two years, 1901 and 1902, \$23,500.

55. NORMAL AND TRAINING SCHOOLS

Establish-
ment.

Systematic provision for the training of teachers was begun by the legislature in 1860, but no progress was made until 1863, when a normal school was established at Farmington. Similar schools were established at Castine in 1867, and at Gorham in 1878. The direction of the schools is vested in a board of trustees, consisting of the governor and State superintendent of public schools, and five other members appointed for not more than three years by the governor and council. The course of study occupies two years, and, together with the terms of admission, is under the management of the State superintendent, subject to the approval of the governor and council; but the trustees are empowered to arrange a course of study, occupying three or four years, for such students as care to pursue it.

Direction.

A number of towns and plantations in northeastern

Maine, south and west of the St. John River, are inhabited largely by French, many of them the descendants of French Acadians who were expelled from Nova Scotia in 1755. "From the fact that the first settlement was made at a point on the St. John opposite the mouth of the Madawaska River, the whole region soon became known among the French settlers as 'Madawaska,'" and it is still customarily referred to by that name, or its equivalent, "Madawaska Territory."¹ Educational facilities in the region were for many years of the most rudimentary character, while the practically universal use of French rather than English made it difficult to extend to the locality the general school system of the State. For many years, accordingly, the Madawaska Territory was separately dealt with for school purposes, the schools being under the direction of a State agent, and deriving their support from legislative appropriations.

Madawaska
Territory.

A change of policy was inaugurated in 1872. "By a special act the townships included within the Territory and organized as towns or plantations were put on an equal footing with the other towns and plantations in the State so far as sharing in the distribution of State moneys, provided they should organize school districts, maintain schools whose discipline and instruction should be in the English language, and should annually raise for the maintenance of schools certain definite sums fixed in the act."² To meet the

Law of 1872.

¹ *Report of the State Superintendent, 1897, 50.* Madawaska Territory includes, among others, the present towns or plantations of Hamlin, Van Buren, Grand Isle, Madawaska, Frenchville, Fort Kent, St. John, and St. Francis.

² *Report, 1897, 52.*

Training
School.

pressing demand for teachers, the trustees of the State normal schools, acting under authority from the legislature, established in 1877 training schools for teachers at Fort Kent and Van Buren. In 1887 these schools were united in the Madawaska Training School, the new school being located at Fort Kent. The school is under the direction of the trustees of the State normal schools, but its work is specially designed to meet the needs of persons who intend to teach in the region in which the school is located.

56. THE UNIVERSITY OF MAINE

Establish-
ment.

In 1862 an act of Congress granted to each State, from the public lands of the United States, thirty thousand acres for each senator and representative from the State in Congress, on condition that from the proceeds of the sale of the land so granted there should be established a perpetual fund, "the interest of which shall be inviolably appropriated by each State . . . to the endowment, support, and maintenance of at least one college, where the leading object shall be, without excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." The State accepted the grant, and in 1865 established the "State College of Agriculture and the Mechanic Arts." The two hundred and ten thousand acres of land to which the State was entitled under the act yielded an

endowment fund of \$118,300. A proposition to connect the new institution with Bowdoin College met with strong opposition from agricultural interests, and the college was finally, in 1866, located at Orono.

Besides considerable sums appropriated from time to time by the State,¹ acts of Congress passed in 1887 and 1890 entitled the college to receive annually from the United States \$15,000 for the maintenance of an agricultural experiment station, and \$25,000 for further endowment and support. The academic work of the institution having in the meantime been increasingly emphasized, the name was, in 1897, changed to "The University of Maine,"² and an appropriation of \$20,000 a year for ten years was made for current expenses.³ Support.

The control of the university is vested in a board of trustees, of which the secretary of the State board of agriculture is an *ex officio* member, but the governor and council have the right "to examine into the affairs of the college and the doings of the trustees, and to inspect all their records and accounts, and the buildings and premises occupied by the college."⁴ Control.

57. OTHER EDUCATIONAL AGENCIES

Several important interests are fostered by the State which, though having no formal connection with the educational department of either the State or the local governments, are so far educational in their purpose

¹ "About \$300,000 for material equipment." — *Report of State Superintendent, 1900, 151.*

² *Private and Special Laws, Chap. 551.*

³ *Resolves, Chap. 215.*

⁴ *Report of the State Superintendent, 1900, 150.*

and scope as to be appropriately treated in this connection.

State
board of
agriculture.

Until 1902 the oversight of agricultural interests was intrusted to a State board of agriculture, consisting of the president and the professor of agriculture of the University of Maine, and sixteen county members chosen by the agricultural societies of their respective counties. By a law of 1901, provision was made for a State department of agriculture, in charge of a commissioner elected biennially by the legislature on joint ballot.¹ Upon the commissioner are devolved the supervisory and administrative duties previously performed by the State board, together with a few others, the most important of the new duties being the enforcement of the laws relating to the manufacture or sale of impure or adulterated food or seed products.

State depart-
ment of
agriculture.

Farmers'
institutes.

The commissioner is required to hold annually two farmers' institutes at least in each county, for "the presentation and discussion of questions bearing upon agriculture and the agricultural interests of the State," and also, in connection with the State dairymen's association, a State dairymen's conference "for the exhibit of dairy products and appliances." A small permanent appropriation is made by the act for the necessary expenses of these meetings.

State appro-
priations.

There is appropriated annually by the State an amount not exceeding one cent for each inhabitant, which sum is divided among the incorporated agricultural societies not provided for by special laws, according to the amounts awarded by them in premiums and gratuities for stock and products exhibited. But no society may receive from this source more than the

¹ *Public Laws, 1901, Chap. 204.*

amount it actually raises and expends for the purposes named, while the further proviso is added "that each of the said societies shall cause the prohibitory liquor law to be enforced on all grounds over which they have control, and not allow gambling in any form, or games of chance."¹

An important factor in the educational work of the State is the encouragement and support of public libraries. The State library at Augusta, though primarily for the use of the legislature and other departments and officers of the government, is open to the public for consultation, and lends certain of its books, under suitable restrictions, to citizens in any part of the State. Any town or village corporation may establish a free public library and raise money for its support, ten per cent. of the amount expended being reimbursed by the State. Moreover, any library owned or controlled by a corporation or association may become a free public library, and receive aid from the town and the State towards its support. The State also makes donations of books to aid in the establishment of libraries, and regular gifts of public documents thereafter, and also offers instruction at the State library in cataloguing and other matters relating to library administration.

Even with this liberal provision of State aid, however, many small communities are unable either to establish or else properly to maintain free public libraries. Accordingly, the legislature in 1899 made provision for lending to libraries, and to associations of five or more persons in places where no public libraries

¹ Freeman, *Supplement*, 367.

Library com-
missioners.

exist, small collections of books.¹ For the general oversight of the system of travelling libraries and the further encouragement of public libraries, a board of library commissioners was established. The commissioners are appointed by the governor and council for four years, one retiring annually. The State librarian is *ex officio* a member of the board and its secretary.

¹ *Public Laws, 1899, Chap. 22.*

CHAPTER IX

THE PROTECTION AND COMFORT OF THE STATE

58. REFERENCES

Besides the statutes, the only important authorities for the topics treated in this chapter are the annual or biennial reports of the officers, departments, and institutions mentioned, the messages of the governors, and the statistical data collected by the United States census. Lists of the members and principal officers of State boards and institutions are given in the *Maine Register*.

59. SOCIAL CLASSES AND NEEDS

While the people resident within a State and subject to its jurisdiction enjoy equality of legal rights and privileges, and are under a common obligation to support and uphold the government, they are not in other respects entirely equal. There are obvious differences in education, wealth, social position, and business capacity. In political affairs some are radical while others are conservative, some are public spirited while others are indifferent. Such divergences have their origin in human nature, and always have characterized, and probably always will characterize, society; and with them the State, as an organized government, has nothing to do. It is not the object of government to bring about social uniformity, even though the plane of uniformity be high.

Social
classes.

Of other social differences, however, the State, in

Defectives
and delin-
quents.

the interest of the welfare of all the people, does take account. Modern civilization particularly enjoins upon a community the care of those who, either from accident, or disease, or misfortune, are mentally or physically defective or incompetent. Of this class are the blind, the deaf and dumb, the feeble-minded, and the insane. Again, the State, in the interest of its own preservation, must punish crime and protect itself against lawlessness and mob violence, while in the remote contingency of invasion or attack by a foreign power, or the nearer liability of a call for assistance from the United States, it must hold itself ready at all times to put into the field an armed force.

Police
power.

Further, while all laws are for the public benefit, the State, in the exercise of what is called the "police power," exercises special jurisdiction over the lives, health, morals, and occupations of its citizens in certain particulars. Thus, it prohibits gambling and lotteries, punishes the circulation or exhibition of immoral pictures and literature, including reproductions of prize fights,¹ prohibits the sale of cigarettes to minors,² and puts under the ban both the manufacture and sale of alcoholic liquors as beverages. It prescribes the use of safety appliances on railroads and regulates the hours of labor in factories, while in the general interest of health and life it assumes special authority in regard to infectious and contagious diseases.

Many of these matters, being such as are common to all the States, require no special mention. Some of them, however, call for more detailed discussion.

¹ *Public Laws, 1897, Chap. 309.*

² *Ibid., Chap. 333.*

60. THE MILITIA¹

The second article of the amendments to the Constitution of the United States reads: "A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." The constitution of Maine, while reasserting the right to keep and bear arms, adds: "No standing army shall be kept up in time of peace without the consent of the legislature, and the military shall, in all cases and at all times, be in strict subordination to the civil power."²

Constitutional provisions.

All male citizens of the State between the ages of eighteen and forty-five years, except justices of the supreme judicial court, ministers of the gospel, persons of the denominations of Shakers or Quakers, officers of the militia who have been honorably discharged, and persons exempted by United States laws, are subject to military duty. All such persons, with the exception of idiots, lunatics, paupers, common drunkards, and persons convicted of infamous crimes, are enrolled biennially by the assessors of the towns, cities, or plantations in which they reside;³ and every person so enrolled must serve if called upon, unless physically disabled, or unless he purchases exemption by producing an acceptable substitute or paying to the State \$100.⁴

Who are liable.

Enrolment.

¹ The militia organization of Maine, like that of many States, was a good deal disturbed by the enlistment of militiamen as volunteers at the outbreak of the war with Spain, in 1898. Section 60 attempts nothing beyond a summary of the provisions of the constitution and laws.

² *Constitution of Maine*, Art. I., Sec. 17.

³ Freeman, *Supplement*, 109.

⁴ *Ibid.*, III, Sec. 12.

Enlistment.

The National Guard of the State of Maine, or active militia, consists of those persons who have enlisted for military service under the State according to law. The term of enlistment is three years, enlistment being accomplished by signing an enlistment book and taking a prescribed oath. No one may be mustered into the service of the State unless certified by a military surgeon to be able bodied and capable of doing military duty. The age limit for enlistment is sixteen to forty years, but a minor is not enlisted in time of peace without the written consent of his parent or guardian.¹ Enlisted men must reside in the town in which the armory of the organization in which they enlist is situated, or within a radius of seven miles.²

Organization of National Guard.

The size and general organization of the National Guard are fixed by law. At present the National Guard consists, on a peace footing, of not more than twenty-four companies of infantry, one battery of light artillery, two troops of cavalry, an ambulance corps, and a signal corps. Each company of infantry contains not less than thirty-two nor more than ninety-two privates, besides the necessary officers; and twelve companies, organized into three battalions of four companies each, make a regiment. A battery of artillery numbers sixty to eighty privates, a troop of cavalry forty-two to fifty-six, the ambulance corps twelve to sixteen, and the signal corps ten to fifteen, besides officers.³

The constitution provides that captains and subal-

¹ Freeman, *Supplement*, 115, Sec. 31.

² *Public Laws*, 1901, Chap. 167, Sec. 2.

³ Freeman, *Supplement*, 114-116, *passim*.

terns of the militia shall be elected by the written votes of the members of their respective companies, field-officers of regiments by the written votes of the captains and subalterns of their respective regiments, and brigadier-generals by the field-officers of their respective brigades.¹ Major-generals are chosen by the Senate and House of Representatives, each house having a negative on the other. The adjutant-general, who is also at present quartermaster-general, paymaster-general and chief of staff, is appointed by the governor. Major-generals, brigadier-generals, and commanding officers of regiments and battalions appoint their respective staff officers. The commander-in-chief is the governor, and all military officers are commissioned by him.²

Election of officers.

The municipal officers of each town or city in which a detachment of the National Guard is located are required to provide a suitable drill room and armory. For the rent of such accommodations, a sum not exceeding \$100 a year is paid by the State. A suitable rifle range must also be provided. Every company is required to assemble for drill twice a month. A meeting of the commissioned officers of each regiment for military instruction is held at least once a year, while the annual encampment, or muster, brings together annually the whole National Guard for inspection and drill.

Armories and drill.

The enrolled militia are subject to active duty "only in case of war, or to prevent or repel invasion, or to suppress insurrection or riot, or to aid civil officers in the execution of the law." When so summoned, each city, town, and plantation is required to

Active service.

¹ *Constitution of Maine*, Art. VII. ² *Ibid.*, Amendment XXVIII.

furnish its quota, credit being given for such representatives as it may have in the National Guard.¹ If a sufficient number do not volunteer in response to the call, a "draft" may be ordered, names being drawn by lot from the enrolled list.

Domestic
disorder.

The provision for calling out troops to suppress domestic violence reads as follows: "When there is, in any county, a tumult, riot, mob, or a body of men acting together by force with intent to commit a felony, or to offer violence to persons or property, or by force and violence to break and resist the laws of the State, or of the United States, or when such tumult, riot, or mob is threatened, and the fact is made to appear to the commander-in-chief, or any justice of the supreme judicial court in term-time or vacation,² the commander-in-chief may issue his order, or such justice may issue a precept, directed to any commander of a brigade, regiment, or company, directing him to order his command, or a part thereof, describing the kind and number of troops, to appear at the time and place therein specified, to aid the civil authorities in suppressing such violence and supporting the laws."³

Military
discipline.

For the maintenance of discipline, particularly when troops are in active service, a strict code of military law, swifter and more effective than the ordinary criminal law of a State, is relied upon. The trial of offences is by a court-martial, composed of officers and acting without a jury. Punishment may

¹ Freeman, *Supplement*, 110.

² The justice would be appealed to only in case of the absence of the governor or his refusal to act.

³ *Public Laws*, 1899, Chap. 128, Sec. 7.

extend to fine, imprisonment, dishonorable discharge, or other suitable penalty, but the governor as commander-in-chief may grant pardons or other mitigations of sentence. Where, in cases of invasion or rebellion, the disorder and danger are so great that the ordinary operations of government cannot go on, "martial law" may be declared, and all persons, both within and without the military service, be brought for a time under the absolute control of the military commander; but the suspension of the privilege of the writ of *habeas corpus* and other civil guarantees may not continue longer than is imperatively necessary.¹ Military rule is of necessity arbitrary rule, and its extension into the sphere of ordinary civil life is carefully guarded against by the constitution and laws.

Martial law.

The legislature in 1899 authorized the establishment, as a part of the National Guard, of a naval reserve and provided for its organization.² The system of administration and instruction conforms as near as may be to that of the navy of the United States, duty being performed afloat when possible; otherwise, the government of the naval reserve follows that prescribed for the National Guard.

Naval reserve.

61. PENSIONS

Any person who served by enlistment in the army or navy of the United States during the Civil War, on the quota of Maine, and any person who saw similar service and who, though not on the quota of Maine, was a resident of Maine at the date of his enlistment, and has resided in the State five years at

Who may receive pensions.

¹ *Constitution of Maine*, Art. I., Sec. 10.

² *Public Laws, 1899*, Chap. 46.

the time of his application for a pension, and also any person who saw similar service on the quota of Maine in the war with Spain, in 1898, and who is disabled by wounds or disease, and in consequence unable to earn a livelihood for himself and those dependent upon him, is entitled, if honorably discharged from the service, to a pension of not over \$8 a month.¹ Similar provision is made for dependent widows, children, parents, and sisters.

The execution of the law is devolved upon the governor and council.² The amount appropriated for pensions in 1902 was \$80,000.

62. STATE CHARITIES

Local care
of poor.

The support and care of the dependent poor, or paupers, devolve in Maine on the local communities, money for the purpose being raised as are other local taxes. Persons in need of relief found in unincorporated places are under the care of the overseers of the poor of the oldest incorporated adjoining town, or the nearest incorporated town where there are none adjoining, and if the persons have no legal settlement³ in the State, the amount expended for their assistance is reimbursed by the State. Persons who are partially dependent are usually assisted at their homes, being frequently classed in town reports as "poor out of the house"; those who are wholly dependent are committed to the poorhouse. Honorably discharged soldiers and sailors of the Civil War, however, if dependent, are not considered as paupers,

Soldiers and
sailors.

¹ *Public Laws, 1899*, Chap. 10.

² A pension clerk is appointed for clerical and office work.

³ See *Revised Statutes* (1883), Chap. 24, Sec. 1.

nor may they or their families be sent to the poor-house.¹ With the two exceptions just named, paupers are not entitled to vote in any election.

The orphan children of honorably discharged soldiers and sailors are provided for at State expense at the Bath Military and Naval Orphan Asylum, established in 1866. The asylum is not a State institution, but four of the trustees are appointed by the governor.

Military
and Naval
Orphan
Asylum.

For the care of the insane the State maintains two hospitals, the Maine Insane Hospital at Augusta, and the Eastern Maine Insane Hospital at Bangor. The control of both institutions is vested in a board of seven trustees, one of whom must be a woman, appointed during the pleasure of the governor and council, with three years as the maximum term under any one appointment. The trustees appoint the superintendents, who must be physicians, and other necessary officers, and are required to make frequent inspections and written reports. The number of patients who can be accommodated is apportioned among the towns according to population.

Insane
hospitals.

Insane persons not otherwise provided for by relatives or friends are committed to one of the hospitals by the municipal officers, after proper examination. If the relatives are unable to pay for the patient's support, the sum of \$1.50 a week is charged to the State, and deducted from the amount charged to the town. Insane criminals are usually confined in the insane department of the State prison.

Commit-
ment.

The Maine School for the Deaf, at Portland, passed into the control of the State in 1897,² having

School for
the Deaf.

¹ Freeman, *Supplement*, 191.

² *Private and Special Laws*, Chap. 446.

been conducted since its establishment, in 1876, as a private institution. The managing body is a board of five trustees, appointed by the governor and council for five years. The school is open to deaf and dumb children not less than five years old.

The blind.

Blind children may, on the request of their parents or guardians, be sent for ten years to the Perkins Institute for the Blind, at Boston, the entire expense being borne by the State. The administration of the law is in the hands of the governor and council, who are specially charged to make no distinction "on account of the wealth or poverty of the parents or guardians of such children."¹

Private institutions.

The State does not maintain general hospitals or similar institutions, but considerable grants in aid of such as are maintained by private associations or corporations are commonly made by the legislature. While, in a strict constitutional view, such grants are perhaps open to question, the fact that hospitals and infirmaries usually perform a large amount of gratuitous service, and depend mainly upon gifts for their support, gives them a quasi-public character which is regarded as sufficient to justify appropriations of public money for their benefit.

63. CORRECTIONAL INSTITUTIONS

In dealing with the defective and unfortunate classes, the aim of the State is, while removing such individuals from immediate contact with the rest of the community, to secure for them such reasonable degree of happiness as their circumstances will per-

¹ Freeman, *Supplement*, 141.

mit, and to give them, as far as possible, the advantages of education. Nothing but moral and social injury could result from allowing the insane or feeble-minded, the helpless or dependent blind and dumb, to mingle freely with their more fortunate fellows, and they are accordingly provided for in public institutions, where they can be given skilled care and supervision.

In the case of offenders against the law, however, the problem of the State is of a different sort. Not only must the State punish the criminal for his crime, but it must also do what it can to reform him in order that the likelihood of the commission of further offences by him may be diminished. While the fear of punishment doubtless restrains many who without it would not hesitate to break the law, it does not always so act, particularly in the case of those who have frequently offended; on the other hand, those whose characters are not yet formed may often be reclaimed by judicious methods at the same time that they are undergoing punishment for offences of which they may have been guilty. The correctional work of the State, accordingly, falls into two classes, that which is punitive and that which is reformatory.

The State
and crime.

Persons convicted of minor offences punishable by short terms of imprisonment are confined in the county jail, where they are under the care of the sheriff and may be employed at any suitable occupation. For adult criminals convicted of more serious offences the State maintains a State prison, located at Thomaston. The supervision of the State prison is vested in the governor and council, but its immediate government and direction are devolved

Jails.

State prison.

upon a board of three prison and jail inspectors, with a warden and other necessary officials and guards. The inspectors and warden are appointed by the governor and council for not more than four years.

Employment
of convicts.

All convicts are regularly employed in some form of labor, preferably in the manufacture of articles not manufactured elsewhere in the State, not more than one-fifth of the male convicts, however, being employed in any one industry at any one time. Articles so manufactured are required to be labelled or branded, "Manufactured at the Maine State Prison."¹ By good conduct a convict can obtain a reduction of the term of sentence to the extent of seven days for each month. The latter provision does not, of course, apply to those sentenced to imprisonment for life.

Inspectors.

The jurisdiction of the inspectors extends also to the county jails. They are required to visit each jail every three months, and are given considerable powers with regard to the repair and management of jails, the removal of prisoners from one jail to another, and similar matters.

Reform
School.

The State Reform School at South Portland is under the control of a board of five trustees, appointed by the governor and council for not more than four years. Any boy between the ages of eight and sixteen years, who is convicted of an offence punishable by imprisonment in a house of correction or county jail, or in the State prison for a term other than life, may be committed to the school for the remainder of his minority. If the boy reforms, he may be discharged; if he grows worse, he is trans-

¹ Freeman, *Supplement*, 518.

ferred to the jail or prison to which his offence would originally have sent him. The inmates of the school are taught farming and useful trades, and may be bound out to service, the probation in the latter case being conditioned on good behavior and obedience to the laws of the State.

The Maine Industrial School for Girls at Hallowell, opened in 1875, was transferred to the control of the State in 1899.¹ The direction of the school is in the hands of a board of six trustees, appointed by the governor and council for five years. The State superintendent of public schools is a trustee *ex officio*, and two of the trustees must be women. The school undertakes to do for delinquent girls what the Reform School does for delinquent boys.

Industrial
School.

64. LABOR

In 1887 there was established a Bureau of Industrial and Labor Statistics, the duties of which are "to collect, assort, systematize, and present in annual reports to the governor, to be by him transmitted biennially to the legislature, statistical details relating to all departments of labor in the State, especially in its relation to the commercial, industrial, social, educational, and sanitary condition of the laboring people, and to the permanent prosperity of the productive industries of the State; and also to inquire into the immediate causes of strikes, lock-outs, or other disturbances of the relations between employers and employees."² The commissioner at the head of the

Bureau of
Labor.

¹ *Public Laws, 1899, Chap. 127.*

² *Freeman, Supplement, 289, 290.*

bureau is appointed biennially on the first Wednesday in February by the governor and council. All State and local officials are required to furnish such information as they possess on the subjects committed to the bureau, when requested, and the commissioner has access, for the purposes of his inquiries, to all State institutions, and to factories, workshops, mines, and other establishments during business hours.

Factory
inspector.

For the enforcement of the law relating to the hours of labor and the employment of women and children in factories and other industrial establishments, there is appointed biennially by the governor and council an inspector of factories, workshops, mines, and quarries. In addition to his other duties, the inspector assists in the collection of statistics and other information desired by the bureau of industrial and labor statistics.¹

Anti-trust
law.

A law to prevent the formation of trusts was passed in 1889,² the State having previously had no law of this character, although the common law had always held "combinations in restraint of trade" to be illegal. Section I. of the act reads as follows:—

"It shall be unlawful for any firm or incorporated company, or any number of firms or incorporated companies, or any unincorporated company, or association of persons or stockholders, organized for the purpose of manufacturing, producing, refining, or mining any article or product which enters into general use and consumption by the people, to form or organize any trust, or to enter into any combination of firms, incorporated or unincorporated com-

¹ Freeman, *Supplement*, 294.

² *Ibid.*, 295, 296.

panies, or association of stockholders, or to delegate to any one or more board or boards of trustees or directors the power to conduct and direct the business of the whole number of firms, corporations, companies, or associations which may have, or which may propose to form a trust, combination or association inconsistent with the provisions of this section and contrary to public policy.”

Violation of the above provisions is punishable by a fine of not less than \$5000 nor more than \$10,000.

65. PUBLIC HEALTH

One of the most important services which the State performs has to do with the prevention and treatment of disease, and the increasing good health of the community as evidenced by the low death-rate is largely due to the vigilance of the State in this direction. The State not only licenses physicians, dentists, and pharmacists,¹ but also takes particular supervision of the treatment of contagious diseases.

At the head of the system of regulation is the State board of health, established in 1885,² and consisting of seven members, six of them appointed by the governor and council, and one, the secretary of the board, chosen by the other six. The term of office is six years, except for the secretary, who holds his office at the pleasure of the board. It is the duty of the board to conduct sanitary investigations and inquiries into the causes and conditions of disease, especially epidemic and contagious diseases ; to advise

State board
of health.

¹ Through a board of registration of medicine, a board of dental examiners, and commissioners of pharmacy, respectively.

² See the law in Freeman, *Supplement*, 156-159.

other departments of the government concerning the location, drainage, etc., of public buildings ; to examine the books on hygiene used in the schools ; and to direct the enforcement of the health laws of the State. The secretary, who is the executive officer of the board, is also superintendent of vital statistics, and under the general direction of the secretary of state collects and publishes the records of births, marriages, and deaths.

Local
boards.

In each town and city there is a local board of health,¹ consisting of three persons appointed by the municipal officers for three years. The municipal officers may also appoint a physician as health officer, who acts as sanitary adviser and executive officer of the board, but such appointments are uncommon save in the larger cities, at least one member of the board usually being a physician. It is the duty of the local board of health to prevent, as far as possible, the introduction and spread of contagious and infectious diseases, to examine and act upon complaints of nuisances dangerous to life or health, and to make by-laws necessary and proper to secure the enforcement of the health laws. For the performance of its duties the board is invested by law with ample and summary powers over both persons and property. An annual report of proceedings, in addition to immediate reports of cases of certain diseases, is made to the State board of health.

Cattle
Commission.

For the detection and prevention of contagious diseases among cattle, horses, and sheep, the State of Maine Cattle Commission, consisting of three persons appointed by the governor and holding office during

¹ The law is in Freeman, *Supplement*, 159-164.

his pleasure, was created in 1889.¹ A quarantine may be established against animals from a locality in which disease is found, and diseased animals may be killed, the owners being paid by the State for the property thus destroyed.

66. THE PROHIBITORY LAW

During the first quarter of the nineteenth century History. public opinion in a number of States began to turn strongly against the almost universal use of intoxicating liquors as beverages. The American Society for the Promotion of Temperance, organized in 1826, declared in 1836 for total abstinence, while the Washingtonian Temperance Society, organized at Baltimore in 1840, sought to reform habitual drunkards. The demand for the suppression of liquor-selling culminated in Maine in the passage, in 1851, of the first State prohibitory law. The law has been amended in one particular or another at almost every session of the legislature since its enactment. In 1884 the principle of prohibition was embodied in an amendment to the constitution.²

Under the "Maine law," as it is often called, The "Maine law." the manufacture and sale of intoxicating liquors, except the sale of liquor for medicinal and mechanical purposes and the arts, are absolutely prohibited. The legal provisions for the enforcement of the law are exceedingly detailed, while the officials upon whom the enforcement falls are given extensive and summary powers. The principal responsibility for the enforcement of the law

¹ Freeman, *Supplement*, 168-172.

² *Constitution of Maine*, Amendment XXVI.

devolves upon the county attorney and the sheriff and his deputies. The penalty for violation of the prohibitory law may be either fine or imprisonment, but the former is the one most commonly imposed.¹

Liquor
agencies.

In order that opportunity may be given for the purchase of liquors for medicinal, mechanical, and scientific purposes, a system of State and local agencies is provided. The establishment of an agency in a town or city rests with the municipal officers, who are authorized to appoint a suitable person as agent for one year. All the liquors kept for sale are required to be purchased of a State commissioner, appointed by the governor and council for four years. The quantity of liquors of various kinds that the commissioner may keep on hand is carefully limited, and all liquors must be analyzed by an assayer before being sold to the towns. Neither the State commissioner nor the local agents are permitted to make any profit from the sales, but each is paid a salary for his services.

Effect of
the law.

No subject connected with the government or social condition of Maine has been so much discussed as the practical working and effect of the prohibitory law. Opponents of the law have claimed that it was either a dead letter, or a license rather than a prohibitory law, and that its pretended enforcement was attended with great and widespread corruption, while the friends of the system, though admitting its imperfections, have insisted that it was, on the whole, as well enforced as other penal statutes, and that the results obtained were superior to those found else-

¹ The legal provisions are to be found in the *Revised Statutes* (1883), Chap. 27, and the corresponding portion of Freeman, *Supplement*.

where under the license or local option systems. The fact that the law has needed repeated amendment, and that its extreme penalties are not commonly imposed, is pointed to by both sides as further proof of the soundness of their respective contention.

The truth seems to be that, while the prohibitory law has not accomplished all that was apparently expected of it, its results, in some respects and in many places, have been beneficent. In the smaller communities and country districts it has been on the whole fairly well enforced. In the cities and larger towns enforcement has been more difficult and irregular, while in a few localities the law has been more or less openly disregarded. Statistics are scanty and hardly reliable, but it seems probable that, in the State at large, the law has been as generally obeyed as have the license laws of some other States. The great merit of the prohibitory law is that, with the exception of a very few cities, it has banished the open saloon with its dangerous surroundings and influences. Whether it can permanently go farther, and put an end to the illegal sale of liquor through other channels, depends upon the public zeal with which the law is sustained.

67. PUBLIC LANDS AND FORESTS

When Maine was admitted to the Union a large part of the land had not yet been taken up by private individuals, but remained the property of the State. The extension of the settled area and the progress of industrial development have, of course, greatly reduced the area of the public domain; but

Public domain.

considerable tracts are still public property, while the State continues to exercise a measure of control over the forests, even where they have passed into private ownership.

Reserved
lands.

The policy adopted by Massachusetts, and continued by Maine after separation, was that of a systematic survey of the public lands at public expense. The first division of the land is into large tracts called townships. In each township is reserved one thousand acres for the benefit of the township, or of the town or plantation that may subsequently be incorporated. These tracts are known as "reserved lands." So long as the township is unincorporated, the reserved lands remain under the care of the State, and the timber and grass may be sold. When a township is incorporated as a town, the reserved lands become the property of the town, the proceeds from their sale, or any other revenue derived from them, being added to the school fund of the town. Many towns in Maine still retain considerable portions of the common lands of which they originally became possessed at incorporation, but the cases appear to be few in which the lands have been made an important source of revenue.

Land
agent.

The immediate oversight of the State lands is intrusted to a land agent, appointed by the governor and council and holding office during their pleasure. The law provides that he shall not, either when appointed or during his term of office, be either directly or indirectly concerned in the lumber business on the State lands, or in the purchase of such lands or the timber and grass on them. Sales of lands are made through him, and deeds on behalf of the State are

executed by him. The land agent and governor and council constitute a board under whose direction all surveys are made.

Lands for actual settlement are sold at a uniform price of thirty-five cents an acre, not more than two hundred acres being sold to any one person. In payment the purchaser gives two notes, payable in one and two years in labor on the roads in the township where the land lies, the purchaser being further required to establish his residence on the land within two years from the date at which it is assigned to him.

Sale of lands.

If the conditions of the purchase are duly performed, the purchaser receives a deed of the land; if not, the land is forfeited to the State and may be resold.

Timber land not suitable for settlement is offered for sale in large tracts to the highest bidder, a minimum price being fixed by the land agent. In addition, the land agent may grant permits to individuals to cut and haul timber on State lands, the cutting being done under the direction of surveyors appointed by the agent. Trespassers on the public lands are liable to suit in any county for the injury done.

Timber lands.

The land agent is also the forest commissioner of the State. As such it is his duty to study and report on the condition of the forests, the methods and effects of cutting timber, the results of fires and wasteful cutting, and the effect of the diminution of the forests on the water supply and water power of the State. Special laws are enacted to prevent forest fires and punish the persons or corporations responsible for them. The selectmen of towns are *ex officio* forest fire wardens for their respective towns; fish and game wardens are State fire wardens; and

Forest commissioner.

forest fire wardens for unorganized places are annually appointed by the county commissioners.

68. FISH AND GAME

Fish and
game com-
missioners.

The popularity of Maine as a resort for hunting and fishing, and the large money value of the business which these sports bring into the State, has led to the enactment of elaborate laws for the preservation of fish and game. For the enforcement of the laws a board of commissioners of inland fisheries and game is provided for. Of the three commissioners, one is the State land agent, the others being appointed for three years by the governor and council. Subject to the laws of the State, the commissioners are empowered to regulate the times and places of taking fish and game, and may prohibit the taking of any kind of game or fish for not more than four years. They also prosecute violations of the game laws, being aided in the enforcement of the law by fish and game wardens, appointed by the governor and council on the recommendation of the commissioners. No person may act regularly as a guide for inland fishing or forest hunting unless registered by the commissioners, nor keep a sporting camp without a license.

Game
wardens.

Sea and
shore
fisheries.

The control of the State over salt-water fishing is exercised through a commissioner of sea and shore fisheries, appointed for three years by the governor and council. The duties of the commissioner extend to the supervision of the fisheries and their products taken from tide waters within the State, including the enforcement of laws relating to the packing and transportation of fish. He is assisted in his duties

by fish wardens, and by inspectors in places where fish are cured or packed for exportation.

69. INDIANS

Of the numerous Indians who for many years occupied the territory of what is now the State of Maine, there remain only the remnants of two tribes, the Penobscot and Passamaquoddy. In all essential respects they are the wards of the State, but the method of dealing with them is a curious combination of tribal independence and State guardianship.

For each tribe there is an agent, appointed by the governor and council and holding office during their pleasure, whose duty it is to care for the property belonging to the tribe and supervise the expenditure of the money appropriated by the State for their benefit. The landed property of the tribe is unalienable, but equitable parts of it are assigned to individuals or families for cultivation or other use, and may be by them transferred to other members.¹ The money paid by the State for such Indian lands as have passed into its control is held as a trust fund, the income being expended for the support of the tribes, in addition to special appropriations made by the legislature from time to time. Considerable income is also derived from the lease of land and territorial rights, such as mill, logging, and rafting privileges.

Indian agents.

Indian funds.

Membership in the Penobscot tribe can be acquired only by birth, or by adoption, or by marriage of women of Indian descent to a male member of the

Penobscot tribe.

¹ Indians of a tribe may convey land to each other, but not to whites; and no Indian is allowed to accumulate more than his fair share.

tribe.¹ For the regulation of the adoption of members, the tribe chooses annually a tribal committee of twelve members,² equally divided between the so-called "old party" and "new party."³ The committee meets annually with the superintending school committee of Oldtown for the purpose of informing the school committee as to who are members of the tribe. Membership and its rights are regulated by statute, reserving to the tribal committee the right of adoption. Abandonment of the tribe, or residence for five years outside the reservation, forfeits membership, and in consequence, all claim to a share in the rentals or other income of the tribe.

Government.

Once in two years the Penobscot Indians elect a governor and lieutenant governor for the tribe, and a representative to the State legislature.⁴ The Passamaquoddy Indians, now divided into two groups, elect a governor, a lieutenant governor and seven councillors for each division, and jointly a delegate to the legislature. The Indian representatives in the legislature have seats in the House of Representatives, but no votes. The property and persons of Indians are not taxed, nor can the right of suffrage be exercised, so long as the tribal connection is maintained. The only way, therefore, by which an Indian may become a citizen is to renounce his tribal allegiance and live independently.

¹ *Public Laws, 1901, Chap. 324.*

² *Ibid., 1899, Chap. 30.*

³ The beginning of the division into an "old party" and a "new party" dates from about 1830, the grounds of the division being the personal relations between the sagamore, the highest officer, and the sachem, the second in rank. The parties seem to have been formally recognized about 1838.

⁴ Freeman, *Supplement, 107.*

CHAPTER X

REVENUE AND EXPENDITURE

70. REFERENCES

The general laws regarding taxation are set forth in Chap. 6 of the *Revised Statutes* (1883), and the corresponding portions of Freeman's *Supplement*; but important changes, especially in the taxation of corporations, have been made since the date of the latter volume, and reference must therefore be had to the session laws of 1897, 1899, and 1901. Detailed exhibits of the financial condition of the State are published biennially in the reports of the treasurer and the board of State assessors. The recommendations of the governors in their biennial messages are also important. Cities, counties, towns, and village corporations usually publish fairly satisfactory statements of their financial condition. On taxation, see particularly Verrill, *Maine Civil Officer*, Chap. 4.

Plehn, *Introduction to Public Finance*, Adams, *The Science of Finance*, and Bryce, *American Commonwealth*, I., Chap. 43, are important general references.

71. RECEIPTS AND EXPENSES

While the successful performance of governmental duties, whether by the State or by the local community, depends upon the ready coöperation of the citizens and the cheerful subordination of personal to public interests, the conduct of government business demands regular and adequate supplies of money as much as does the business of any individual or corporation. The officers of the government must be paid for their services, necessary public buildings must be built and maintained, schools and philanthropic institutions must

Public need
of money.

be established and supported, works of public improvement must be carried on, and the defence of the State against invasion or domestic violence must be provided for. If the receipts are not sufficient to meet the necessary expenditures, money must be borrowed, to be repaid eventually with interest. In hardly any direction can the State move forward at all without some outlay of money, and the more rapid and vigorous the growth of the State, and the greater the multiplicity and variety of its interests, the greater in proportion must be its scale of expenditure.

Comparison
with private
expenditure.

There is one very important difference, however, between the expenditure of a State and that of a private individual or corporation. Expenditures on private account, in the regular course of business, are made with a view to a return, or profit, on the amount laid out. When men engage in business, they do so for the purpose of making money. The State, however, is not a money-making institution. The money which it takes from its citizens from year to year is intended to be only sufficient in amount to cover the expenses of the year, and carefully itemized statements of receipts and expenditures are published in order that the people may see, not only the sources from which the funds of the State have come, but also the directions in which they have been expended.

Taxation.

The revenue of a State is received from taxation. The power of taxation, perhaps the most important power which a government possesses, is, in general, unlimited. All real and personal property in the State, and certain personal property outside the State belonging to inhabitants of the State, is subject to taxation at the discretion of the legislature. In

the interest of public policy the legislature levies taxes in different ways on different kinds of property, and exempts certain property in whole or in part, but the differences may, at any time, be done away with, and the exemptions abolished, at the discretion of the law-making body, except such exemptions as are guaranteed by the articles of separation from Massachusetts, or arise from the constitutional relation of the State to the Federal Government.

The income of the central government is derived from a variety of sources. Somewhat less than half the amount comes from the towns and counties in the form of a "State tax" apportioned among them. About the same amount is derived from taxes on corporations, those on railroad and insurance companies and savings banks being the most considerable, and from licenses or fees, the remainder being made up of a number of small items. The expenditures are still more diversified. The largest single item of expense, and more than one-third of the whole, is for schools, the other considerable items being for salaries of State officers, the support of public institutions, grants to academies, hospitals, and societies, printing, pensions, and interest on the public debt.

In 1890 the receipts from various sources were \$2,014,007.88, and the expenditures \$2,014,651.03. The small excess of expenditures over receipts was offset by cash on hand at the beginning of the year to the amount of \$199,522.16, so that the fiscal year ended with a balance in the treasury of \$198,879.01.

The receipts of counties, towns, and cities, while in the aggregate many times greater than those of the State, come also from the taxation of real and per-

Sources of
State income.

Local
receipts.

sonal property within their limits, and from fees and licenses of various sorts. In addition a part of the amount paid to the State by local communities comes back again in the form of grants to schools, libraries, and other local causes. The local governments, however, are much more restricted than is the State government in regard to the amount and kind of taxes they may collect and the objects for which money may be expended.

Borrowing.

Where the State or a local community has to provide for large expenditures in addition to its ordinary expenses, as, for example, for the erection of public buildings, the necessary money is usually borrowed by means of an issue of bonds. By the constitution, the State debt, except such as may be incurred in suppressing insurrection, or in repelling invasion, or for war purposes, is limited to \$300,000,¹ and that of cities and towns to five per cent. of their valuation.² The State was, however, authorized in 1868 to issue bonds to the amount of \$3,500,000 to reimburse the towns, cities, and plantations for the expenses incurred by them for military purposes during the civil war,³ and both the State and the towns may contract temporary loans to be paid out of the proceeds of taxes during the year for which they are made.

72. TAXES

Nature of taxes.

Taxes may be defined as "all the regular impositions made by government upon the person, property, privileges, occupations, and enjoyments of the people

¹ *Constitution of Maine*, Art. IX., Sec. 14.

² *Ibid.*, Amendment XXII.

³ *Ibid.*, Art. IX., Sec. 15.

for the purpose of raising public revenue.”¹ A tax differs from an arbitrary levy or exaction by being imposed in accordance with some general rule or principle; but taxation can never be made to rest with precisely equal weight upon all citizens. It can never be a valid objection to a tax, accordingly, that it discriminates among those who pay it, unless the discrimination is obviously arbitrary or unjust; nor is a tax unwarranted because its effect is to divide people into classes, provided that all within the class are treated alike.

The power of the State government over taxation is absolute, save as it is restricted by the constitution of the State or that of the United States. The State may, therefore, prescribe the objects to be taxed and the method by which the tax shall be levied and collected. It is not limited as to the amount or rate of taxation, and it may, at its discretion, grant exemptions, complete or partial, as it thinks wise. Since, however, the object of taxation is to raise money for public purposes, a tax whose chief effect is to benefit individuals, and whose public purpose is only ostensible or incidental, is unconstitutional. A town, for example, may not vote money to an individual or a corporation to aid in the establishment of a manufacturing industry within the town.²

Power over
taxation.

While the government undoubtedly might, if it chose, raise its entire revenue from a few sources, or even from a single source, the prevailing opinion in this country demands that practically all classes

Subjects of
taxation.

¹ Cooley, *Constitutional Law*, 56.

² See the case of *Allen v. Jay*, 60 *Maine Reports*, 124. But this decision seems in a few instances to have been disregarded.

of private property shall be made to contribute by taxation to the support of the government. In the imposition of taxes, accordingly, the law aims to reach not only the usual kinds of real and personal property, such as land, buildings, domestic animals, and stocks and bonds, but also the property and business of corporations, especially railroad, telegraph, telephone, express, banking, and insurance companies, and, in some instances, the occupations of individuals. All property exceeding \$500 in value, passing from one person to another by will or devise, except for the use of legal heirs or of educational, charitable, or benevolent institutions, is subject to taxation for the benefit of the State.¹ Further, each adult male inhabitant, unless specially exempted by law, is liable for a poll-tax, in amount not greater than three dollars, in addition to any tax which he is liable for on account of his real or personal property.²

Imposition
of taxes.

The amount of the State tax levied upon the towns and cities is ascertained by deducting from the total amount appropriated by the legislature the estimated income from all other sources ; that is, whatever revenue is not otherwise provided for must be raised by a general levy on the taxable property of the State. In towns and cities, where the sources of revenue are comparatively few, nearly all of the money needed for municipal expenses, except that which comes from the State, is voted annually, in towns by the town meeting, in cities by the city council. Neither

¹ *Public Laws, 1901*, Chap. 225. The rate is four per cent. The former rate (*Public Laws, 1895*, Chap. 96) was two and one-half per cent.

² *Revised Statutes (1883)*, Chap. 6, Sec. 38.

in the central nor in the local governments is any tax levied until the taxing power—either the people or their representatives—has authorized it and prescribed the objects to which it shall be devoted. Whether the tax shall be large or small depends upon the will of the body authorized to impose it, but while the expenses of government naturally increase with the growth of population and business interests, changes in either the amount or the rate of taxation from year to year are usually slight.

73. ASSESSMENT OF PROPERTY

The amount of the tax which each person pays is regulated, in general, by the amount levied and the ratio which the value of his property bears to the value of all the property taxed. If there are five hundred taxpayers in a town, they will together pay all the taxes levied by the town, while the share which each will pay will depend upon the value of his property as compared with the value of all the property on which taxes are levied. In order, therefore, that the apportionment of taxes may be equitable, and the share of each taxpayer be properly determined, a valuation of the taxable property of the community must first be made.

Assessment
of taxes.

The duty of assessing the value of property in towns, cities, and plantations, and of determining the amount of tax which each person shall pay, is devolved by law upon the assessors. The assessors, three in number, must be elected by the municipality, under penalty of a fine in case of failure, but selectmen may act as assessors if none others are specially chosen. Every inhabitant is required to submit

Local
assessors.

annually to the assessors a list of such property, not by law exempt from taxation, as he was possessed of on the first day of April.¹ In case no list is presented, the assessors ascertain as well as they can the amount of the property and determine its value.² The number of persons liable to the payment of a poll-tax is also ascertained. The amount of tax voted by the town at a town-meeting, or by the city through the legislative branch of its government, and the share of the State and county taxes, are then combined and assessed upon the taxpayers in proportion to the value of the taxable property of each.³ By dividing the amount of taxable property of the town by the amount of tax to be raised, the rate of taxation, usually expressed as so many mills on a dollar, is ascertained, and the share of each taxpayer computed.

County taxes. The estimates of the amount of tax required for county expenses are prepared biennially by the county commissioners, approved by the legislature, and then apportioned among the towns in accordance with the last State valuation of the county, the amount of the tax being divided between the two years for which the estimate is made.

State tax. The State tax authorized by the legislature is apportioned among the towns, each town being notified annually by the State treasurer of the amount which it is required to pay. The three kinds of taxes, therefore, — State, county, and

¹ Failure to submit such list forfeits the right to appeal from the assessment made.

² The list submitted is not conclusive upon the assessors. They may alter it if they know it to be incorrect.

³ An amount equal to five per cent. of the tax — known as an “overlay” — may be added by the assessors to cover abatements, etc,

town, — are assessed upon individual taxpayers by the town assessors, the town tax, however, being the only one whose amount is directly determined by the town itself.

In order that the general estimate of the value of property may be uniform throughout the State, and a just proportion of the State and county taxes be borne by every community, the action of the local assessors is subject to review by the board of State assessors.¹ Once in two years the State assessors are required to visit each county, and there, in conference with the assessors from the towns, examine the records of valuation and investigate any charges of concealment of property liable to assessment. A statement of the assessed valuation of each local subdivision of the State, as thus adjusted by the State assessors, is filed biennially with the secretary of state, and becomes the basis for the computation and apportionment of the State and county taxes for the next two years.² The State assessors also form a board of equalization for the purpose of equalizing the State tax among the towns and unorganized districts.

Board of
State
assessors.

74. COLLECTION OF TAXES

The fair and equitable determination of the value of property for purposes of taxation calls for mature experience and sound judgment on the part of assessors, and we have seen how the action of the local board is reviewed by a State board, and the valuation equalized as far as possible throughout the State.

¹ See the act in Freeman, *Supplement*, 89-93.

² The *Constitution of Maine* (Art. IX., Sec. 7) requires a general valuation to be taken at least once in ten years.

No such opportunity for difference of opinion, however, exists in the matter of the collection of taxes, since that is a subject which can be definitely regulated by law, and we accordingly find that the central government not only still utilizes the local governments, but relies almost exclusively upon their efforts, only interfering itself when the town or city has failed to perform the duties prescribed for it in the statutes.

Collector.

When the list of taxable persons in the town, with the amount which each is to pay, has been completed by the assessors, it is turned over to the collector, whose duty it is to see that the tax is paid. The town may, and usually does, decide at the town-meeting the date at which taxes shall become due and payable, and also, if it chooses, the date at which interest shall be added to taxes still unpaid. The collector is usually paid a commission, either on the whole amount of the "commitment," or on the amount collected. As the money is received it is turned over by the collector to the town treasurer, who transmits to the county treasurer and the State treasurer the amounts due them, and holds the balance subject to the order of the municipal officers. Proceedings in cities are similar to those in towns save that the taxes are commonly paid to the collector at his office instead of being collected in person as is often the case in small towns.

Delinquent
taxes.

The provisions of law for the collection of unpaid taxes are elaborate, and too detailed and technical to be dwelt upon here. In general, an unpaid tax may be collected by seizing upon the real or personal property of the delinquent and selling it at public

sale, the surplus proceeds, if any, being returned to the original owner. When real estate is sold for taxes, the deed is not at once issued to the purchaser, but is deposited with the town treasurer, who holds it for two years, if the former owner is a resident, or one year, if a non-resident, within which times the owner may, by paying the tax, together with charges and interest, redeem the property. The collector may also bring suit against a delinquent to compel payment of a tax. In all cases, the town has a "lien," or claim, on all real property against which a tax has been assessed, which lien takes precedence of all other claims on the property, and continues in force until the tax is paid.

The assessors of plantations have the same powers as assessors of towns in regard to the valuation of property and the assessment of taxes, and plantations pay their proportionate share of the State tax. Lands in unincorporated places are assessed by the county commissioners, subject to review by the board of State assessors, and are liable for their share of State and county taxes. The taxes on wild lands are paid to the State treasurer, who credits the counties with the amounts severally due them. The county commissioners may also levy taxes on lands in unincorporated places for the construction and maintenance of roads.¹

Plantations.

Unincorporated places.

75. TAXATION OF CORPORATIONS

In Maine, as in most of the States, the taxation of corporations is made the subject of special regulation. Every corporation organized under the laws of the

General provisions.

¹ But account is to be taken of the localities particularly benefited by the road, and part of the expense may be levied on the county.

State, except those for religious, charitable, educational, or benevolent purposes, and those for the maintenance of libraries and cemeteries, is required to pay to the State annually a franchise tax of from \$5 upward, according to the amount of its authorized capital.¹ The real estate of a corporation is taxed where the property is. The stock, except that of manufacturing corporations, is taxed to its owners where they reside, if known to be residents of the State, but if the residence of the owner is outside of the State, or unknown, the stock, together with that of manufacturing corporations, is taxed, if taxed at all, in the town where the corporation is located or transacts its ordinary business.

Banks.

Foreign banking associations, — that is, banking corporations not chartered under the laws of Maine or of the United States, — maintaining branches in the State, pay to the State an annual tax of one-fourth of one per cent. on the amount of business done by them in the State,² while banks and trust companies incorporated in the State pay an annual tax of one-half of one per cent. on the amount of their interest-bearing time deposits, less certain exemptions.³ The taxation of savings banks is determined by the value of the franchises of the several institutions as fixed semi-annually by the State assessors on the report of the bank examiner, the tax being seven-eighths of one per cent. on the value so ascertained.⁴ More than one-fifth of the receipts of the central government are derived from this source. Loan and building associations pay to

Savings
banks.Building
associations.

¹ *Public Laws, 1901, Chap. 229, Sec. 3.*

² *Ibid., 1899, Chap. 123.*

³ *Ibid., 1901, Chap. 286.*

⁴ *Freeman, Supplement, 96.*

the State an annual tax of one-fourth of one per cent. on the amount of capital dues paid in by the shareholders, payment being made semi-annually. Insurance companies are taxed on the premiums received under contracts for the insurance of life or property.

Insurance
companies.

The taxation of railroad corporations takes the form, first, of a municipal tax on the real estate of the company; second, of an annual excise tax by the State for the privilege of exercising its franchise; and, third, of a small tax imposed for the purpose of defraying the expenses of the State board of railroad commissioners. The excise tax is levied on the gross receipts for transportation. When the average receipts do not exceed \$1500 per mile, the tax is one-half of one per cent., increasing one-fourth of one per cent. with each additional \$500 of average gross receipts per mile, the maximum being four per cent.¹ Of the amount thus obtained there is refunded to the cities and towns in which railroad stock exempt from other taxation is held, an amount equal to one per cent.

Railroads.

of the value of such stock. Palace and sleeping car companies pay to the State an annual tax of four per cent. on their gross earnings from business done wholly within the State, the cars and other equipment being exempt from local taxation.²

Palace cars.

Street railroad corporations are subject to the same laws regarding taxation as are other railroad corporations, except that the tax is fixed at three-twentieths of one per cent. on gross receipts not exceeding \$1000 per mile, with an increase of the same amount for each additional \$1000 per mile.³

Street
railroads.

¹ *Public Laws, 1901*, Chap. 145.

² *Ibid.*, Chap. 174.

³ *Ibid.*, Chap. 156.

Telegraph
and tele-
phone com-
panies.

The same general principle is followed in the taxation of telegraph and express companies. Telegraph and telephone companies pay to the State, on their gross receipts from business in the State, a tax of from one-fourth of one per cent. to four per cent., and are exempt from other taxation save on their real estate, which is subject to municipal taxation, the amount of the latter, however, being deducted by the State assessors from the State tax.¹ Express companies pay a tax of two per cent. on the receipts from their business, the same exemptions and deductions being made as are provided for telegraph companies.²

Express
companies.

76. EXEMPTIONS

Limitations
on State
power.

While the powers of the State in reference to taxation are thus exceedingly comprehensive, the State does not, as a matter of fact, attempt to tax all the property subject to its control, but grants numerous and liberal exemptions. No State may tax any property of the United States within its limits, or the salary of any United States official, nor may it impede by taxation the free movement of persons and commodities into and from the State. The State does not, of course, tax its own property, nor may any town, city, or county do so.

Exemptions.

In the interest of what it regards as sound public policy, the State further relieves from the obligation to pay taxes certain classes of persons and property. The polls and estates of Indians and of persons who, by reason of age, infirmity, and poverty are, in the judgment of the assessors, unable to pay, together

¹ *Public Laws, 1901*, Chap. 201.

² *Ibid.*, Chap. 147.

with the polls of persons under guardianship, and of soldiers and sailors who receive pensions from the State, are wholly exempt. Household furniture, not exceeding in value \$200 for a family, wearing apparel, farm implements, mechanics' tools, and musical instruments of a value of not more than \$15 are also exempt, as are mules, horses, neat-cattle, swine, and sheep, if less than six months old; and hay, grain, potatoes, orchard products, and wool, owned by and in possession of the producer.

Exemptions of personal property rest upon the theory, obviously reasonable and proper in itself, that an individual ought not to be compelled to pay taxes on property indispensable to his health and comfort, or to his activity as a wage-earner, or which is necessary for his maintenance rather than a means to his financial profit. If a contribution to the expenses of the government would tend to impoverish the citizen or lower his standard of living, the community would not benefit by the exaction of the tax. In the case of educational, religious, and charitable institutions, on the other hand, the contribution which they make to the intellectual, moral, and physical happiness and well-being of the community is so much greater than the financial benefit which would accrue from taxing them, that intelligent public opinion has for generations approved their exemption also. Thus, churches and their furniture, parsonages not exceeding \$6000 in value, and personal property of like amount,¹ held and used by a religious society for religious purposes and not as sources of income, are exempt, together with the personal property of all

Theory of exemptions.

Educational, charitable, and religious institutions.

¹ *Public Laws, 1897, Chap. 287.*

literary and scientific institutions, with real estate occupied by them for their own purposes, or by any of their officers as places of residence, and the real and personal property of all benevolent and charitable institutions incorporated by the State. A college having real estate purchased prior to 1889, and liable to taxation, is reimbursed by the State to an amount not exceeding \$1500 on the annual tax paid.¹

77. PUBLIC EXPENDITURE

It was pointed out at the beginning of this chapter that the object of taxation was to raise money for public purposes, and that while considerable discretion must be allowed to the legislature in determining what is and what is not a public purpose, the expenditure for private benefit of money raised by taxation is wholly unwarranted. For protection against such unconstitutional expenditure, however, reliance is placed on the vigilance and self-interest of the taxpayer, since the courts of law do not act of themselves, but only when a *bona fide* case is brought before them.

In the expenditure of public money both the State and the local governments are hedged about with many restrictions. The laws are explicit and detailed in regard to the purposes for which the money of the community may be spent, and the various individuals through whose hands money passes are held to strict accountability for its safe keeping and proper use, either by means of elaborate book-keeping, or the publication of accounts, or the giving of personal security. The safeguards are at present somewhat

Legal restrictions and safeguards.

¹ Freeman, *Supplement*, 68.

better in towns and cities than in the central government. The financial accounts of towns and cities are subject to inspection at least once a year by an auditor,¹ who examines bills, receipts, bonds, and cash on hand, and makes a public report. There is as yet no State auditor, nor any entirely satisfactory provision for checking the accounts of the State treasurer. As the matter stands at present, the books of the treasurer are audited by a committee appointed by the governor and council, but this method does not give the State the benefit of either frequent or expert examination of its accounts, and is not the one which has commended itself to States that have paid the most attention to the management and oversight of their finances.

In the central government no money may be drawn from the treasury save on the warrant of the governor and council, and in accordance with an appropriation made by the legislature.² In cities orders are drawn by the city treasurer in accordance with appropriations voted by the common council or aldermen; while in towns all appropriations are made by the town-meeting. In both central and local governments appropriations are commonly detailed, specific sums being appropriated for specific purposes, so-called "lump sums" being rarely placed at the disposal of the municipal officers to expend at their discretion.

When the State, or one of the local governments, borrows money for other than a temporary purpose, it issues a series of bonds, bearing interest, and fall-

Appropriation and payment.

Bonds.

¹ The law provides for but one auditor, but some towns elect two, representing different political parties.

² *Constitution of Maine*, Art. V., Part IV., Sec. 4.

ing due, usually, in equal amounts from year to year until all are paid. Provision for the payment of interest, accordingly, and for the principal of the bonds as they successively mature, must be made annually by raising a specific amount for that purpose. If, as is sometimes the case, the bonds do not fall due until some years after they are issued, funds for their payment are accumulated in what is called a "sinking fund," in order that the whole amount of the loan may not have to be raised by taxation in a single year.¹

Temporary
loans.

While the government is not a money-making institution, and raises no more money from year to year than it needs for the expenses of that year, it frequently happens that the receipts from taxes do not come in with sufficient regularity or rapidity to keep the treasury supplied at all times with the necessary funds for current needs. In such cases the deficiency is met by making a "temporary loan," repayable with interest during the year out of the proceeds of taxes. Many towns and cities regularly appropriate money for the payment of interest on such loans, as does the State legislature for similar loans for State purposes. Such loans are not subject to the constitutional provisions limiting the amount of State and municipal indebtedness.

78. VILLAGE CORPORATIONS

It is frequently the case that a part of the inhabitants of a town — usually those in the most populous

¹ The sinking fund is usually invested for the time being in interest-bearing securities.

section — desire to take measures for their convenience or protection, or for the general benefit or improvement of the immediate locality, the expense of which the town as a whole is either unable or unwilling to assume, or which it could not assume without exceeding the limit of municipal indebtedness fixed by the constitution. In such a case the portion of the town which desires to take the action in question may be erected by the legislature into what is called a village corporation.

The village corporation, though comprising a certain portion of the area of the town and the inhabitants within that area, is a financial and not a governing organization. Its objects may be the organization and maintenance within its limits of a fire department, the construction of sewers or waterworks, the building of sidewalks, the lighting and policing of streets, or any other of the numerous public activities in which the community may see fit to engage, but with the normal administration of the town as a political subdivision of the State it has nothing to do.

Nature and
objects.

In its general organization and powers, however, the village corporation follows the model set by the town.¹ Its officers are a clerk, treasurer, collector, three assessors, and such others as may be necessary. The officers are chosen annually by the voters within the limits of the corporation, — all persons liable for poll-tax or entitled to vote for representatives being members and voters, — and have the powers of corresponding officers of towns. Money voted by the

Organization
and work.

¹ The acts of incorporation will be found among the Private and Special Laws.

corporation for the purposes for which the corporation is formed is assessed by the assessors on polls and estates, and collected by the collector in the same way that town taxes are assessed and collected. The assessors may use the last town valuation as the basis of their own, or may make a new one if they see fit. The assessors are also the general administrative officers of the corporation, and have charge of its affairs and the expenditure of its money. The corporation may make necessary rules and by-laws, and its night watchmen and police, if there be any, have within the limits of the corporation the powers of constables in criminal matters.

Relation to
town.

The creation of the village corporation is an interesting attempt to remedy an obvious defect in the system of local government in Maine. Every town comprises two distinct kinds of areas: one or more places, familiarly called "villages," in which the population is relatively compact and dense, and a considerably larger rural area in which the population is thin and scattered. The two parts differ widely, not only in numbers, but also in wealth, prosperity, and economic and social needs; but the laws for the government of towns ignore differences of locality, and deal with the town as though it were in all respects a unit. The result is the development of the village corporation, for the benefit of the populous part of the town on its financial or economic side. None of the things done by the corporation are of a nature not to be done with propriety by the town, but since they are limited and not general in their interest or application, the inhabitants who are immediately concerned are given the direction of them. The

citizen thus finds himself subject to the jurisdiction of two bodies, one political or governmental, the other financial, both operating within the same area, dealing with the same persons, and affecting the same property.

The village corporation is thus a supplement to the town on its financial side. Its officers are frequently the same men as the corresponding officers of the town, and friction between the two is rare. In order, however, to ascertain the amount of taxes actually paid in a community for local purposes, the tax paid to the corporation, where there is one, must be added to that paid to the town. The corporation itself, though it enjoys the rights and privileges granted by law to corporations in general, is of course not taxable, since it has no capital stock and pays no dividend.¹

79. GENERAL OBSERVATIONS

No State has, or probably ever will have, a perfect system of taxation, or one which will not, at particular times or in particular cases, seem to bear unequally on the property of the citizen. To a considerable extent the inequalities of the system in Maine are such as inhere in any attempt to tax personal property. Since the discovery and assessment of immovable or visible property is always easier than the discovery and valuation of movable or invisible property, it must probably always happen that those whose wealth consists mainly in what cannot well be concealed or underestimated will pay relatively the

Inequalities.

¹ On the incorporated village in New York, see Morey, *The Government of New York*, 107-111.

largest taxes. The farmer, for instance, whose property consists mainly in land, buildings, farm animals, and tools, is certain to be taxed higher in proportion to his actual resources than is the person whose wealth consists mainly in bonds, stocks, notes, or mortgages.¹

Reform.

A step in the direction of a much-needed revision of the tax laws of the State was taken by a law of 1901,² directing the board of State assessors to investigate biennially the tax systems of other States, and report to the legislature the results of their inquiries, together with recommendations for the improvement of the existing system in Maine. The information thus elicited should afford the material for reform. In so far, however, as existing inequalities are due to a failure on the part of the State to levy its taxes with reference to the comparative ability of different kinds of property to pay, or to the failure of local assessors to assess all classes of property truly and impartially, the immediate remedy for inequality and discrimination is in the hands of the people, and may be applied by them at the polls whenever they see fit to do so.

¹ The board of State assessors, in their report for 1900, say (page 6) : "As the amount of personal property included in the valuation is but 22½ per cent. of the entire property of the State, it is very evident that a large amount of personal property escapes taxation. The personal property that is visible, like live stock, is assessed its proportion of the taxes, but the invisible personal property largely goes free. An inspection of the valuations shows what classes of property escape. Money at interest is taxed to the amount only of \$9,629,330, while live stock is taxed on \$12,347,347. Even this amount of money at interest is not given in, and the local assessors are compelled to 'doom' many of the taxpayers. Many assessors refrain from resorting to extreme measures, and some of them do not even search the records of mortgages."

² *Public Laws, 1901*, Chap. 260.

APPENDIX A

CHRONOLOGICAL TABLES

80. RECORD OF EVENTS

- 1606. First Virginia charter. Southern part of Maine included in grant to the Plymouth Company.
- 1607. Unsuccessful Popham colony at the mouth of the Kennebec.
- 1609. Jesuit mission established on Mount Desert Island.
- 1614. Coast of Maine visited by Captain John Smith.
- 1615-1618. Destructive war and pestilence among the eastern Indians.
- 1620. Patent of the Council for New England. The whole of Maine included.
- 1622. Grant to Gorges and Mason of the region between the Merrimac and Sagadahoc, under the name of Laconia.
- 1623. Permanent settlement made at Saco. Other settlements by this time at Sheepscot, Damariscotta, Pemaquid, Monhegan, and a few other points.
- 1626. Trading post established on the Kennebec by Plymouth colonists.
- 1627. First Kennebec patent.
- 1628. First charter of Massachusetts.
- 1629. Comnock's patent (Scarboro and vicinity).
Second Kennebec, or Plymouth, patent.
- 1630. Two Saco patents.
Lygonia patent (region of Casco Bay).
Muscongus patent (east of Penobscot). Later known as Waldo patent.
- 1631. Pemaquid patent.
- 1635. Division of the territory of the Council for New England.
(See Williamson, *History of Maine*, I., 256, 257.)
Encroachments of the French, under d'Aulney, on the Penobscot.

1636. First organized government in Maine set up at Saco by William Gorges, nephew of Sir Ferdinando Gorges.
1639. Sir Ferdinando Gorges's charter of "The Province of Maine."
Pejepscot tract (Brunswick and vicinity) ceded to Massachusetts.
1651. Massachusetts asserted its claim to Maine under the charter of 1628.
- 1652-1653. Settlements in western Maine submitted to Massachusetts. County of Yorkshire established. Gradual absorption of other settlements.
1653. First representation of Maine in the Massachusetts General Court.
1661. Plymouth, or Kennebec, patent sold to John Winslow and others.
1664. Royal order directing Massachusetts to restore Maine to Ferdinando Gorges (grandson of the original proprietor).
Eastern Maine included in grant to the Duke of York, and known as "Newcastle," or the "County of Cornwall."
1665. Royal commissioners set up independent government in Maine.
1668. Massachusetts government resumed control.
1674. County of Devonshire (east of Kennebec) established.
- 1675-1677. King Philip's War.
1677. Purchase of Maine by Massachusetts from Gorges for £1250.
1678. Andros became governor, under the Duke of York, of New York and Sagadahoc.
1680. Government of Maine reorganized by the General Court.
1684. Massachusetts charter vacated.
1687. Andros governor of New England.
- 1688-1699. King William's War. Settlements in Maine ravaged.
1689. Andros deposed, and provisional government set up.
1691. Second charter of Massachusetts, including the whole of Maine.
1697. Treaty of Ryswick. France and England both claim Sagadahoc (territory between Kennebec and St. Croix).

- 1703-1711. Queen Anne's, or third Indian War. Settlements again ravaged.
- 1722-1725. Lovewell's, or the fourth Indian War.
1739. Line between Maine and New Hampshire fixed, after long dispute, by the king in council.
1741. George Whitfield visited Maine. A second visit in 1744-1745.
- 1745-1756. Renewed Indian war.
- 1754-1763. Seven Years' War, the last of the French and Indian wars.
1760. Cumberland and Lincoln counties established.
1775. Capture of British schooner *Margranetto* at Machias. Falmouth burned by British. Arnold's expedition to Quebec.
1778. Maine constituted a district by the Continental Congress, and a maritime court established.
1779. Unsuccessful attempt to drive the British from the Penobscot.
1780. Constitution of Massachusetts.
1784. Establishment of the province of New Brunswick; and beginning of the long boundary dispute between the province and Maine.
1785. *Falmouth Gazette*, first newspaper in Maine, established to aid the agitation in favor of separation from Massachusetts. Convention at Falmouth to consider separation.
1786. Second convention for separation.
1789. Hancock and Washington counties established.
1794. Bowdoin College founded.
1799. Kennebec County established.
1805. Oxford County established.
1809. Somerset County established.
1813. September 5, capture of the British brig *Boxer* by the American brig *Enterprise* off Portland.
1814. British control established on the Penobscot and elsewhere in eastern Maine, continuing until the end of the war.
1816. Penobscot County established.
Revival of agitation for separation.
First separation law: not accepted.
Great western emigration, or "Ohio fever."

1819. Second separation act: accepted. State Constitution formed.
1820. Maine admitted to the Union.
1827. Waldo County established.
1832. Removal of the seat of government from Portland to Augusta.
1838. Franklin and Piscataquis counties established.
- 1838-1839. "Aroostook War."
1839. Aroostook County established.
1842. Ashburton treaty, settling the disputed northeastern boundary.
1846. First prohibitory law: ineffective.
1851. Prohibitory law, or "Maine law."
1854. Androscoggin and Sagadahoc counties established.
1855. Mob outbreak in Portland over liquor agency.
1860. Knox County established.
1879. "State steal," disputed gubernatorial election.
1884. Prohibitory constitutional amendment adopted.

81. GOVERNORS OF MAINE

1820. William King, Bath, Rep.¹
1821. William D. Williamson, Bangor (acting).²
Benjamin Ames, Bath (acting).³
1822. Albion K. Parris, Paris, Rep.
1827. Enoch Lincoln, Portland, Rep.⁴
1829. Nathan Cutler, Farmington (acting).⁵
1830. Jonathan G. Hunton, Readfield, Nat. Rep.
1831. Samuel E. Smith, Wiscasset, Dem. Rep.
1834. Robert P. Dunlap, Brunswick, Dem.
1838. Edward Kent, Bangor, Whig.
1839. John Fairfield, Saco, Dem.

¹ Resigned to become United States Commissioner of Spanish Claims.

² President of the Senate; chosen a representative in Congress, and resigned.

³ Speaker of the House.

⁴ Died in office.

⁵ President of the Senate.

1841. Edward Kent, Bangor, Whig.
 1842. John Fairfield, Saco, Dem.
 1843. John Fairfield, Saco.¹
 Edward Kavanagh, Newcastle (acting).²
 1844. Hugh J. Anderson, Belfast, Dem.
 1847. John W. Dana, Fryeburg, Dem.
 1850. John Hubbard, Hallowell, Dem.
 1853. William G. Crosby, Belfast, Whig.
 1855. Anson P. Morrill, Readfield, Maine Law and American.
 1856. Samuel Wells, Portland, Dem.
 1857. Hannibal Hamlin, Hampden, Rep.³
 Joseph H. Williams, Augusta (acting).⁴
 1858. Lot M. Morrill, Augusta, Rep.
 1861. Israel Washburn, Jr., Orono, Rep.
 1863. Abner Coburn, Skowhegan, Rep.
 1864. Samuel Cony, Augusta, Rep.
 1867. Joshua L. Chamberlain, Brunswick, Rep.
 1871. Sidney Perham, Paris, Rep.
 1874. Nelson Dingley, Jr., Lewiston, Rep.
 1876. Selden Connor, Augusta, Rep.
 1879. Alonzo Garcelon, Lewiston, Dem.
 1880. Daniel F. Davis, Corinth, Rep.
 1881. Harris M. Plaisted, Bangor, Fusion.
 1883. Frederick Robie, Gorham, Rep.
 1887. Joseph R. Bodwell, Hallowell, Rep.⁵
 Sebastian S. Marble, Waldoboro (acting).⁶
 1889. Edwin C. Burleigh, Bangor, Rep.
 1893. Henry B. Cleaves, Portland, Rep.
 1897. Llewellyn Powers, Houlton, Rep.
 1901. John F. Hill, Augusta, Rep.

¹ Elected to United States Senate, and resigned.

² President of the Senate.

³ Elected to United States Senate, and resigned.

⁴ President of the Senate.

⁵ Died December 15, 1887.

⁶ President of the Senate.

APPENDIX B

DOCUMENTS

82. FIRST CHARTER OF VIRGINIA APRIL 10/20, 1606

I. *JAMES*, by the Grace of God, King of *England, Scotland, France, and Ireland*, Defender of the Faith, &c. WHEREAS our loving and well-disposed Subjects, Sir *Thomas Gates*, and Sir *George Somers*, Knights, *Richard Hackluit*, Clerk, Prebendary of *Westminster*, and *Edward-Maria Wingfield, Thomas Hanham, and Raleigh Gilbert*, Esqrs. *William Parker*, and *George Popham*, Gentlemen, and divers others of our loving Subjects, have been humble Suitors unto us, that We would vouchsafe unto them our Licence, to make Habitation, Plantation, and to deduce a Colony of sundry of our People into that Part of *America*, commonly called VIRGINIA, and other Parts and Territories in *America*, either appertaining unto us, or which are not now actually possessed by any *Christian* Prince or People, situate, lying, and being all along the Sea Coasts, between four and thirty Degrees of *Northerly* Latitude from the Equinoctial Line, and five and forty Degrees of the same Latitude, and in the main Land between the same four and thirty and five and forty Degrees, and the Islands thereunto adjacent, or within one hundred Miles of the Coast thereof;

II. AND to that End, and for the more speedy Accomplishment of their said intended Plantation and Habitation there, are desirous to divide themselves into two several Colonies and Companies; The one consisting of certain Knights, Gentlemen, Merchants, and other Adventurers, of our City of *London* and elsewhere, which are, and from time to time shall be, joined unto them, which do desire to begin their Plantation and Habitation in some fit and convenient Place, between four and thirty and

one and forty Degrees of the said Latitude, amongst the Coasts of *Virginia* and Coasts of *America* aforesaid; And the other consisting of sundry Knights, Gentlemen, Merchants, and other Adventurers of our Cities of *Bristol* and *Exeter*, and of our Town of *Plimouth*, and of other Places, which do join themselves unto that Colony, which do desire to begin their Plantation and Habitation in some fit and convenient Place, between eight and thirty Degrees and five and forty Degrees of the said Latitude, all amongst the said Coast of *Virginia* and *America*, as that Coast lyeth :

III. WE, greatly commending, and graciously accepting of, their Desires for the Furtherance of so noble a Work, which may, by the Providence of Almighty God, hereafter tend to the Glory of his Divine Majesty, in propagating of *Christian* Religion to such People, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages, living in those Parts, to human Civility, and to a settled and quiet Government; DO, by these our Letters Patents, graciously accept of, and agree to, their humble and well-intended Desires;

IV. AND do therefore, for Us, our Heirs, and Successors, GRANT and agree, that the said Sir *Thomas Gates*, Sir *George Somers*, *Richard Hackluit*, and *Edward-Maria Wingfield*, Adventurers of and for our City of *London*, and all such others, as are, or shall be, joined unto them of that Colony, shall be called the *first Colony*; And they shall and may begin their said first Plantation and Habitation, at any Place upon the said Coast of *Virginia* or *America*, where they shall think fit and convenient, between the said four and thirty and one and forty Degrees of the said Latitude; And that they shall have all the Lands, Woods, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the said Seat of their Plantation and Habitation by the Space of fifty Miles of *English* Statute Measure, all along the said Coast of *Virginia* and *America*, towards the *West* and *Southwest*, as the Coast lyeth, with all the Islands within one hundred Miles directly over against the same Sea Coast; And also all the Lands, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Woods, Waters, Marshes, Fishings, Commodities, and Hereditaments, whatsoever, from the said Place of their first Plantation and Habi-

tation for the space of fifty like *English* Miles, all amongst the said Coast of *Virginia* and *America*, towards the *East* and *North-east*, or towards the *North*, as the Coast lyeth, together with all the Islands within one hundred Miles, directly over against the said Sea Coast; And also all the Lands, Woods, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the same fifty Miles every way on the Sea Coast, directly into the main Land by the Space of one hundred like *English* Miles; And shall and may inhabit and remain there; and shall and may also build and fortify within any the same, for their better Safeguard and Defence, according to their best Discretion, and the Discretion of the Council of that Colony; And that no other of our Subjects shall be permitted, or suffered, to plant or inhabit behind, or on the Backside of them, towards the main Land, without the Express Licence or Consent of the Council of that Colony, thereunto in Writing first had and obtained.

V. AND we do likewise, for Us, our Heirs, and Successors, by these Presents, GRANT and agree, that the said *Thomas Hanham*, and *Raleigh Gilbert*, *William Parker*, and *George Popham*, and all others of the Town of *Plimouth* in the County of *Devon*, or elsewhere, which are, or [shall be, joined unto them of that Colony, shall be called the *second Colony*; And that they shall and may begin their said Plantation and Seat of their first Abode and Habitation, at any Place upon the said Coast of *Virginia* and *America*, where they shall think fit and convenient, between eight and thirty Degrees of the said Latitude, and five and forty Degrees of the same Latitude; And that they shall have all the Lands, Soils, Grounds, Havens, Ports, Rivers, Mines, Minerals, Woods, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the first Seat of their Plantation and Habitation by the Space of fifty like *English* Miles, as is aforesaid, all amongst the said Coast of *Virginia* and *America*, towards the *West* and *Southwest*, or towards the *South*, as the Coast lyeth, and all the Islands within one hundred Miles, directly over against the said Sea Coast; And also all the Lands, Soils, Grounds, Havens, Ports, Rivers, Mines, Minerals, Woods, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the said Place of their first Plantation and Habitation for the Space

of fifty like Miles, all alongst the said Coast of *Virginia* and *America*, towards the *East* and *Northeast*, or towards the *North*, as the Coast lyeth, and all the Islands also within one hundred Miles directly over against the same Sea Coast; And also all the Lands, Soils, Grounds, Havens, Ports, Rivers, Woods, Mines, Minerals, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the same fifty Miles every way on the Sea Coast, directly into the main Land, by the Space of one hundred like *English* Miles; And shall and may inhabit and remain there; and shall and may also build and fortify within any the same for their better Safeguard, according to their best Discretion, and the Discretion of the Council of that Colony; And that none of our Subjects shall be permitted, or suffered, to plant or inhabit behind, or on the back of them, towards the main Land, without the express Licence of the Council of that Colony, in Writing thereunto first had and obtained.

VI. PROVIDED always, and our Will and Pleasure herein is, that the Plantation and Habitation of such of the said Colonies, as shall last plant themselves, as aforesaid, shall not be made within one hundred like *English* Miles of the other of them, that first began to make their Plantation, as aforesaid.

— MACDONALD, *Select Charters*, 1-5.

83. PATENT OF THE COUNCIL FOR NEW ENGLAND NOVEMBER 3/13, 1620

[The patent begins by reciting the grant of the Virginia charter of 1606, and the subsequent separation of the London and Plymouth companies under the charter of 1609, and continues:]

Now forasmuch as We have been in like Manner humbly petitioned unto by our trusty and well beloved Servant, Sir *Jferdinando Georges*, Knight, Captain of our ffort and Island by Plymouth, and by certain the principal Knights and Gentlemen Adventurers of the said Second Collonye, and by divers other Persons of Quality, who now intend to be their Associates, divers of which have been at great and extraordinary Charge, and sustained many Losses in seeking and discovering a Place fitt and convenient to lay the Foundation of a hopeful Plantation, and have divers Years past by God's Assistance, and their own En-

deavours, taken actual Possession of the Continent hereafter mentioned, in our Name and to our Use, as Sovereign Lord thereof, and have settled already some of our People in Places agreeable to their Desires in those Parts, and in Confidence of prosperous Success therein, by the Continuance of God's Devine Blessing, and our Royall Permission, have resolved in a more plentiful and effectual Manner to prosecute the same, and to that Purpose and Intent have desired of Us, for their better Encouragement and Satisfaction herein, and that they may avoide all Confusion, Questions, or Differences between themselves, and those of the said first Collonye, We would likewise be graciously pleased to make certaine Adventurers, intending to erect and establish ffishery, Trade, and Plantacion, within the Territoryes, Precincts, and Lymitts of the said second Colony, and their Successors, one several distinct and entire Body, and to grant unto them, such Estate, Liberties, Priveliges, Enlargements, and Immunityes there, as in these our Letters-Pattents hereafter particularly expressed and declared. And forasmuch as We have been certainly given to understand by divers of our good Subjects, that have for these many Yeares past frequented those Coasts and Territoryes, between the Degrees of Fourty and Forty-Eight, that there is noe other the Subjects of any Christian King or State, by any Authority from their Sovereignes, Lords, or Princes, actually in Possession of any of the said Lands or Precincts, whereby any Right, Claim, Interest, or Title, may . . . by that Meanes accrue . . . unto them, or any of them. And also for that We have been further given certainly to knowe, that within these late Yeares there hath by God's Visitation raigned a wonderfull Plague, together with many horrible Slaughters, and Murthers, committed amongst the Savages and bruitish People there, heertofore inhabiting, in a Manner to the utter Destruction, Devastacion, and Depopulacion of that whole Territorye, so that there is not left for many Leagues together in a Manner, any that doe claime or challenge any Kind of Interests therein, nor any other Superiour Lord or Souveraigne to make Claime thereunto, whereby We in our Judgment are persuaded and satisfied that the appointed Time is come in which Almighty God in his great Goodness and Bountie towards Us and our People, hath thought fitt and determined, that those large and goodly

Territoryes, deserted as it were by their naturall Inhabitants, should be possessed and enjoyed by such of our Subjects and People as heertofore have and hereafter shall by his Mercie and Favour, and by his Powerfull Arme, be directed and conducted thither. In Contemplacion and serious Consideracion whereof, Wee have thought it fitt according to our Kingly Duty, soe much as in Us lyeth, to second and followe God's sacred Will, rendering reverend Thanks to his Divine Majestie for his gracious favour in laying open and revealing the same unto us, before any other Christian Prince or State, by which Meanes without Offence, and as We trust to his Glory, Wee may with Boldness goe on to the settling of soe hopefull a Work, which tendeth to the reducing and Conversion of such Savages as remaine wandering in Desolacion and Distress, to Civil Societie and Christian Religion, to the Inlargement of our own Dominions, and the Advancement of the Fortunes of such of our good Subjects as shall willingly intresse themselves in the said Employment, to whom We cannot but give singular Commendations for their soe worthy Intention and Enterprize; Wee therefore . . . Do . . . grant . . . that all that Circuit, Continent, Precincts, and Limitts in America, lying and being in Breadth from Forty Degrees of Northerly Latitude, from the Equinoctiall Line, to Forty-eight Degrees of the said Northerly Latitude, and in Length by all the Breadth aforesaid throughout the Maine Land, from Sea to Sea, with all the Seas, Rivers, Islands, Creekes, Inletts, Ports, and Havens, within the Degrees . . . of the said Latitude and Longitude, shall be the Limitts . . . of the second Collony: And to the End that the said Territoryes may forever hereafter be more particularly and certainly known and distinguished, our Will and Pleasure is, that the same shall from henceforth be nominated, termed, and called by the Name of New-England, in America. . . .

—MACDONALD, *Select Charters*, 24-26.

84. GRANT OF MAINE TO GORGES AND MASON AUGUST 10/20, 1622

[The patent recites the grant of 1620 to the Council for New England, and continues:]

Now this Indenture witnesseth that the said President and Council . . . doe give grant . . . and confirme unto the said Sir Ferdinando Gorges & Captain John Mason their heirs and assignes all that part of the maine land in New England lying upon the Sea Coast betwixt the rivers of Merrimack & Sagadahock and to the furthest heads of the said Rivers and soe forwards up into the land westward untill threescore miles be finished from the first entrance of the aforesaid rivers and half way over that is to say to the midst of the said two rivers which bounds and limitts the lands aforesaid together with all Islands & Islets within five leagues distance of the said premisses and abutting upon the same or any part or parcell thereof . . . which said porcons of lands with the appurtenances the said Sir Ferdinando Gorges and Capt. John Mason with the consent of the President & Councell intend to name the PROVINCE OF MAINE. . . .

—MACDONALD, *Select Charters*, 37.

85. FIRST CHARTER OF MASSACHUSETTS

MARCH 4/14, 1628/9

[The charter begins with a recital of the patent of 1620 to the Council for New England, and the subsequent grant by the Council, in March, 1627/8, to Sir Henry Rosewell and others, which last-mentioned grant is by this present charter confirmed, and continues:]

AND FURTHER knowe yee, That . . . Wee . . . by theis presents doe . . . give and graunt unto the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Symon Whetcombe, Isaack Johnson, Samuell Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniel Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, theire heires and assignes, All that parte of Newe England in America which lyes and extendes betweene a great river there commonlie called Monomack river, alias Merrimack river, and a certen other river there called Charles river, being in the bottome of a certen bay there commonlie called Massachusetts,

alias Mattachusetts, alias Massatusetts bay: And also all and singuler those landes and hereditaments whatsoever, lyeing within the space of three Englishe myles on the south parte of the saide river called Charles river, or of any or every parte thereof: And also all and singuler the landes and hereditaments whatsoever lyeing and being within the space of three Englishe myles to the southward of the southernmost parte of the said baye called Massachusetts . . . : And also all those landes and hereditaments whatsoever which lye and be within the space of three English myles to the northward of the saide river called Monomack, alias Merrymack, or to the northward of any and every parte thereof, and all landes and hereditaments whatsoever, lyeing within the lymitts aforesaide, north and south, in latitude and bredth, and in length and longitude, of and within all the bredth aforesaide, throughout the mayne lands there from the Atlantick and westerne sea and ocean on the east parte, to the south sea on the west parte: . . . and also all islandes in America aforesaide, in the saide seas, or either of them, on the westerne or easterne coastes, or partes of the said tracts of landes hereby mentioned to be given and graunted . . . , and all mynes and myneralls, aswell royall mynes of gould and silver as other mynes and myneralls whatsoever . . . , and free libertie of fishing in or within any the rivers or waters within the boundes and lymytts aforesaid, and the seas thereunto adjoining: And all fishes, royal fishes, whales, balan, sturgions, and other fishes, of what kinde or nature soever that shall . . . be taken in . . . the saide seas or waters . . . by the said Sir Henry Rosewell . . . [and others] . . . or by any person or persons whatsoever there inhabiting, by them, or any of them, to be appointed to fishe therein. PROVIDED, alwayes, that yf the said landes, islandes, or any other the premisses herein before mentioned, and by theis presents intended and meant to be graunted, were, at the tyme of the graunting of the saide former letters patents . . . [of 1620] . . . actuallie possessed or inhabited by any other Christian Prince or State, or were within the boundes . . . of that Southerne Colony then before graunted by our said late father to be planted . . . in the south partes of America, That then this present graunt shall not extend to any such partes . . . , but as to those partes . . . shalbe utterly voyd.

86. PLYMOUTH PATENT
 JANUARY 13/23, 1629/30

[The patent recites the grant of 1620 to the Council for New England, and continues:]

Now knowe yee that the said councell by virtue and authority of his said late Majesty's letters pattents and for and in consideration that William Bradford and his associatts have for these nine yeares lived in New Englande aforesaid and have there inhabited and planted a towne called by the name of New Plimouth att their own proper costs and charges: And now seeinge that by the speciall providence of god, and their extraordinary care and industry they have increased their plantation to neere three hundred people, and are uppon all occasions able to relieve any new planters or others his Majesty's subjects whoe may fall uppon that coaste; . . . doe . . . graunt . . . unto the said William Bradford, his heires, associatts and assignes all that part of New-Englande in America aforesaid and tracte and tractes of lande that lye within or betweene a certaine rivolet or rundlett there commonly called Coahassett alias Conahasset towards the north, and the river commonly called Naragansets river towards the south; and the great westerne ocean towards the east, and betweene and within a straight line directly extendinge upp into the maine land towards the west from the mouth of the said river called Naragansetts river to the utmost limitts and bounds of a cuntry or place in New Englande called Pokenacutt alias Sowamsett westward, and another like straight line extendinge itself directly from the mouth of the said river called Coahassett alias Conahassett towards the west so farr up into the maine lande westwardes as the utmost limitts of the said place or cuntry commonly called Pokencutt alias Sowamsett doe extend, together with one half of the said river called Naragansetts and the said rivolett or rundlett called Coahassett alias Conahassett. . . . And for as much as they have noe conveniente place either of tradinge or ffishinge within their own precints whereby (after soe long travell and great paines,) so hopefull a plantation may subsiste, as alsoe that they may bee encouraged the better to proceed in soe pious a worke which may especially tend to the propagation

of religion and the great increase of trade to his Majesty's realmes, and advancemente of the publique plantation, the said councell . . . further . . . graunte . . . unto the said William Bradford . . . all that tracte of lande or parte of New England . . . which lyeth within or betweene and extendeth itself from the utmost limitts of Cobbiseconte alias Comasee-Conte which adjoineth to the river of Kenebeke alias Kenebekike towards the westerne ocean and a place called the falls at Mequamkike . . ., and the space of fiteene Englishe miles on each side of the said river commonly called Kenebek river, and all the said river called Kenebek that lies within the said limitts and bounds eastward westward northward or southward laste above mentioned. . . .

— MACDONALD, *Select Charters*, 52-53.

87. GRANT OF THE PROVINCE OF MAINE

APRIL 3/13, 1639

Whereas Sir Ferdinando Gorges Knight hath been an humble suitor unto us to graunte and confirme unto him and his heires a parte and porcon of the Countrie of America now commonly called or knowne by the name of New England in America hereafter in these Presents described by the meets and boundes thereof . . . which parte or porcon of the said Countrie wee have heretofore . . . taken into actuall and reall possession or in defaulte of such actuall and reall possession formerly taken Wee Doe by these Presents . . . take the same into our . . . possession Knowe yee therefore that . . . Wee . . . by these Presents . . . Doe give graunte and confirme unto the said Sir Fardinando Gorges his heires and assignes All that Parte . . . of the Mayne Lande of New England aforesaid beginning att the entrance of Pascataway Harbor and soe to passe upp the same into the River of Newichewanocke and through the same unto the furthest heade thereof and from thence Northwestwards till one hundred and twenty miles bee finished and from Pascataway Harbor mouth aforesaid Northeastwards along the Sea Coasts to Sagadahocke and upp the River thereof to Kynybequy River and through the same unto the heade thereof and into the Lande Northwestwards untill one hundred and twenty myles bee ended being accopted from the mouth of Sagadahocke and from the period of one hun-

dred and twenty myles aforesaid to crosse over Lande to the one hundred and twenty myles end formerly reckoned upp into the Lande from Pascataway Harbor through Newichewanocke River and alsoe the Northe halfe of the Isles of Shoales together with the Isles of Capawock and Nawtican neere Cape Cod as alsoe all the Islands and Iletts lyeinge within five leagues of the Mayne all alonge the aforesaide Coasts betweene the aforesaid River of Pascataway and Segadahocke. . . . All which said Part . . . of the Mayne Lande and all and every the Premisses herein before named Wee Doe . . . create and incorporate into One Province or Countie . . . [to] . . . be called and named the Province or Countie of Mayne. . . .

— MACDONALD, *Select Charters*, 66–67.

88. GRANT TO THE DUKE OF YORK

MARCH 12/22, 1663/4

CHARLES the Second, . . . [&c.] . . . Know ye that we . . . by these presents for us Our heirs and Successors Do Give and Grant unto our Dearest Brother James Duke of York his Heirs and Assigns All that part of the maine Land of New England beginning at a certain place called or known by the name of St Croix next adjoining to New Scotland in America and from thence extending along the Sea Coast unto a certain place called Petuaquine or Pemaquid and so up the River thereof to the furthest head of the same as it tendeth Northwards and extending from thence to the River Kinebequi and so Upwards by the Shortest course to the River Canada Northward And also all that Island or Islands commonly called by the several name or names of Matowacks or Long Island situate lying and being towards the West of Cape Cod and the Narrow Higansetts abutting upon the main land between the two Rivers there called or known by the several names of Connecticut and Hudsons River together also with the said River called Hudsons River and all the Land from the West side of Connecticut to the East side of Delaware Bay and also all those several Islands called or known by the Names of Martin's Vinyard and Nantukes otherwise Nantuckett. . . .

— MACDONALD, *Select Charters*, 137.

89. SECOND CHARTER OF MASSACHUSETTS

OCTOBER 7/17, 1691

[The charter begins by reciting the grant of a patent in 1620 to the Council for New England, the grant by the Council to the Massachusetts Bay Company in 1628, the royal charter of 1629, and the vacating of the charter by a judgment in chancery in 1684, and continues:]

And ~~Wherres~~ several persons employed as Agents in behalfe of Our said Collony of the Massachusetts Bay in New England have made their humble application unto Us that Wee would be graciously pleased by Our Royall Charter to Incorporate Our Subjects in Our said Collony and to grant and confirme unto them such powers priviledges and Franchises as [in] Our Royall Wisdome should be thought most conducing to Our Interest and Service and to the Welfare and happy State of Our Subjects in New England and Wee being graciously pleased to gratifie Our said Subjects And alsoe to the end Our good Subjects within Our Collony of New Plymouth in New England aforesaid may be brought under such a forme of Government as may put them in a better Condition of defence and considering aswell the granting unto them as unto Our Subjects in the said Collony of the Massachusetts Bay Our Royall Charter with reasonable Powers and Priviledges will much tend not only to the safety but to the Flourishing estate of Our Subjects in the said parts of New England and alsoe to the advancing of the ends for which the said Plantations were at first encouraged . . . Wee doe by these presents for Us Our Heirs and Successors Will and Ordeyne that the Territories and Collonyes comonly called or known by the Names of the Collony of the Massachusetts Bay and Collony of New Plymouth the Province of Main the Territorie called Accadia or Nova Scotia and all that Tract of Land lying betweene the said Territorities of Nova Scotia and the said Province of Main be Erected United and Incorporated . . . into one reall Province by the Name of Our Province of the Massachusetts Bay in New England And . . . Wee doe give and grant unto Our good Subjects the Inhabitants of Our said Province or Territory of the Massachusetts Bay and their Successors all that parte of New England in America lying and extending from the greate River

commonly called Monomack alias Merrimack on the Northpart and from three Miles Northward of the said River to the Atlantick or Western Sea or Ocean on the South part And all the Lands and Hereditaments whatsoever lying within the limitts aforesaid and extending as farr as the Outermost Points or Promontories of Land called Cape Cod and Cape Mallabar North and South and in Latitude Breadth and in Length and Longitude of and within all the Breadth and Compass aforesaid throughout the Main Land there from the said Atlantick or Western Sea and Ocean on the East parte towards the South Sea or Westward as far as Our Collonyes of Rhode Island Connecticut and the Marragansett [*Narragansett*] Countrey all alsoe all that part or portion of Main Land beginning at the Entrance of Pescata way Harbour and soe to pass upp the same into the River of Newickewannock and through the same into the furthest head thereof and from thence Northwestward till One Hundred and Twenty Miles be finished and from Piscata way Harbour mouth aforesaid North-Eastward along the Sea Coast to Sagadahock and from the Period of One Hundred and Twenty Miles aforesaid to crosse over Land to the One Hundred and Twenty Miles before reckoned up into the Land from Piscataway Harbour through Newickewannock River and also the North halfe of the Isles and [*of*] Shoales together with the Isles of Cappawock and Nantuket near Cape Cod aforesaid and alsoe [*all*] Lands and Hereditaments lying and being in the Countrey and Territory commonly called Accadia or Nova Scotia And all those Lands and Hereditaments lying and extending betweene the said Countrey or Territory of Nova Scotia and the said River of Sagadahock or any part thereof . . . and alsoe all Islands and Islets lying within tenn Leagues directly opposite to the Main Land within the said bounds . . .

— MACDONALD, *Select Charters*, 205-207.

90. ARTICLES OF SEPARATION

JUNE 19, 1819

An Act relating to the separation of the District of Maine from Massachusetts proper, and forming the same into a separate and independent State.



Whereas, It has been represented to this Legislature that a majority of the people of the District of Maine are desirous of establishing a separate and independent Government within said District; Therefore,

Section 1. *Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That the consent of this Commonwealth be, and the same is hereby given, that the District of Maine may be formed and erected into a separate and independent State, if the people of the said District shall, in the manner, and by the majority, hereinafter mentioned, express their consent and agreement thereto, upon the following terms and conditions; *and, provided,* the Congress of the United States shall give its consent thereto, before the fourth day of March next; which terms and conditions are as follows, viz.:

First. All the lands and buildings belonging to the Commonwealth, within Massachusetts proper, shall continue to belong to said Commonwealth; and all the lands belonging to the Commonwealth, within the District of Maine, shall belong, the one-half thereof to the said Commonwealth, and the other half thereof, to the State to be formed within the said District, to be divided as is hereinafter mentioned; and the lands within the said District which shall belong to the said Commonwealth shall be free from taxation, while the title to the said lands remains in the Commonwealth; and the rights of the Commonwealth to their lands, within said District, and the remedies for the recovery thereof, shall continue the same within the proposed State, and in the courts thereof, as they now are within the said Commonwealth, and in the courts thereof. . . .

Second. All the arms which have been received by this Commonwealth from the United States, under the law of Congress, entitled, "An act making provision for arming and equipping the whole body of Militia of the United States," passed April the twenty-third, one thousand eight hundred and eight, shall, as soon as the said District shall become a separate State, be divided between the two States, in proportion to the returns of the militia, according to which, the said arms have been received from the United States, as aforesaid.

Third. All moneys, stock, or other proceeds, hereafter obtained

from the United States, on account of the claim of this Commonwealth, for disbursements made, and expenses incurred, for the defence of the State, during the late war with Great Britain, shall be received by this Commonwealth, and when received, shall be divided between the two States, in the proportion of two-thirds to this Commonwealth and one-third to the new State.

Fourth. All other property, of every description, belonging to the Commonwealth, shall be holden and receivable by the same, as a fund and security, for all debts, annuities, and Indian subsidies, or claims due by said Commonwealth; and within two years after the said District shall have become a separate State, the Commissioners to be appointed, as hereinafter provided, if the said States cannot otherwise agree, shall assign a just portion of the productive property so held by said Commonwealth, as an equivalent and indemnification to said Commonwealth, for all such debts and annuities, or Indian subsidies or claims, which may then remain due or unsatisfied; and all the surplus of the said property, so holden, as aforesaid, shall be divided between the said Commonwealth and the said District of Maine, in the proportion of two-thirds to the said Commonwealth, and one-third to the said District. And if, in the judgment of the said Commissioners, the whole of said property, so held, as a fund and security, shall not be sufficient indemnification, the said District shall be liable for, and shall pay to said Commonwealth, one-third of the deficiency.

Fifth. The new State shall, as soon as the necessary arrangements can be made for that purpose, assume and perform all the duties and obligations of this Commonwealth, towards the Indians within said District of Maine, whether the same arise from treaties, or otherwise; and for this purpose, shall obtain the assent of said Indians, and their release to this Commonwealth of claims and stipulations arising under the treaty at present existing between the said Commonwealth and said Indians; and as an indemnification to such new State, therefor, this Commonwealth, when such arrangements shall be completed, and the said duties and obligations assumed, shall pay to said new State, the value of *thirty thousand dollars*. . . .

* * * * *

Seventh. All grants of land, franchises, immunities, corporate or other rights, and all contracts for, or grants of land not yet

located, which have been or may be made by the said Commonwealth, before the separation of said District shall take place, having or to have effect within the said District, shall continue in full force, after the said District shall become a separate State. But the grant which has been made to the President and Trustees of Bowdoin College, out of the tax laid upon the banks, within this Commonwealth, shall be charged upon the tax upon the banks within the said District of Maine, and paid according to the terms of said grant ; and the President and Trustees, and the Overseers of said College, shall have, hold and enjoy their powers and privileges in all respects ; so that the same shall not be subject to be altered, limited, annulled or restrained, except by judicial process, according to the principles of law ; and in all grants hereafter to be made, by either State, of unlocated land within the said District, the same reservations shall be made for the benefit of schools and of the ministry, as have heretofore been usual, in grants made by this Commonwealth. And all lands heretofore granted by this Commonwealth, to any religious, literary, or eleemosynary corporation, or society, shall be free from taxation, while the same continue to be owned by such corporation, or society.

Eighth. No laws shall be passed in the proposed State, with regard to taxes, actions or remedies at law, or bars, or limitations thereof, or otherwise making any distinction between the lands and rights of property of proprietors, not residents in, or not citizens of said proposed State, and the lands and rights of property of the citizens of the proposed State, resident therein. . . .

Ninth. These terms and conditions, as here set forth, when the said District shall become a separate and independent State, shall, *ipso facto*, be incorporated into, and become, and be a part of any constitution, provisional, or other, under which the government of the said proposed State shall, at any time hereafter, be administered ; subject, however, to be modified, or annulled, by the agreement of the Legislature of both the said States ; but by no other power or body whatsoever.

Sec. 2. *Be it further enacted,* That the inhabitants of the several towns, districts, and plantations, in the District of Maine, qualified to vote for Governor or Senators, shall assemble in regular meeting, to be notified by warrants of the proper officers, on the fourth Monday of July next, and shall, in open meeting, give

in their votes, on this question: "Is it expedient, that the District of Maine shall become a separate and independent State, upon the terms and conditions, provided in an act, entitled 'An act relating to the separation of the District of Maine from Massachusetts proper, and forming the same into a separate and independent State'?" And the selectmen of the towns and districts, and the assessors of the plantations, shall, in open meeting, receive, sort, count and declare, and the clerks thereof, respectively, shall record the votes given for and against the measure; and the said selectmen, assessors, and clerks, respectively, shall make out an exact return thereof, under their hands and shall seal up and transmit the same to the office of the Secretary of this Commonwealth, on or before the fourth Monday of August next. And all returns, not then made, shall be rejected in the counting; and the Governor and Council shall open and examine the said returns, made as aforesaid, and shall count the votes given on the said question; and the Governor shall, by public proclamation, to be made as soon as the state of the vote can be ascertained, after the said fourth Monday of August next, make known the result, by declaring the number of votes appearing in favor of the separation of said District, as aforesaid, and the number of votes appearing against it. And, if the number of votes for the measure shall exceed the number of votes against it, by fifteen hundred, then, and not otherwise, the people of said District shall be deemed to have expressed their consent and agreement, that the said District shall become a separate and independent State, upon the terms and conditions above stated; and in case of such majority, the Governor, in his said proclamation, shall call upon the people of said District to choose delegates to meet in convention for the purposes, and in the manner hereinafter provided. . . .

Sec. 3. *Be it further enacted,* That if it shall be declared by said proclamation, that the said majority of fifteen hundred votes appeared by the said returns to be in favor of the separation of the said District as aforesaid; the inhabitants of the several towns and districts, now entitled to send one or more Representatives to the General Court, and all other incorporated towns, shall, on the third Monday of September next, assemble in town meeting, to be notified by warrant of the selectmen, and shall elect one or more delegates (not exceeding the number of repre-

sentatives which such town is now entitled to; each town, however, to be at liberty to elect at least one,) to meet delegates from other towns within the said District, in convention, for the purpose of forming a constitution, or frame of government, for the said District. And at such meeting of the said inhabitants, every person qualified to vote for Senators, shall have a right to vote in the choice of delegates. . . .

Sec. 4. *Be it further enacted*, That the persons so elected delegates, shall meet in convention, at the Court House, in Portland, in the County of Cumberland, on the second Monday of October next, and they shall be the judges of the returns and election of their own members, and may adjourn from time to time, and sixty of the persons elected shall constitute a quorum for the transaction of business; and the said delegates shall, as soon as may be, proceed to organize themselves, in convention, by choosing a President, and such other officers as they may judge expedient, and establishing proper rules of proceedings; and it shall be the duty of the said convention, to apply to the Congress of the United States for its assent to be given, before the last day of January next, that the said District should be admitted into the Union, as a separate and independent State. And it shall also be the duty of the said convention, to form a constitution, or frame of government, for said new State, and to determine the style and title of the same; and such constitution, when adopted, and ratified by the people of said District, in the manner hereinafter mentioned, shall, from and after the fifteenth day of March, in the year of our Lord, one thousand eight hundred and twenty (the consent of the Congress of the United States, then being first had, as aforesaid,) be the constitution of said new State. And the said convention shall, as soon as may be, after having formed such constitution, or frame of government, for such new State, cause the same to be published, and sent to the several towns, districts, and plantations, within the said District of Maine; and there shall be a meeting of the inhabitants, in each of said towns, districts, and plantations, to be called and warned by the selectmen, and assessors respectively, in due course of law, and on the day named by said convention; at which meeting, every male inhabitant, having the personal qualifications, herein declared requisite in the election of delegates to the said conven-

tion, shall have a right to vote; and the people so assembled, shall give in their votes in writing, expressing their approbation or disapprobation of the constitution so prepared, and proposed by said convention: . . . and if a majority of the votes so returned, shall be in favor of the constitution proposed, as aforesaid, the said constitution shall go into operation, according to its own provisions; otherwise the constitution of Massachusetts, with the addition of the terms and conditions herein provided, shall be, and be considered as the constitution of the said proposed State, in manner as hereafter provided. And to the end, that no period of anarchy may happen to the people of said proposed State, in case a new constitution shall not be so adopted and ratified by the people of said District of Maine, the present constitution of the Commonwealth of Massachusetts, shall, with the terms and conditions aforesaid, and with the exception hereinafter made, be provisionally, the constitution or frame of government, for said District; except only such parts of said constitution of Massachusetts, as relate to the style or title of said State, or may be otherwise inconsistent with, or repugnant to the situation and condition of said new State; and except, that the people of said District shall choose in their senatorial districts, as now established, three times the number of Senators now allowed them, and that the Legislature shall choose such a number of councilors, not exceeding nine, as they shall determine to be proper. And the said convention shall designate the place for the first meeting of the Legislature of said new State, and for the organization of its government, and shall appoint a Secretary, pro tempore, for said new State; and the said convention shall regulate the pay of its members. . . .

Sec. 5. *Be it further enacted*, That until a Governor of the proposed State shall be chosen and qualified according to the constitution which may be in operation in said State, the person last chosen President of the said convention, shall, from and after the fifteenth day of March next, have all the power of the Governor and Council under the constitution of Massachusetts, until a new Governor shall be chosen and qualified in the said proposed State; excepting only, that the said President shall not have the power to remove from office any officer who may be duly qualified, and executing the duties of his office according to

the intent and meaning of this act. And in order that there may be no failure of justice, and that no danger may arise to the people of the said District of Maine, after the fifteenth day of March next, and before the government of the said State shall be fully organized; therefore,

Sec. 6. *Be it further enacted*, That all the laws which shall be in force within the said District of Maine, upon the said fifteenth day of March next, shall still remain, and be in force, within the said proposed State, until altered or repealed by the government thereof, such parts only excepted as may be inconsistent with the situation and condition of said new State, or repugnant to the constitution thereof. And all officers, who shall, on the said fifteenth day of March next, hold commissions, or exercise any authority within the said District of Maine, under the Commonwealth of Massachusetts, or by virtue of the laws thereof, excepting only, the Governor, Lieutenant Governor and Council, the members of the Legislature, and the Justices of the Supreme Judicial Court of the said Commonwealth of Massachusetts, shall continue to have, hold, use, exercise and enjoy, all the powers and authority to them respectively granted or committed, until other persons shall be appointed in their stead, or until their respective offices shall be annulled by the government of said proposed State. And all courts of law, whatsoever, within the said proposed State, excepting only the Supreme Judicial Court, shall proceed to hear and determine all causes, matters and things, which are or may be commenced or depending before them, respectively, upon the said fifteenth day of March next, or at any time afterwards, and before the government of the said proposed State shall establish new courts within the same; and shall continue from and after the said fifteenth day of March next, to exercise the like power and authority, and in like manner as they now by law may do, until such new courts shall be so established, in their stead.

Sec. 7. *Be it further enacted*, That all actions, suits, and causes, civil and criminal, and all matters and things whatsoever, that shall, on the said fifteenth day of March next, be in any manner depending in the Supreme Judicial Court of the said Commonwealth of Massachusetts, then last holden within any county in the said District of Maine, . . . shall be respectively

transferred, and returned to, have day in, and be heard, tried, and determined in the highest court of law that shall be established in the said new State, by the government thereof; . . . *Provided, however,* That nothing contained in this section shall be understood or construed to control, in any degree, the right of the people of the said new State, or the government thereof, to establish judicial courts, in such manner, and with such authority as they shall see fit; nor to prevent the said people or their government from making any other provisions, pursuant to their constitution, and not repugnant to the terms and conditions above set forth, respecting all the said actions, suits, processes, matters and things, herein above mentioned, as they shall think most proper, to prevent the discontinuance thereof, and to avoid any delay or failure of justice.

—*Journal of the Constitutional Convention, 1819-1820, pp. 3-14.*

91. ACT OF CESSION

FEBRUARY 25, 1820

An Act in addition to an act entitled "An act relating to the separation of the District of Maine from Massachusetts proper, and forming the same into a separate and independent State."

Be it enacted by the Senate and House of Representatives of Massachusetts in General Court assembled, and by the authority of the same, That the consent of the legislature of this commonwealth be, and the same is hereby, given, that the District of Maine may be formed and erected into a separate and independent State, upon the terms and conditions, and in conformity to the enactments contained in an act entitled "An act relating to the separation of the District of Maine from Massachusetts proper, and forming the same into a separate and independent State," whenever the Congress of the United States shall give its consent thereto, anything in the said act limiting the time when such consent should be given to the contrary notwithstanding: *Provided, however,* That if the Congress of the United States shall not have given its consent, as aforesaid, before the fifteenth day of March next, then all parts of the act, to which this is an addition, and all matters therein contained, which by said act have

date or operation from or relation to the fifteenth day of March next, shall have date and operation from and relation to the day on which the Congress of the United States shall give its consent, as aforesaid: *Provided, also*, That if the Congress of the United States shall not give its consent, as aforesaid, within two years from the fourth day of March next, this present act shall be void and of no effect.

Sec. 2. *Be it further enacted*, That if it shall not be known on the first Monday of April next that the Congress of the United States has given its consent, as aforesaid, the people of the said District of Maine shall elect, provisionally, a governor, senators and representatives, or other officers necessary to the organization of the government thereof as a separate and independent State, according to the provisions of the constitution of government agreed to by the people of the said District. And the persons so elected shall assemble at the time and place designated by the said constitution, if the consent of Congress, as aforesaid, shall be given during the present session thereof, but not otherwise; and when assembled, as aforesaid, and having first determined on the returns and qualifications of the persons elected, they shall have the power as delegates of the people for that purpose, to declare, on behalf and in the name of the people, the said elections of such persons to be constitutional and valid, for the respective offices and stations for which they shall have been elected, as aforesaid. And if such declaration shall not be made before the persons so elected shall proceed to transact business as the legislature of said State, the said election shall be wholly void, unless it shall appear that the consent of Congress, aforesaid, shall have been given on or before the said first Monday of April next. And if the consent of Congress, as aforesaid, shall be given after the said first Monday of April next, and the persons so elected, when assembled, as aforesaid, shall not declare the said election valid and constitutional, as aforesaid, within ten days from the last Wednesday of May next, then they shall cease to have any power to act in any capacity for the people of the said District, by virtue of their elections, as aforesaid; and the people shall again choose delegates to meet in convention, in the manner, for the purposes, and with the powers set forth in the third and fourth sections of the act to which this is in addition; the said elections of such dele-

gates to be made on the first Monday of July next, and the delegates to meet in convention at Portland on the first Monday of September next.

— POORE, *Charters and Constitutions*, I., 809-810.

92. ACT ADMITTING MAINE INTO THE UNION

MARCH 3, 1820

Whereas by an act of the State of Massachusetts, passed on the nineteenth day of June, in the year one thousand eight hundred and nineteen, entitled "An act relating to the separation of the District of Maine from Massachusetts proper, and forming the same into a separate and independent State," the people of that part of Massachusetts heretofore known as the District of Maine did, with the consent of the legislature of the said State of Massachusetts, form themselves into an independent State, and did establish a constitution for the government of the same, agreeably to the provisions of the said act: therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the fifteenth day of March, one thousand eight hundred and twenty, the State of Maine is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States, in all respects whatever.

— *U. S. Statutes at Large*, III., 544.

93. CONSTITUTION OF MAINE¹

(Draft approved February 23, 1876)

PREAMBLE

Objects of
government.

WE, the people of Maine, in order to establish justice, insure tranquility, provide for our mutual defense, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty, acknowledging with grateful hearts the goodness of the Sovereign Ruler of the Universe in affording us an opportunity, so favorable to the design; and, imploring His aid and direction in its accomplishment, do agree to form ourselves into a free and

¹ Obsolete provisions, together with those superseded by amendments, are printed in italics.

independent State, by the style and title of the STATE OF MAINE, and do ordain and establish the following Constitution for the government of the same.

ARTICLE I
DECLARATION OF RIGHTS

Section 1. All men are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.

Natural rights.

Sec. 2. All power is inherent in the people; all free governments are founded in their authority and instituted for their benefit; they have therefore an unalienable and indefeasible right to institute government, and to alter, reform, or totally change the same, when their safety and happiness require it.

Power inherent in people.

Sec. 3. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship; — and all persons demeaning themselves peaceably, as good members of the State, shall be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required as a qualification for any office or trust, under this State; and all religious societies in this State, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance.

Religious freedom.

Sec. 4. Every citizen may freely speak, write and publish his sentiments on any subject, being responsible for the abuse of this liberty; no laws shall be passed regulating or restraining the freedom of the press; and in prosecutions for any publication respecting the official conduct of men in public capacity, or the qualifications of those who are candidates for the suffrages of the

Freedom of speech and publication.

people, or where the matter published is proper for public information, the truth thereof may be given in evidence, and in all indictments for libels, the Jury, after having received the direction of the Court, shall have a right to determine, at their discretion, the law and the fact.

Unreasonable searches.

Sec. 5. The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, nor without probable cause — supported by oath or affirmation.

Rights of accused persons.

Sec. 6. In criminal prosecutions, the accused shall have a right to be heard by himself and his counsel, or either, at his election;

To demand the nature and cause of the accusation, and have a copy thereof;

To be confronted by the witnesses against him;

To have compulsory process for obtaining witnesses in his favor;

To have a speedy, public and impartial trial, and, except in trials by martial law or impeachment, by a jury of the vicinity. He shall not be compelled to furnish or give evidence against himself, nor be deprived of his life, liberty, property or privileges, but by judgment of his peers, or by the law of the land.

No person to answer for a capital or infamous crime but on indictment.

Sec. 7. No person shall be held to answer for a capital or infamous crime, unless on a presentment or indictment of a grand jury, except in cases of impeachment, or in such cases of offenses as are usually cognizable by a justice of the peace, or in cases arising in the army or navy, or in the militia when in actual service in time of war or public danger. The Legislature shall provide by law a suitable and impartial mode of selecting juries and their usual number and unanimity, in indictments and convictions, shall be held indispensable.

Not to be put in jeopardy twice for same offense. Sanguinary laws prohibited.

Sec. 8. No person, for the same offense, shall be twice put in jeopardy of life or limb.

Sec. 9. Sanguinary laws shall not be passed; all penalties and punishments shall be proportioned to the offense; excessive bail shall not be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

Sec. 10. No person before conviction shall be bailable for any

of the crimes, which now are, or have been denominated capital offenses since the adoption of the Constitution, where the proof is evident or the presumption great, whatever the punishment of the crimes may be. And the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Sec. 11. The Legislature shall pass no bill of attainder, ex post facto law, nor law impairing the obligation of contracts, and no attainder shall work corruption of blood nor forfeiture of estate.

Sec. 12. Treason against this State shall consist only in levying war against it, adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

Sec. 13. The laws shall not be suspended but by the Legislature or its authority.

Sec. 14. No person shall be subject to corporal punishment under military law, except such as are employed in the army or navy, or in the militia when in actual service in time of war or public danger.

Sec. 15. The people have a right at all times in an orderly and peaceable manner to assemble to consult upon the common good, to give instructions to their representatives, and to request, of either department of the government by petition or remonstrance, redress of their wrongs and grievances.

Sec. 16. Every citizen has a right to keep and bear arms for the common defense; and this right shall never be questioned.

Sec. 17. No standing army shall be kept up in time of peace without the consent of the Legislature, and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

Sec. 18. No soldier shall, in time of peace, be quartered in any house without the consent of the owner or occupant, nor in time of war, but in a manner to be prescribed by law.

Sec. 19. Every person, for an injury done him in his person, reputation, property or immunities, shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay.

Bailable offenses. (Resolve of March 30, 1837: Amendment ii.) — habeas corpus.

Bills of attainder, etc,

Treason.

Suspension of laws.

Corporal punishment under military law.

Right of petition.

To keep and bear arms.

Standing armies shall not be kept.

No soldier to be quartered on citizens in time of peace.

Right of redress for injuries.

- Trial by jury. Sec. 20. In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced; the party claiming the right may be heard by himself and his counsel, or either, at his election.
- Private property, when to be taken. Sec. 21. Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it.
- Taxes. Sec. 22. No tax or duty shall be imposed without the consent of the people or of their representatives in the Legislature.
- Titles of nobility prohibited. Sec. 23. No title of nobility or hereditary distinction, privilege, honor or emolument, shall ever be granted or confirmed, nor shall any office be created, the appointment to which shall be for a longer time than during good behavior.
- tenure of offices.
- Other rights not impaired. Sec. 24. The enumeration of certain rights shall not impair nor deny others retained by the people.

ARTICLE II

ELECTORS

- Qualifications of electors. (See Amendment xxix.)
- written ballot.
- soldiers or seamen in U. S. service.
- students at colleges and academies. (Resolve of March 24, 1864: Amendment x.)
- Electors exempt from arrest on election days.
- Section 1. Every male citizen of the United States of the age of twenty-one years and upwards, excepting paupers, persons under guardianship, and Indians not taxed, having his residence established in this State for the term of three months next preceding any election, shall be an elector for Governor, Senators and Representatives, in the town or plantation where his residence is so established; and the elections shall be by written ballot. But persons in the military, naval or marine service of the United States, or this State, shall not be considered as having obtained such established residence by being stationed in any garrison, barrack, or military place, in any town or plantation; nor shall the residence of a student at any seminary of learning entitle him to the right of suffrage in the town or plantation where such seminary is established. No person, however, shall be deemed to have lost his residence by reason of his absence from the State in the military service of the United States, or of this State.
- Sec. 2. Electors shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest on the days of elec-

tion, during their attendance at, going to, and returning therefrom.

Sec. 3. No elector shall be obliged to do duty in the militia on any day of election, except in time of war or public danger.

Sec. 4. The election of Governor, Senators and Representatives shall be on the second Monday of September *annually* forever. But citizens of the State absent therefrom in the military service of the United States or of this State, and not in the regular army of the United States, being otherwise qualified electors, shall be allowed to *vote on Tuesday next after the first Monday of November, in the year of our Lord one thousand eight hundred and sixty-four, for governor and senators, and their votes shall be counted and allowed in the same manner, and with the same effect, as if given on the second Monday of September in that year. And they shall be allowed to vote for governor, senators and representatives on the second Monday of September annually thereafter forever, in the manner herein provided* [The rest of the section provides for the voting of persons in military service.]

When exempt from military duty. Time of state election. (See Amendment xxiii.) — soldiers allowed to vote for governor, etc.

(Resolve of March 24, 1864: Amendment x.)

ARTICLE III

DISTRIBUTION OF POWERS

Section 1. The powers of this government shall be divided into three distinct departments, the Legislative, Executive and Judicial.

Powers distributed.

Sec. 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.

To be kept separate. (See Art. IX., § 2.)

ARTICLE IV.—PART FIRST

LEGISLATIVE POWER — HOUSE OF REPRESENTATIVES

Section 1. The legislative power shall be vested in two distinct branches, a House of Representatives, and a Senate, each to have a negative on the other, and both to be styled the Legislature of Maine and the style of their acts and laws, shall be, "BE IT EN-

Legislative department. — style of acts.

ACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES IN LEGISLATURE ASSEMBLED.”

Number of representatives fixed. (See Amendments xxiii, xxv.)

Sec. 2. The House of Representatives shall consist of one hundred and fifty-one members, to be elected by the qualified electors, for *one year* from the day next preceding the *annual* meeting of the Legislature. The Legislature, *which shall first be convened under this Constitution*, shall, *on or before the fifteenth day of August, in the year of our Lord, one thousand eight hundred and twenty-one, and the Legislature*, within every subsequent period of at most ten years, and at least five, cause the number of the inhabitants of the State to be ascertained, exclusive of foreigners not naturalized and Indians not taxed. The number of representatives shall, at the several periods of making such enumeration, be fixed and apportioned among the several counties as near as may be, according to the number of inhabitants, having regard to the relative increase of population. *The number of representatives shall, on said first apportionment, be not less than one hundred nor more than one hundred and fifty.*

(Resolve of April 16, 1841: Amendment iv.)

Apportionment among towns.

Sec. 3. Each town having fifteen hundred inhabitants may elect one representative; each town having three thousand seven hundred and fifty may elect two; each town having six thousand seven hundred and fifty may elect three; each town having ten thousand five hundred may elect four; each town having fifteen thousand may elect five; each town having twenty thousand two hundred and fifty may elect six; each town having twenty-six thousand two hundred and fifty may elect seven; but no town shall ever be entitled to more than seven representatives; and towns and plantations duly organized, not having fifteen hundred inhabitants, shall be classed, as conveniently as may be, into districts containing that number, and so as not to divide towns; and each such district may elect one representative; *and, when on this apportionment the number of representatives shall be two hundred, a different apportionment shall take place upon the above principle*; and, in case the fifteen hundred shall be too large or too small to apportion all the representatives to any county, it shall be so increased or diminished as to give the number of representatives according to the above rule and proportion; and whenever any town or towns, plantation or plantations not entitled to elect a representative shall determine against a classifi-

(Resolve of April 16, 1841: Amendment iv.)

cation with any other town or plantation, the Legislature may, at each apportionment of representatives, on the application of such town or plantation, authorize it to elect a representative for such portion of time and such periods, as shall be equal to its portion of representation; and the right of representation, so established, shall not be altered until the next general apportionment.

Sec. 4. No person shall be a member of the House of Representatives, unless he shall, at the commencement of the period for which he is elected, have been five years a citizen of the United States, have arrived at the age of twenty-one years, have been a resident in this State one year, *or from the adoption of this constitution*; and for the three months next preceding the time of his election shall have been, and, during the period for which he is elected, shall continue to be a resident in the town or district which he represents.

Sec. 5. The meetings within this State for the choice of representatives shall be warned in due course of law by the selectmen of the several towns seven days at least before the election, and the selectmen thereof shall preside impartially at such meetings, receive the votes of all the qualified electors present, sort, count and declare them in open town meeting, and in the presence of the town clerk, who shall form a list of the persons voted for, with the number of votes for each person against his name, shall make a fair record thereof in the presence of the selectmen and in open town meeting. And the towns and plantations organized by law, belonging to any class herein provided, shall hold their meetings at the same time in the respective towns and plantations; and the town and plantation meetings in such towns and plantations shall be notified, held and regulated, the votes received, sorted, counted and declared in the same manner. And the assessors and clerks of plantations shall have all the powers, and be subject to all the duties, which selectmen and town clerks have, and are subject to by this Constitution. And fair copies of the lists of votes shall be attested by the selectmen and town clerks of towns, and the assessors of plantations, and sealed up in open town and plantation meetings; and the town and plantation clerks respectively shall cause the same to be delivered into the secretary's office thirty days at least before the first Wednesday of January *annually*. And the governor and council shall examine the returned copies

Qualifications of a representative. (Resolve of March 24, 1864: Amendment x.)

Meetings for choice of representatives. (Resolve of March 24, 1864: Amendment x.)

— meetings of classed towns. Resolve of March 24, 1864: Amendment x.)

(Resolve of March 24, 1864: Amendment x.)

(See Amendments xxiii, xxv.)

— lists of votes shall be examined by governor and council.

— governor and council shall summon persons who appear to be elected. (Resolve of Aug. 2, 1847: Amendment vii.)

— lists shall be laid before the house of representatives.

— manner of electing representatives and other civil officers in cities. (Resolve of March 7, 1834: Amendment i, amended by Resolve of March 24, 1864: Amendment x.)

Vacancies.

House to choose its own officers. Power of impeachment.

of such lists, and also all lists of votes of citizens in the military service, returned to the secretary's office, as provided in article second, section four, of this constitution; and twenty days before the said first Wednesday of January, *annually*, shall issue a summons to such persons as shall appear to be elected by a plurality of all the votes returned, to attend and take their seats. But all such lists shall be laid before the house of representatives on the first Wednesday of January *annually*, and they shall finally determine who are elected. The electors resident in any city may, at any meeting duly notified for the choice of representatives, vote for such representatives in their respective ward meetings, and the wardens in said wards shall preside impartially at such meetings, receive the votes of all qualified electors present, sort, count and declare them in open ward meetings, and in the presence of the ward clerk, who shall form a list of the persons voted for, with the number of votes for each person against his name, shall make a fair record thereof in the presence of the warden, and in open ward meetings; and a fair copy of this list shall be attested by the warden and ward clerk, sealed up in open ward meeting, and delivered to the city clerk within twenty-four hours after the close of the polls. And the electors resident in any city may at any meetings duly notified and holden for the choice of any other civil officers for whom they have been required heretofore to vote in town meeting, vote for such officers in their respective wards, and the same proceedings shall be had by the warden and ward clerk in each ward, as in the case of votes for representatives. And the aldermen of any city shall be in session within twenty-four hours after the close of the polls in such meetings, and in the presence of the city clerk shall open, examine and compare the copies from the lists of votes given in the several wards, of which the city clerk shall make a record, and return thereof shall be made into the Secretary of State's office in the same manner as selectmen of towns are required to do.

Sec. 6. Whenever the seat of a member shall be vacated by death, resignation, or otherwise, the vacancy may be filled by a new election.

Sec. 7. The House of Representatives shall choose their speaker, clerk and other officers.

Sec. 8. The House of Representatives shall have the sole power of impeachment.

ARTICLE IV.—PART SECOND

SENATE

Section 1. The Senate shall consist of *not less than twenty, more than thirty-one* members, elected at the same time, and for the same term, as the representatives, by the qualified electors of the districts into which the State shall from time to time be divided.

Number of senators fixed. (See Amendments xxiii, xxv.)

Sec. 2. The Legislature, *which shall be first convened under this Constitution*, shall, *on or before the fifteenth day of August in the year of our Lord, one thousand eight hundred and twenty-one, and the Legislature at every subsequent period of ten years*, cause the State to be divided into districts for the choice of senators. The districts shall conform, as near as may be, to county lines, and be apportioned according to the number of inhabitants. The number of senators shall *not exceed twenty at the first apportionment, and shall at each apportionment be increased, until they shall amount to thirty-one, according to the increase in the House of Representatives.*

State to be districted once in ten years.

—districts, how formed.

Sec. 3. The meetings within this State for the election of senators shall be notified, held and regulated, and the votes received, sorted, counted, declared and recorded, in the same manner as those for representatives. And fair copies of the list of votes shall be attested by the selectmen and town clerks of towns, and the assessors and clerks of plantations, and sealed up in open town and plantation meetings; and the town and plantation clerks respectively shall cause the same to be delivered into the secretary's office thirty days at least before the first Wednesday of January. All other qualified electors, living in places unincorporated, who shall be assessed to the support of the government by the assessors of an adjacent town, shall have the privilege of voting for senators, representatives and governor in such town; and shall be notified by the selectmen thereof for that purpose accordingly.

Meetings for choice of senators. (Resolve of March 24, 1864: Amendment x.)

—electors in unincorporated places. Votes to be examined by the governor and council. (Amendment x, amended by Resolve of Feb. 24, 1875: Amendment xiii.)

Sec. 4. The Governor and Council shall, as soon as may be, examine the returned copies of such lists, and also the lists of votes of citizens in the military service, returned into the secretary's office, and twenty days before the said first Wednesday of January, issue a summons to such persons, as shall appear to be

elected by a plurality of the votes for each district, to attend that day and take their seats.

Senate to decide election of its members. (See Amendments xxiii, xxv.)
(Resolve of Feb. 24, 1875: Amendment xiii.)
(See Amendment xxx.)

Sec. 5. The Senate shall, on the said first Wednesday of January, *annually*, determine who are elected by a plurality of votes to be senators in each district; and in case the full number of senators to be elected from each district shall not have been so elected, the members of the house of representatives and such senators, as shall have been elected, shall, from the highest numbers of the persons voted for, on said lists, equal to twice the number of senators deficient, in every district, if there be so many voted for, elect by joint ballot the number of senators required; *and in this manner all vacancies in the senate shall be supplied as soon as may be, after such vacancies happen.*

Qualifications of senators.

Sec. 6. The senators shall be twenty-five years of age at the commencement of the term, for which they are elected, and in all other respects their qualifications shall be the same, as those of the representatives.

Senate shall try impeachment. — limitation of judgment. — party is liable to be tried and punished in court.
Senate to choose its officers.

SEC. 7. The Senate shall have the sole power to try all impeachments, and when sitting for that purpose shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present. Their judgment, however, shall not extend farther than to removal from office, and disqualification to hold or enjoy any office of honor, trust or profit under this State. But the party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

Sec. 8. The Senate shall choose their president, secretary and other officers.

ARTICLE IV. — PART THIRD

LEGISLATIVE POWER

Legislature to meet annually. — its powers. (See Amendments xxiii, xxv.)
Bills to be signed by the governor.

Section 1. The Legislature shall convene on the first Wednesday of January, *annually*, and shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States.

Sec. 2. Every bill or resolution having the force of law, to which the concurrence of both houses may be necessary, except

on a question of adjournment, which shall have passed both houses, shall be presented to the Governor, and if he approve, he shall sign it; if not, he shall return it with his objections to the house, in which it shall have originated, which shall enter the objections at large on its journals, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass it, it shall be sent together with the objections, to the other house, by which it shall be reconsidered, and, if approved by two-thirds of that house, it shall have the same effect, as if it had been signed by the Governor; but in all such cases, the votes of both houses shall be taken by yeas and nays, and the names of the persons, voting for and against the bill or resolution, shall be entered on the journals of both houses respectively. If the bill or resolution shall not be returned by the Governor within five days, (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect, as if he had signed it, unless the Legislature, by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within three days after their next meeting.

— proceedings in case he disappears.

— bills shall be returned by him within five days.

Sec. 3. Each house shall be the judge of the elections and qualifications of its own members, and a majority shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties as each house shall provide.

Each house to judge of its elections. — majority a quorum.

Sec. 4. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

May punish and expel members.

Sec. 5. Each house shall keep a journal, and from time to time publish its proceedings, except such parts as in their judgment may require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one-fifth of those present, be entered on the journals.

Shall keep a journal.

Sec. 6. Each house, during its session, may punish by imprisonment any person, not a member, for disrespectful or disorderly behavior in its presence, for obstructing any of its proceedings, threatening, assaulting or abusing any of its members for anything said, done, or doing in either house; *provided*,

May punish for contempt.

that no imprisonment shall extend beyond the period of the same session.

Compensation of members.

Sec. 7. The senators and representatives shall receive such compensation, as shall be established by law; but no law increasing their compensation shall take effect during the existence of the Legislature which enacted it. The expenses of the House of Representatives in traveling to the Legislature and returning therefrom, once in each session and no more, shall be paid by the State out of the public treasury to every member, who shall seasonably attend, in the judgment of the house, and does not depart therefrom without leave.

Members are exempt from arrest.
—freedom of debate.

Sec. 8. The senators and representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at, going to, and returning from each session of the Legislature; and no member shall be liable to answer for anything spoken in debate in either house, in any court or place elsewhere.

Either house may originate bills.
—revenue bills.

Sec. 9. Bills, orders or resolutions, may originate in either house, and may be altered, amended or rejected in the other; but all bills for raising a revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other cases; *provided*, that they shall not, under color of amendment, introduce any new matter, which does not relate to raising a revenue.

Members not to be appointed to certain offices.

Sec. 10. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which increased during such term except such offices as may be filled by elections by the people, *provided*, that *this prohibition shall not extend to the members of the first Legislature.*

Persons disqualified to be members.

Sec. 11. No member of Congress, nor person holding any office under the United States (post-officers excepted) nor office of profit under this State, justices of the peace, notaries public, coroners and officers of the militia excepted, shall have a seat in either house during his being such member of Congress, or his continuing in such office.

Adjournments.

Sec. 12. Neither house shall, during the session, without the consent of the other, adjourn for more than two days, nor

to any other place than that in which the houses shall be sitting.

Sec. 13. The Legislature shall, from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation.

Sec. 14. Corporations shall be formed under general laws, and shall not be created by special acts of the Legislature, except for municipal purposes, and in cases where the objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the State.

Sec. 15. The Legislature shall, by a two-thirds concurrent vote of both branches, have the power to call constitutional conventions, for the purpose of amending this constitution.

ARTICLE V.—PART FIRST

EXECUTIVE POWERS

Section 1. The supreme executive power of this State shall be vested in a Governor.

Sec. 2. The Governor shall be elected by the qualified electors, and shall hold his office *one year* from the first Wednesday of January *in each year*.

Sec. 3. The meetings for election of governor shall be notified, held, and regulated, and votes shall be received, sorted, counted, declared and recorded, in the same manner as those for senators and representatives. They shall be sealed and returned into the secretary's office in the same manner, and at the same time as those for senators. And the secretary of state for the time being shall, on the first Wednesday of January, then next, lay the lists before the Senate and House of Representatives, and also the lists of votes of citizens in the military service returned into the secretary's office, to be by them examined, and, in case of a choice by a *majority* of all the votes returned, they shall declare and publish the same. But if no person shall have a *majority* of votes, the House of Representatives shall, by ballot, from the persons having the four highest numbers of votes on the lists, if so many there be, elect two persons and make return of their names to the Senate, of whom the Senate shall, by ballot, elect one, who shall be declared the Governor.

Special legislation.

(Resolve of Feb. 24, 1875: Amendment xiv.)

Corporations to be formed under general laws.

(Resolve of Feb. 24, 1875: Amendment xiv.)

Constitutional conventions.

(Resolve of Feb. 24, 1875: Amendment xix.)

Governor.

Election.

(See Amendment xxiii.)

Meetings for choice of governor.

— votes to be returned to secretary of state.

(Resolve of March 24, 1864: Amendment x.)

(See Amendment xxiv.)

— provision in case there is no choice.

Qualifica-
tions of
governor.

Sec. 4. The Governor shall, at the commencement of his term, be not less than thirty years of age; a natural born citizen of the United States, have been five years, *or from the adoption of this Constitution*, a resident of the State; and at the time of his election and during the term for which he is elected, be a resident of said State.

Disqualifica-
tions.

Sec. 5. No person holding any office or place under the United States, this State, or any other power, shall exercise the office of Governor.

Compensa-
tion.

Sec. 6. The Governor shall at stated times, receive for his services a compensation, which shall not be increased or diminished during his continuance in office.

Commander-
in-chief of
the militia.
— not to
march the
militia out of
the State.

Sec. 7. He shall be commander-in-chief of the army and navy of the State and of the militia, except when called into the actual service of the United States; but he shall not march nor convey any of the citizens out of the State, without their consent or that of the Legislature, unless it shall become necessary, in order to march or transport them from one part of the State to another for the defence thereof.

To nominate
officers.

(Resolve of
March 17,
1855:
Amendment
ix, amended
by Resolve of
Feb. 24, 1875;
Amendment
xvi.)

Sec. 8. He shall nominate, and, with the advice and consent of the council, appoint all judicial officers, coroners, and notaries public; and he shall also nominate, and with the advice and consent of the council, appoint all other civil and military officers, whose appointment is not by this Constitution, or shall not by law be otherwise provided for; and every such nomination shall be made seven days, at least, prior to such appointment.

To give infor-
mation and
recommend
measures.

Sec. 9. He shall from time to time give the Legislature information of the condition of the State, and recommend to their consideration such measures, as he may judge expedient.

May require
information
of any officer.
Power of gov-
ernor to par-
don and
remit penal-
alties, etc.

Sec. 10. He may require information from any military officer or any officer in the executive department, upon any subject relating to the duties of their respective offices.

Sec. 11. He shall have power, with the advice and consent of the council, to remit, after conviction, all forfeitures and penalties, and to grant reprieves, commutations and pardons, except in cases of impeachment, upon such conditions, and with such restrictions and limitations, as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. And he shall communicate to

the Legislature at each session thereof, each case of reprieve, remission of penalty, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the reprieve, remission, commutation or pardon, and the conditions, if any, upon which the same was granted.

(Resolve of Feb. 24, 1875: Amendment xv.)

Sec. 12. He shall take care that the laws be faithfully executed.

Shall enforce the laws.

Sec. 13. He may, on extraordinary occasions, convene the Legislature; and in cases of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the day of the next *annual* meeting; and if, since the last adjournment, the place where the Legislature were next to convene shall have become dangerous from an enemy or contagious sickness, may direct the session to be held at some other convenient place within the State.

Convene the legislature on extraordinary occasions, and adjourn it in case of disagreement. (See Amendment xxiii.)

Sec. 14. Whenever the office of the Governor shall become vacant by death, resignation, removal from office or otherwise, the president of the Senate shall exercise the office of Governor until another Governor shall be duly qualified; and in case of the death, resignation, removal from office or disqualification of the president of the Senate, so exercising the office of Governor, the speaker of the House of Representatives shall exercise the office, until a president of the Senate shall have been chosen; and when the office of Governor, president of the Senate, and speaker of the House shall become vacant, in the recess of the Senate, the person, acting as Secretary of State for the time being, shall by proclamation convene the Senate, that a president may be chosen to exercise the office of Governor. And whenever either the president of the Senate or speaker of the House shall so exercise said office, he shall receive only the compensation of Governor, but his duties as president or speaker shall be suspended; and the Senate or House shall fill the vacancy until his duties as Governor shall cease.

— may change the place of meeting. Vacancy, how supplied.

ARTICLE V. — PART SECOND

COUNCIL

Section 1. There shall be a Council, to consist of seven persons, citizens of the United States, and residents of this State,

Council shall consist of seven.

to advise the Governor in the executive part of government, whom the Governor shall have full power, at his discretion, to assemble; and he with the Councilors, or a majority of them, may from time to time, hold and keep a council, for ordering and directing the affairs of State, according to law.

Councilors,
how chosen.
(See Amend-
ment xxiii.)

—privileged
from arrest.

Journal of
their pro-
ceedings.

Persons dis-
qualified to
be council-
ors.

—not to be
appointed to
any office.

Sec. 2. The Councilors shall be chosen *annually*, on the first Wednesday of January, by joint ballot of the senators and representatives in convention; and vacancies, which shall afterwards happen, shall be filled in the same manner; but not more than one Councilor shall be elected from any district, prescribed for the election of senators; and they shall be privileged from arrest in the same manner as senators and representatives.

Sec. 3. The resolutions and advice of Council, shall be recorded in a register, and signed by the members agreeing thereto, which may be called for by either house of the Legislature; and any Councilor may enter his dissent to the resolution of the majority.

Sec. 4. No member of congress, or of the Legislature of this State, nor any person holding any office under the United States, (post officers excepted), nor any civil officers under this State (justices of the peace and notaries public excepted), shall be Councilors. And no Councilor shall be appointed to any office during the time for which he shall have been elected.

ARTICLE V.—PART THIRD

SECRETARY

Secretary,
how chosen.
(See Amend-
ment xxiii.)

—to keep
the records
of state.

—to attend
the governor
and council.

—to preserve
records of ex-
ecutive and
legislative
departments.

Section 1. The Secretary of State shall be chosen *annually* at the first session of the Legislature, by joint ballot of the senators and representatives in convention.

Sec. 2. The records of the State shall be kept in the office of the Secretary, who may appoint his deputies, for whose conduct he shall be accountable.

Sec. 3. He shall attend the Governor and Council, Senate and House of Representatives, in person or by his deputies, as they shall respectively require.

Sec. 4. He shall carefully keep and preserve the records of all the official acts and proceedings of the Governor and Council, Senate and House of Representatives, and, when required, lay

the same before either branch of the Legislature, and perform such other duties as are enjoined by this Constitution, or shall be required by law.

ARTICLE V.—PART FOURTH

TREASURER

Section 1. The Treasurer shall be chosen *annually*, at the first session of the Legislature, by joint ballot of the senators and representatives in convention, but shall not be eligible more than *five* years successively.

Treasurer, how chosen. (See Amendments xxiii, xxvii.)

Sec. 2. The Treasurer shall, before entering on the duties of his office, give bond to the State, with sureties, to the satisfaction of the Legislature, for the faithful discharge of his trust.

Must give bond.

Sec. 3. The Treasurer shall not, during his continuance in office, engage in any business of trade or commerce, or as a broker, nor as an agent or factor for any merchant or trader.

Must not engage in trade.

Sec. 4. No money shall be drawn from the treasury, but by warrant from the Governor and Council, and in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money, shall be published at the commencement of the *annual* session of the Legislature.

Nor draw money but by warrant. — account of receipts and expenditures to be published.

ARTICLE VI

JUDICIAL POWER

Section 1. The judicial power of this State shall be vested in a Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish.

Supreme and other courts.

Sec. 2. The justices of the Supreme Judicial Court shall, at stated times receive a compensation, which shall not be diminished during their continuance in office, but they shall receive no other fee or reward.

Compensation of justices of S. J. court.

Sec. 3. They shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Council, Senate, or House of Representatives.

To give opinion when required by either branch of government.

Sec. 4. All judicial officers *now in office or who may be hereafter appointed* shall, *from and after the first day of March in*

Tenure of judicial offices.

(Resolve of
March 14,
1839:
Amendment
iii.)

Justices of
the peace
and notaries.

Justices of
the S. J. C.
can hold no
other office.

Judges and
registers of
probate, their
election and
tenure of
office.

(See Amend-
ment xxiii.)
—vacancies.
(Resolve of
March 17,
1855:
Amendment
ix.)

(See Amend-
ment xxiii.)
Judges of
municipal
and police
courts, their
tenure.

(Resolve of
Feb. 24, 1875:
Amendment
xvi.)

the year eighteen hundred and forty, hold their offices for the term of seven years from the time of their respective appointments, (unless sooner removed by impeachment or by address of both branches of the Legislature to the Executive) and no longer unless re-appointed thereto.

Sec. 5. Justices of the peace and notaries public, shall hold their offices during seven years, if they so long behave themselves well, at the expiration of which term, they may be re-appointed or others appointed, as the public interest may require.

Sec. 6. The justices of the Supreme Judicial Court shall hold no office under the United States, nor any State, nor any other office under this State, except that of justice of the peace.

Sec. 7. Judges and registers of probate shall be elected by the people of their respective counties, by a plurality of the votes given in at the *annual* election, on the second Monday of September, and shall hold their offices for four years, commencing on the first day of January next after their election. Vacancies occurring in said offices by death, resignation or otherwise, shall be filled by election in manner aforesaid, at the September election next after their occurrence; and in the meantime, the Governor, with the advice and consent of the Council, may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January *thereafter*.

Sec. 8. Judges of municipal and police courts shall be appointed by the executive power, in the same manner as other judicial officers, and shall hold their offices for the term of four years; *provided, however, that the present incumbents shall hold their offices for the term for which they were elected.*

ARTICLE VII

MILITARY

[The important provisions of this article have been incorporated in Section 60, pp. 144-148, *ante*.]

ARTICLE VIII

LITERATURE

A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people ; to promote this important object, the Legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools ; and it shall further be their duty to encourage and suitably endow from time to time, as the circumstances of the people may authorize, all academies, colleges and seminaries of learning within the State ; provided, that no donation, grant or endowment shall at any time be made by the Legislature to any literary institution now established, or which may hereafter be established, unless, at the time of making such endowment, the Legislature of the State shall have the right to grant any further powers to alter, limit or restrain any of the powers vested in, any such literary institution, as shall be judged necessary to promote the best interests thereof.

Legislature shall require towns to support public schools ;

— shall endow colleges and academies.
— proviso.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Every person elected or appointed to either of the places or offices provided in this Constitution, and every person elected, appointed, or commissioned to any judicial, executive, military or other office under this State, shall, before he enter on the discharge of the duties of his place or office, take and subscribe the following oath or affirmation : “ I —— do swear, that I will support the Constitution of the United States, and of this State, so long as I shall continue a citizen thereof. So help me God.”

Oaths and subscriptions.

“ I —— do swear, that I will faithfully discharge, to the best of my abilities, the duties incumbent on me as —— according to the Constitution and laws of the State. So help me God.”
Provided, that an affirmation in the above forms may be substituted, when the person shall be conscientiously scrupulous of taking and subscribing an oath.

— proviso.

[The persons before whom the oaths are to be taken are indicated.]

Offices incompatible with each other.

(See Art. iii, § 2.
Art. iv, Part 3, § II.
Art. v, Part I, § 5.)

Commissions.

Elections on the first Wednesday of January may be adjourned from day to day. (See Amendment xxiii.)

Every civil officer may be removed by impeachment or address.

Tenure of office.

Valuation. Taxation. (Resolve of Feb. 24, 1875: Amendment xvii.)

Power of taxation. (Amendment xvii.)

Sec. 2. No person holding the office of justice of the Supreme Judicial Court, or of any inferior court, attorney general, county attorney, treasurer of the State, adjutant general, judge of probate, register of probate, register of deeds, sheriffs or their deputies, clerks of the judicial courts, shall be a member of the Legislature; and any person holding either of the foregoing offices, elected to, and accepting a seat in the Congress of the United States, shall thereby vacate said office; and no person shall be capable of holding or exercising at the same time within this State, more than one of the offices before mentioned.

Sec. 3. All commissions shall be in the name of the State, signed by the Governor, attested by the secretary or his deputy, and have the seal of the State thereto affixed.

Sec. 4. And in case the elections required by this Constitution on the first Wednesday of January *annually*, by the two houses of the Legislature, shall not be completed on that day, the same may be adjourned from day to day, until completed, in the following order; the vacancies in the Senate shall first be filled; the Governor shall then be elected, if there be no choice by the people; and afterwards the two houses shall elect the council.

Sec. 5. Every person holding any civil office under this State, may be removed by impeachment, for misdemeanor in office; and every person holding any office, may be removed by the Governor, with the advice of the Council, on the address of both branches of the Legislature. But before such address shall pass either house, the causes of removal shall be stated and entered on the journal of the house in which it originated, and a copy thereof served on the person in office, that he may be admitted to a hearing in his defense.

Sec. 6. The tenure of all offices, which are not or shall not be otherwise provided for, shall be during the pleasure of the Governor and Council.

Sec. 7. While the public expenses shall be assessed on polls and estates, a general valuation shall be taken at least once in ten years.

Sec. 8. All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally, according to the just value thereof.

Sec. 9. The Legislature shall never, in any manner, suspend or surrender the power of taxation.

Sec. 10. Sheriffs shall be elected by the people of their respective counties, by a plurality of the votes given in on the second Monday of September, and shall hold their offices for two years from the first day of January next after their election. Vacancies shall be filled in the same manner as is provided in the case of judges and registers of probate.

Sec. 11. The attorney general shall be chosen *annually* by joint ballot of the senators and representatives in the convention. Vacancy in said office, occurring when the Legislature is not in session, may be filled by the appointment of the Governor with the advice and consent of the Council.

Sec. 12. [Citizens absent in the military service may vote for county officers.]

Sec. 13. The Legislature may enact laws excluding from the right of suffrage, for a term not exceeding ten years, all persons convicted of bribery at any election, or of voting at any election, under the influence of a bribe.

Sec. 14. The credit of the State shall not be directly or indirectly loaned in any case. The Legislature shall not create any debt or debts, liability or liabilities, on behalf of the State, which shall singly or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed three hundred thousand dollars, except to suppress insurrection, to repel invasion, or for purposes of war; but this amendment shall not be construed to refer to any money that has been, or may be deposited with this State by the government of the United States, or to any fund which the State shall hold in trust for any Indian tribe.

Sec. 15. *The State is authorized to issue bonds payable within twenty-one years, at a rate of interest not exceeding six per cent. a year, payable semi-annually, which bonds or their proceeds shall be devoted solely towards the reimbursement of the expenditures incurred by the cities, towns and plantations of the State for war purposes during the rebellion, upon the following basis: Each city, town and plantation shall receive from the State one hundred dollars for every man furnished for the military service of the United States under and after the call of July second, eighteen hundred and sixty-two, and accepted by the United States towards its quota for the term of three years, and in the same proportion for every man so furnished and accepted for any shorter period;*

Sheriffs, how elected, and tenure of office.

(Resolve of March 17, 1855: Amendment ix.)

Attorney general. (Resolve of March 17, 1855:

Amendment ix; see Amendment xxiii.)

Bribery at elections.

(Resolve of Feb. 24, 1875: Amendment xx.)

Credit of state not to be loaned. — state debt limited to \$300,000.

(Resolve of July 26, 1847: Amendment vi.)

State to issue bonds in payment of municipal war debt. (Resolve of March 7, 1868:

Amendment xi.)

— basis of payment.

— commis-
sion ap-
pointed to
determine
amount due
cities, towns
and planta-
tions.
— limited to
\$3,500,000.

Towns of
4,000 inhabit-
ants or hav-
ing inhabited
islands, may
be divided
into voting
districts.
(Resolve of
March 15,
1869:
Amendment
xii.)

Laws now in
force con-
tinue until
repealed.

Constitution,
how
amended.

(See Art. 4,
Part 3, § 15.)

(See Amend-
ment xxiii.)

and the same shall be in full payment for any claim upon the State on account of its war debts by any such municipality. A commission appointed by the Governor and Council shall determine the amount to which each city, town and plantation is entitled; to be devoted to such reimbursement, the surplus, if any, to be appropriated to the soldiers who enlisted or were drafted and went at any time during the war, or if deceased, to their legal representatives. The issue of bonds hereby authorized shall not exceed in the aggregate three million five hundred thousand dollars, and this amendment shall not be construed to permit the credit of the State to be directly or indirectly loaned in any other case or for any other purpose.

Sec. 16. The Legislature may by law authorize the dividing of towns having not less than four thousand inhabitants, or having voters residing on any island within the limits thereof, into voting districts for the election of representatives to the Legislature, and prescribe the manner in which the votes shall be received, counted, and the result of the election declared.

ARTICLE X

SCHEDULE

Section 1. All laws now in force in this State, and not repugnant to this Constitution, shall remain, and be in force until altered or repealed by the Legislature, or shall expire by their own limitation.

SEC. 2. The Legislature, whenever two-thirds of both houses shall deem it necessary, may propose amendments to this Constitution; and when any amendments shall be so agreed upon, a resolution shall be passed and sent to the selectmen of the several towns, and the assessors of the several plantations, empowering and directing them to notify the inhabitants of their respective towns and plantations, in the manner prescribed by law, at their next *annual* meetings in the month of September, to give in their votes on the question, whether such amendment shall be made; and if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of this Constitution.

[Sections 3 and 4 provide for the rearrangement of the text of the Constitution by the chief justice of the Supreme Judicial Court, in accordance with the legislative resolve of February 24, 1875.]

AMENDMENTS

ARTICLE XXII¹

LIMITATION OF MUNICIPAL INDEBTEDNESS

No city or town shall hereafter create any debt or liability, which singly, or in the aggregate with previous debts or liabilities, shall exceed five per centum of the last regular valuation of said city or town; *provided, however,* that the adoption of this article shall not be construed as applying to any fund received in trust by said city or town, nor to any loan for the purpose of renewing existing loans or for war, or to temporary loans to be paid out of money raised by taxation, during the year in which they are made.

Municipal indebtedness never to exceed 5 per cent. of valuation. — exceptions. (See Art. i, §§ 1, 21.)

ARTICLE XXIII

[Article XXIII of the amendments, adopted September 8, 1879, substituted biennial elections and sessions for annual.]

ARTICLE XXIV²

ELECTION OF GOVERNOR BY PLURALITY VOTE

The Constitution of this State shall be amended, in the third section of the first part of article five, by striking out the word "majority," wherever it occurs therein, and inserting in the place thereof the word "plurality."

Governor to be elected by plurality. (See Art. v, Part 1, § 3.)

ARTICLE XXV³

BIENNIAL LEGISLATIVE TERMS

[Amends § 2, Art. 4, Part I, as amended by Article XXIII of the amendments, to read as follows:]

¹ Adopted September 10, 1877.

² Adopted September 13, 1880.

³ "The twenty-fifth Amendment was proposed to the people by a Resolve of the fifty-ninth Legislature passed March 18, 1880, and was adopted September 13, as appears from the transactions of the governor and council, preserved in the office of the secretary of state, wherein it is recorded that the report of the committee on elections to that effect was

Biennial terms of senators and representatives.

— legislature to ascertain number of inhabitants once every five or ten years.

— apportionment of representatives.

‘Sec. 2. The house of representatives shall consist of one hundred and fifty-one members, to be elected by the qualified electors, and hold their office two years from the day next preceding the biennial meeting of the legislature, *and the amendment herein proposed, if adopted, shall determine the term of office of senators and representatives to be elected at the annual meeting in September, in the year eighteen hundred and eighty, as well as the term of senators and representatives thereafter to be elected.* The legislature, *which shall first be convened under this constitution, shall on or before the fifteenth day of August, in the year of our Lord one thousand eight hundred and twenty-one, and the legislature, within every subsequent period of at most ten years, and at least five, cause the number of the inhabitants of the state to be ascertained, exclusive of foreigners not naturalized and Indians not taxed.* The number of representatives shall, at the several periods of making such enumeration, be fixed and apportioned among the several counties, as near as may be, according to the number of inhabitants, having regard to the relative increase of population. *The number of representatives shall, on said first apportionment, be not less than one hundred and not more than one hundred and fifty.*’

ARTICLE XXVI¹

PROHIBITION OF THE MANUFACTURE AND SALE OF INTOXICATING LIQUORS

Manufacture and sale of intoxicating liquors prohibited.

— exception.
— legislature shall enact laws to carry this article into effect.

The manufacture of intoxicating liquors, not including cider, and the sale and keeping for sale of intoxicating liquors, are and shall be forever prohibited. Except, however, that the sale and keeping for sale of such liquors for medicinal and mechanical purposes and the arts, and the sale and keeping for sale of cider may be permitted under such regulations as the Legislature may provide. The Legislature shall enact laws with suitable penal-

accepted by the council and approved by the governor, October 20, 1880. The amendment was never proclaimed by the governor nor declared by the Legislature, and it is not known that any public evidence of its adoption is in existence.” (*Note from text in Revised Statutes.*)

¹ Adopted September 8, 1884.

ties for the suppression of the manufacture, sale and keeping for sale of intoxicating liquors, with the exceptions herein specified.

ARTICLE XXVII¹

ELIGIBILITY OF THE TREASURER OF STATE

The treasurer shall be chosen biennially, at the first session of the legislature, by joint ballot of the Senators and Representatives in convention, but shall not be eligible more than six years successively.

Treasurer not eligible for more than six years. (See Art. v, Part 4, § 1.)

ARTICLE XXVIII²

APPOINTMENT OF ADJUTANT GENERAL

The major generals shall be elected by the senate and house of representatives each having a negative on the other. The adjutant general and quarter-master general shall be appointed by the governor. But the adjutant general shall perform the duties of quarter-master general until otherwise directed by law. The major generals and brigadier generals and the commanding officers of regiments and battalions, shall appoint their respective staff officers; and all military officers shall be commissioned by the governor.

Major generals, how elected. Adjutant general and quarter-master general appointed by governor. (See Art. vii, § 3.)

ARTICLE XXIX³

EDUCATIONAL QUALIFICATION OF VOTERS

No person shall have the right to vote or be eligible to office under the Constitution of this state, who shall not be able to read the Constitution in the English language and write his name; provided, however, that the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any person who shall be sixty years of age or upwards at the time this amendment shall take effect.

Elector must be able to read constitution in English and write his name.

—exceptions. (See Art. ii. § 1.)

¹ Adopted September 10, 1888.

³ Adopted September 12, 1892.

² Adopted September 12, 1892.

ARTICLE XXX¹

VACANCIES IN THE SENATE

Amendment
to Art. iv,
Part 2, § 5.
Vacancies in
Senate, how
filled.

Section five, in article four, part two, is hereby amended by striking out the words "and in this manner all vacancies in the senate shall be supplied as soon as may be after such vacancies happen," and substituting therefor the following :

' But all vacancies in the senate, arising from death, resignation, removal from the State, or like causes, shall be filled by an immediate election in the unrepresented district. The governor shall issue his proclamation therefor and therein fix the time of such election.'

¹ Adopted September 12, 1898.

APPENDIX C

94. THE STATE GOVERNMENT IN OUTLINE

THE CENTRAL GOVERNMENT

I. Legislative Department.

1. *Senate*,— fifty-one members elected from senatorial districts for two years.
2. *House of Representatives*,— one hundred and fifty-one members elected from representative districts for two years.

Each house elects its own officers (secretary, messengers, doorkeepers, etc.).

II. Executive Department.

1. *Executive Officers*.

- (1) Governor, — elected by popular vote for two years.
- (2) Council, — seven members elected by the legislature from councillor districts for two years.
- (3) Secretary of State, — elected by the legislature for two years.
- (4) Treasurer, — elected biennially by the legislature, but not eligible for more than six years in succession.
- (5) Attorney-General, — elected by the legislature for two years.

2. *Administrative Officers*.¹

- (1) State Superintendent of Public Schools, — appointed for three years.²

¹ The administrative officers, boards, and commissions have, in general, no connection with each other, but have been provided for from time to time to meet the requirements of particular classes of public business. Their arrangement in this outline, therefore, must not be understood as indicating their order of importance.

² Appointments, unless otherwise stated, are made by the governor and council. A number of officers, who normally hold their places for

- (2) Land Agent and Forest Commissioner, — appointed during the pleasure of the governor and council.
- (3) Insurance Commissioner, — appointed for three years.
- (4) Bank Examiner, — appointed for three years.
- (5) State Liquor Commissioner, — appointed for four years.
- (6) Commissioner of Agriculture, — elected by the legislature for two years.
- (7) Commissioner of Industrial and Labor Statistics, — appointed for two years.
- (8) Factory Inspector, — appointed for two years.
- (9) State Librarian, — appointed for three years.
- (10) Commissioner of Sea and Shore Fisheries, — appointed for three years.
- (11) Agent of Penobscot Indians, — appointed during the pleasure of the governor and council.
- (12) Agent of Passamaquoddy Indians, — appointed as in (11).

3. *Boards and Commissions.*

- (1) Railroad Commissioners, — three members appointed for three years.
- (2) State Assessors, — three members elected by the legislature for six years.
- (3) Commissioners of Inland Fisheries and Game, — three members: one the Land Agent and Forest Commissioner, two appointed for two years.
- (4) Cattle Commissioners, — three members appointed by the governor during his pleasure.
- (5) Inspectors of Prisons and Jails, — three members appointed for four years.
- (6) Inspectors of Steamboats, — two appointed for five years.
- (7) Commissioners of Pharmacy, — three members appointed for three years.

stated periods, may be removed before the expiration of the period by the governor and council.

- (8) State Board of Health,— six members appointed for six years. The secretary is appointed by the board, and holds office during good behavior.
- (9) Board of Registration of Medicine,— six members appointed for six years.
- (10) Board of Dental Examiners,— five members appointed for three years.
- (11) Trustees of State Normal Schools,— the Governor and State Superintendent of Public Schools, and five members appointed for three years.

III. Judicial Department.

Supreme Judicial Court.

A chief justice and seven associate justices appointed for seven years.

THE COUNTY

I. Executive Department.

- (1) County Commissioners. Three members elected for six years.¹
- (2) Sheriff,— elected for two years.
- (3) County Attorney,— elected for two years.
- (4) Treasurer,— elected for two years.
- (5) Register of Deeds,— elected for four years.
- (6) Register of Probate,— elected for four years.
- (7) Coroner,— appointed during the pleasure of the governor and council.

II. Judicial Department.

- (1) Superior Court (Cumberland and Kennebec counties only),— one judge appointed for seven years. These courts have both civil and criminal jurisdiction, the latter exclusive.
- (2) Supreme Judicial Court,— trial terms, two or more times a year in each county (civil business only in

¹ Elective county officers are chosen by the voters of the county.

Cumberland and Kennebec counties), held by a single justice.

- (3) Court of Probate and Insolvency, — one judge elected for four years.

THE TOWN

I. Legislative Department.

Town meeting, in which all voters may participate.

II. Executive Department.

- (1) Three selectmen, clerk, treasurer, assessors of taxes, collector, overseers of the poor, town agent, auditor, etc., — elected annually.¹
- (2) Superintending School Committee, — three members elected for three years, one retiring annually.
- (3) Superintendent of Schools, — appointed by the superintending school committee, if not elected by the town.
- (4) Board of Health, — three members appointed by the municipal officers for three years.
- (5) Road Commissioner or Commissioners, — elected, if chosen at all.
- (6) Fire Wards, — optional number, elected.
- (7) Night Watch, Police, and Constables, — optional number, elected or appointed.

III. Judicial Department.

- (1) Municipal or Police Court (established by special act of the legislature), — one judge appointed by the governor and council for four years.
- (2) Trial Justice, — appointed by the governor and council for seven years.²

¹ Except as otherwise stated, the term of all town officers, whether elected or appointed, is one year. Officers not elected by the town are appointed by the municipal officers, and most minor officers, such as fence-viewers, weighers and measurers, etc., may be chosen in either way.

² Justices of the Peace and Quorum are commissioned to act in every county; trial justices only in the county for which they are commis-

- (3) Justice of the Peace and Quorum,—appointed by the governor and council for seven years.¹

THE CITY

I. Legislative Department.

Board of Aldermen, or Common Council, or both (the two bodies usually known together as the City Council), elected by the voters of the several wards. The number of wards, the number of members from each ward, and the term of office are fixed by the city charter.

II. Executive Department.

- (1) Mayor,—elected annually by popular vote.
- (2) Clerk, Treasurer, Auditor, Solicitor, Engineer, Assessors, etc.,—chosen according to the provisions of the charter, but usually elected by the city council with the approval of the mayor.
- (3) Board of Registration,—three members: one appointed by the governor and council for four years, two appointed by the mayor for three years on nomination of the city committees of the two parties which polled respectively the highest and next highest number of votes in the next preceding gubernatorial election.
- (4) Board of Health,—same as in towns, with the addition, usually, of a health officer appointed by the board.
- (5) Superintending School Committee or Board of Education,—the number and method of choice are fixed by the charter, the various cities showing no uniformity.²

sioned. There is usually no other trial justice in a town in which a municipal court is established.

¹ See note 2, p. 246.

² The provisions of the statutes relating to the choice of the superintending school committee and superintendent of schools by towns do not apply to cities whose charters make different provisions.

- (6) Superintendent of Schools,— usually elected annually by the school committee.¹
- (7) Warden and Ward Clerk,— elected by the voters of each ward at the same election at which the mayor is chosen.
- (8) Minor officials, as in towns,— a few appointed by heads of departments, others by the city council.

III. Judicial Department.

- (1) Municipal or Police Court, as in towns.
- (2) Justices of the Peace and Quorum, as in towns.

THE PLANTATION

Organization substantially the same as that of towns, except that there is no board of selectmen. The duties of selectmen of towns are performed in plantations by the board of assessors.

¹ See note 2, p. 247.

APPENDIX D

STATISTICAL TABLES

95. PRESIDENTIAL VOTE OF MAINE

(Compiled from tables in Stanwood's *History of the Presidency*. The name of the successful candidate is indicated by a star (*).)

1820.	*James Monroe, Dem. Rep.	1
	John Quincy Adams, Nat. Rep.	1
1824.	*John Quincy Adams, Nat. Rep.	10,289
	William H. Crawford, Dem.	2,336 ²
1828.	*Andrew Jackson, Dem.	13,927
	John Quincy Adams, Nat. Rep.	20,733
1832.	*Andrew Jackson, Dem.	33,291
	Henry Clay, Nat. Rep.	27,204 ⁸
1836.	*Martin Van Buren, Dem.	22,990
	William Henry Harrison, Whig	15,239
1840.	*William Henry Harrison, Whig	46,612
	Martin Van Buren, Dem.	46,201
	James G. Birney, Abol.	194
1844.	*James K. Polk, Dem.	45,719
	Henry Clay, Whig	34,378
	James G. Birney, Abol.	4,836
1848.	*Zachary Taylor, Whig	35,125
	Lewis Cass, Free Soil	39,880
	Martin Van Buren, Dem.	12,096
1852.	*Franklin Pierce, Dem.	41,609
	Winfield Scott, Whig	32,543
	John P. Hale, Free Soil	8,030
1856.	*James Buchanan, Dem.	39,080
	John C. Fremont, Rep.	67,379
	Millard Fillmore, Amer.	3,325
1860.	*Abraham Lincoln, Rep.	62,811
	Stephen A. Douglas, Northern Dem.	26,693

¹ Complete figures not available.

² Combined opposition. ⁸ Includes votes cast for William Wirt.

1860.	John C. Breckinridge, Southern Dem.	6,368
	John Bell, Union	2,046
1864.	* Abraham Lincoln, Rep.	72,278
	George B. McClellan, Dem.	47,736
1868.	* Ulysses S. Grant, Rep.	70,426
	Horatio Seymour, Dem.	42,396
1872.	* Ulysses S. Grant, Rep.	61,422
	Horace Greeley, Dem.	29,087
1876.	* Rutherford B. Hayes, Rep.	66,300
	Samuel J. Tilden, Dem.	49,917
	Peter Cooper, Greenback	663
1880.	* James A. Garfield, Rep.	74,039
	Winfield S. Hancock, Dem.	65,171 ¹
	James B. Weaver, Greenback	4,408
	Neal Dow, Pro.	93
1884.	* Grover Cleveland, Dem.	52,140
	James G. Blaine, Rep.	72,209
	Benjamin F. Butler, Anti-Monop.	3,953
	John P. St. John, Pro.	2,160
1888.	* Benjamin Harrison, Rep.	73,734
	Grover Cleveland, Dem.	50,481
	Clinton B. Fisk, Pro.	2,691
	Alson J. Streeter, Un. Labor	1,344
1892.	* Grover Cleveland, Dem.	48,044
	Benjamin Harrison, Rep.	62,931
	James B. Weaver, Peop.	2,381
	John Bidwell, Pro.	3,062
	Simon Wing, Soc. Labor	336
1896.	* William McKinley, Rep.	80,461
	William J. Bryan, Dem.	34,587
	John M. Palmer, Nat. Dem.	1,866
	Joshua Levering, Pro.	1,589
1900.	* William McKinley, Rep.	65,412
	William J. Bryan, Dem.	36,822
	James G. Woolley, Pro.	2,585
	Eugene V. Debs, Soc. Dem.	878

¹ Fusion ticket.

96. POPULATION OF MAINE BY COUNTIES

(From *Twelfth Census of the United States, I., 23*)

COUNTIES.	1790	1800	1810	1820	1830	1840	1850	1860	1870	1880	1890	1900
The State . . .	96,540	151,719	228,795	298,269	399,455	501,793	583,169	628,279	626,915	648,936	661,086	694,466
Androscoggin . . .	—	—	—	—	—	—	—	29,726	35,866	45,042	48,968	54,242
Aroostook . . .	—	—	—	—	—	9,413	12,529	22,479	29,609	41,700	49,589	60,744
Cumberland . . .	26,105	38,208	42,831	49,379	60,102	68,658	79,538	75,591	82,021	86,359	90,949	100,689
Franklin . . .	—	—	—	—	—	20,801	20,027	20,493	18,807	18,180	17,053	18,444
Hancock . . .	9,549	16,358	30,031	31,290	24,336	28,605	34,372	37,757	36,495	38,129	37,312	37,241
Kennebec . . .	—	24,571	32,564	42,623	52,485	55,823	62,521	55,655	53,203	53,058	57,012	59,117
Knox . . .	—	—	—	—	—	—	—	32,716	30,823	32,803	31,473	30,406
Lincoln . . .	29,236	30,225	42,992	53,189	57,192	63,517	74,875	27,860	25,597	24,821	21,996	19,669
Oxford . . .	—	—	17,630	27,104	35,219	38,351	39,763	36,698	33,488	32,627	30,586	32,238
Penobscot . . .	—	—	—	13,870	31,530	45,705	63,089	72,731	75,150	70,476	72,865	76,246
Piscataquis . . .	—	—	—	—	—	13,138	14,735	15,032	14,403	14,872	16,134	16,949
Sagadahoc . . .	—	—	—	—	—	—	—	21,790	18,803	19,272	19,452	20,330
Somerset . . .	—	—	12,910	21,787	35,787	33,912	35,581	36,753	34,611	32,333	32,627	33,849
Waldo . . .	—	—	—	—	29,788	41,509	47,230	38,447	34,522	32,463	27,759	24,185
Washington . . .	2,758	4,461	7,870	12,744	21,294	28,327	38,811	42,534	43,343	44,484	44,482	45,232
York . . .	28,892	37,896	41,877	46,283	51,722	54,034	60,098	62,107	60,174	62,257	62,829	64,885

97. POPULATION OF PLACES OF 4000 INHABITANTS
OR OVER IN 1890 AND 1900

(From *Twelfth Census of the United States, I., 189-195*)

	1890	1900		1890	1900
Auburn	11,250	12,951	Fort Fairfield . . .	3,526	4,181
Augusta	10,527	11,683	Gardiner	5,491	5,501
Bangor	19,103	21,850	Houlton	4,015	4,686
Bath	8,723	10,477	Lewiston	21,701	23,761
Biddeford	14,443	16,145	Old Town	5,312	5,763
Brewer	4,193	4,835	Portland ²	36,425	50,145
Brunswick	6,012	6,806	Rockland	8,174	8,150
Calais	7,290	7,655	Saco	6,075	6,122
Cape Elizabeth ¹ . . .	5,459	887	Sanford	4,201	6,078
Caribou	4,087	4,758	Skowhegan	5,068	5,180
Deering	5,353	South Portland	6,287
Eastport	4,908	5,311	Waterville	7,107	9,477
Eden	1,946	4,379	Westbrook	6,632	7,283
Ellsworth	4,804	4,297			

¹ Part taken in 1895 to form South Portland.

² Includes Deering, annexed in 1899.

98. STATE FINANCES

[The figures are taken from the report of the State Treasurer for the year ending December 31, 1901, but the classification is changed to show, as far as possible, the different kinds of revenue and expenditure. The items vary little from year to year.]

A. STATE REVENUE

I. REVENUE DERIVED FROM TAXATION

(1) *From General or Direct Taxes.*

State tax, arrears	\$10,353.03
State tax, 1900	752,022.65
State tax, 1901	166,846.63
County tax	38,749.70

Carried forward \$967,972.01

<i>Brought forward</i>	.	.	.	\$2,289,275.42
State liquor commissioner		\$1,500.00		
Miscellaneous	.	.	5,960.75	
				<u>102,747.44</u>
Total revenue from taxation and other income	.	.	.	\$2,392,022.86
Cash on hand Jan. 1, 1901	.	.	.	198,879.01
				<u>\$2,590,901.87</u>

B. STATE EXPENDITURES

(1) *General Administrative Expenses.*

Salaries of public officers	.	.	\$91,531.45	
Expenses of offices, depart- ments, and boards	.	.	101,935.83	
Council	.	.	4,241.68	
Contingent funds	.	.	7,467.81	
				<u>\$205,176.77</u>

(2) *Legislative Department.*

Pay roll, House of Represen- tatives	.	.	\$31,894.00	
Pay roll, Senate	.	.	10,324.00	
Contingent expenses	.	.	12,000.00	
Clerical expenses	.	.	3,560.97	
Committees	.	.	1,016.93	
Printing and stationery	.	.	15,180.65	
				<u>73,976.55</u>

(3) *Education.*

School fund and mill tax	.	.	\$531,951.94	
Normal schools	.	.	42,879.77	
University of Maine	.	.	20,600.00	
High schools	.	.	36,751.94	
Academies	.	.	2,690.00	
State library	.	.	5,073.00	
Public libraries	.	.	4,443.77	
Farmers' institutes, etc.	.	.	16,034.00	
Unorganized townships	.	.	2,841.51	
Miscellaneous	.	.	5,562.71	
				<u>668,828.64</u>
<i>Carried forward</i>	.	.	.	\$947,981.96

	<i>Brought forward</i>	\$947,981.96
(4)	<i>Charities and Correction.</i>	
	State charitable institutions	\$239,332.95
	State correctional institutions	88,104.81
	Private institutions	37,500.00
	Miscellaneous	27,700.04
		<hr/>
		392,637.80
(5)	<i>Military Expenses.</i>	
	Militia	\$29,988.32
	Pensions	79,097.33
	Miscellaneous	6,895.06
		<hr/>
		115,980.71
(6)	<i>Miscellaneous.</i>	
	Public debt, loans reissued	\$50,000.00
	Temporary loans	350,000.00
	Interest	84,059.12
	Taxes and fees refunded	69,188.04
	Printing, etc.	88,447.07
	Indians	21,294.20
	Australian ballot	3,789.82
	Fish and game	34,565.94
	Cattle Commission	10,975.55
	Railroad and telegraph tax due towns	67,985.04
	Sea and shore fisheries	13,748.33
	Topographical survey	7,577.08
	Miscellaneous	53,161.99
		<hr/>
		854,792.18
		<hr/>
	Total expenditures	\$2,293,064.70
	Cash on hand December 31, 1901	297,837.17
		<hr/>
	Total	\$2,590,901.87

C. RESOURCES AND LIABILITIES OF THE STATE
JANUARY 1, 1902

1. RESOURCES

Cash in treasury	\$297,837.17
Balance due on state taxes	762,000.00
Securities	177,894.08
	\$1,237,731.25
Total resources	

2. LIABILITIES

Bonded debt	\$2,053,000.00
Temporary loans	250,000.00
Trust funds bearing interest	794,002.06
Miscellaneous accounts	177,894.08
School fund and mill tax	562,162.18
Railroad and telegraph tax	101,654.99
Dog licenses due towns	24,171.72
Pensions	64,579.00
Interest on Madawaska school fund	300.00
Warrants drawn and not paid	103,323.09
County taxes, 1901, due counties	38,726.13
	\$4,169,813.25
Total liabilities	



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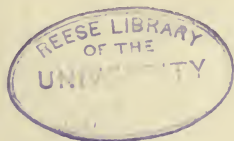
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