# GARNER JAMES WILFORD

## GOVERNMENT IN THE UNITED STATES, NATIONAL, STATE AND LOCAL

**James Garner**

# Government in the United States, National, State and Local

*http://www.litres.ru/pages/biblio_book/?art=24858739*
*Government in the United States, National, State and Local:*

# Содержание


| | |
|---|---|
| PREFACE | 4 |
| CHAPTER I | 6 |
| CHAPTER II | 30 |
| CHAPTER III | 68 |
| CHAPTER IV | 88 |
| CHAPTER V | 110 |
| Конец ознакомительного фрагмента. | 129 |

# James Wilford Garner
# Government in the United States, National, State and Local

## PREFACE

My aim in the preparation of this book has been to present in an elementary way the leading facts concerning the organization and activities of national, state, and local government in the United States. I have given rather greater emphasis than is customarily done in textbooks of this character to what may be called the dynamics of government, that is, its actual workings, as contradistinguished from organization. Likewise, I have laid especial stress upon the activities and methods of political parties, party conventions, primaries, the conduct of political campaigns, the regulation of campaign methods, and the like. The increasing importance of citizenship has led me to devote a chapter to that subject. To encourage wider reading among students, I have added to each chapter a brief list of references to books which should be in every high school library. The great value of illustrative material as a means of acquainting

students with the spirit and actual methods of government is now recognized. For the convenience of teachers, I have therefore added at the end of each chapter a list of documentary and other illustrative material, most of which can be procured without cost and all of which may be used to advantage in supplementing the descriptive matter in the textbook. To stimulate the spirit of research and to encourage independent thinking among students, I have also added at the end of each chapter a list of search questions bearing upon the various subjects treated in the chapter.

I am under obligations to a number of teachers for reading the proof sheets of this book and for giving me the benefit of their advice. Among those to whom I am especially indebted are Mr. Clarence O. Gardner, formerly assistant in political science in the University of Illinois, Mr. W. A. Beyer, of the Illinois State Normal University, Mr. C. H. Elliott, of the Southern Illinois State Normal University, Mr. E. T. Austin, of the Sterling Township (Ill.) High School, and Mr. William Wallis, Principal of the Bloomington (Ill.) High School.

*J. W. Garner*

Urbana, Illinois.

# CHAPTER I
# LOCAL GOVERNMENT: TOWNS, TOWNSHIPS, AND COUNTIES

**Kinds of Local Government.–** Most of us live under at least four different governmental organizations: the government of the United States, the government of a state, the government of a county, and the government of a minor division, usually called a town or township. In addition to (or sometimes instead of) the county or township government, many of us live under a special form of government provided for urban communities, – cities, villages, or boroughs, – where the population is comparatively dense and where, therefore, the somewhat simple form of government provided for rural communities is insufficient. If the people of the smaller communities are allowed to choose their own public officials and, within certain limits, to determine their own policies in public matters of a local character, they have a system of *local self-government*. If, on the contrary, they are governed by some distant central authority which determines their local policies and by which their local officials are appointed, they live under a system of *centralized government*.

**Merits of Local Self-Government.–** In the United States, the privilege of local self-government is regarded as one of the chief merits of our political system, and it is often declared to be

one of the inalienable rights of the people. One great advantage of local self-government is that it brings government near the door of every citizen, and permits the people of each locality, who are most familiar with their own local conditions and who know best what are their local needs, to regulate their own affairs as they see fit. Also, such a system is well calculated to secure responsibility. So long as the local authorities are chosen by the community from its own inhabitants and are constantly under the eyes of the people, to whom they are responsible, they can be more effectively controlled by local public opinion than is possible where they are chosen by authorities distantly removed. Another important advantage of local self-government is that it serves as a training school for the political education of the citizens. Allow them the privilege of choosing their own local officials and of regulating their own local concerns, and their interest in public affairs will be stimulated and their political intelligence increased and broadened. This not only will tend to secure more responsible government (local, state, and national), but will produce a more active type of citizenship.

**Importance of Local Government.–** With the growth and congestion of population in centers, and the increasing complexity of our industrial and social life, the importance of local self-government has enormously increased. The local governments touch us at many more points to-day than does either the state or the national government; they regulate a far larger proportion of the concerns of our everyday life;

and hence we feel the effects of corrupt or inefficient local government more keenly than we feel the effects of inefficient state or national government. We depend largely upon our local governments for the maintenance of the peace, order, and security of the community; for the protection of the public health; for the support of our schools; for the construction and maintenance of roads and bridges; for the care of the poor; and if we live in a city, for protection against fire, for our water supply, usually, and for many other services essential to our comfort and happiness. Finally, the larger proportion of the taxes we pay goes toward the support of local government – a fact which makes it very important that our local governments should be efficiently, honestly, and economically conducted.

**Types of Local Government.–** The form of local government existing in each state is such as the state itself provides, the national government having no authority whatever over the matter. Such differences as exist are more largely the result of historical conditions growing out of the early settlement of the states, than of any pronounced differences of opinion among the people in regard to forms of government. Since colonial times there have been three general types of local rural government in America: the *town system*, in New England; the *county system*, which originated in Virginia and spread to other colonies and states; and the *county-township type*– a combination of the first two forms – which developed in the middle colonies of New York and Pennsylvania and was carried to many Western

states by settlers from the middle states, and is now the most common form to be found.

## TOWN GOVERNMENT

**Town and County in New England.–** The characteristic feature of the town system of government is that the management of local affairs devolves mainly upon the town (or township, as it is usually called outside of New England), while the county is little more than an administrative district for judicial and election purposes. In some of the New England states, where the town system originated and where it exists in its purest form, the county is almost ignored as an area for local government. In Rhode Island it performs practically no duties of local government and is merely a judicial district; there no county officers are to be found except the sheriff and clerks of the courts. In the other New England states the county plays a more important part than it does in Rhode Island, but in none of them does it share with the towns in anything like an equal measure the burden of local government.

**The New England Town.–** The towns of New England are the oldest political communities in America, some of them being older in fact than the counties and states of which they are a part. Generally they vary from twenty to forty square miles in area, and are irregular in shape, being in this respect unlike the townships of many Western states, which were laid out in squares, each

with an area of thirty-six square miles. In population they vary from a few hundred persons to more than 130,000 as is the case with New Haven, which, though an incorporated city, maintains a separate town organization.

**Powers of Town Government.–** The functions performed by the town governments are varied and numerous. The most important, however, are the support and management of public schools, the laying out and maintenance of roads, the construction of bridges, the care of the poor, and in the more populous towns, fire protection, health protection, the maintenance of police, lighting, paving of streets, establishment of parks, public libraries, etc. The towns also have power to enact ordinances of a police character, relating to such matters as bicycle riding on sidewalks, the running of animals at large, etc.

In addition to the management of the purely local affairs of the community, the town acts as the agent of the state government for carrying out certain state laws and policies. Thus it assesses and collects the state taxes, keeps records of vital statistics, enforces the health laws of the state, and acts for the state in various other matters. Finally, except in Massachusetts, the town is a district for choosing members of at least one branch of the legislature, and everywhere in New England it is a district for state and national elections.[1]

**The Town Meeting.–** The central fact in the system of town government in New England is the town meeting, or assembly of

[1] Fairlie, "Local Government," p. 147.

the qualified voters of the town. The annual meeting is usually held in the early Spring (except in Connecticut, where it is generally held in October) and special meetings are called from time to time as necessity may require. All persons qualified as voters under the state laws are entitled to attend and take part in the proceedings of the meeting. Formerly non-attendance was punishable by a fine, but that is no longer resorted to; it being supposed that each voter's interest will be sufficient inducement to secure his presence. The attendance is larger in the towns of New England than in the states of the West where the town meeting exists, and it is larger in urban towns than in those of a rural character. Formal notice must be given of the time and place of the meeting, and this is done by a warrant issued by the selectmen, which specifies also the matters of business to be considered. This notice must be posted in conspicuous places a certain number of days before the meeting. No other matters than those mentioned in the warrant can be introduced or considered. The meetings are usually held in the town hall, though in the early history of New England they were frequently held in the church, which was thus a "meeting house" for civil as well as for church purposes.

The meeting is called to order by the town clerk, who reads the warrant, after which an organization is effected by the election of a presiding officer called a moderator, and business then proceeds in accordance with the customary rules of parliamentary law. The next order of business is the election of

the town officers for the ensuing year. This done, appropriations are made for the payment of the public expenses of the town, and the other measures necessary for the government of the town are then discussed and adopted. The most interesting fact about the New England town meeting is the lively discussion which characterizes its proceedings. Any voter may introduce resolutions and express his opinion on any proposition before the assembly. One great advantage of this system of local government is its educative effect upon the citizens. It affords a means of keeping alive interest in public affairs and thus tends to develop a more intelligent citizenship. Important measures may be carefully discussed and criticized before the final vote is taken, and it is difficult to "railroad" or smuggle an objectionable measure through, as is sometimes done in the legislatures and city councils. Everything the officials and committees of the town have done is subject to be criticized, everything they are to do is subject to be regulated by the meeting. The final action of the meeting, therefore, is pretty apt to represent the real wishes of the people.

**Conditions Unfavorable to Government by Town Meeting.–** Various causes, however, are at work in some parts of New England to weaken the system of government by town meeting and to render it less suited to the modern conditions under which it must be operated. The growth of manufacturing industries in many of the towns has introduced a conflict of interests between factory owners and operators on the one hand,

and farmers on the other. The result is occasional squabbles and controversies which are not favorable to government by mass meeting. The influx of foreigners who are unaccustomed to local self-government and who are therefore unfamiliar with the duties of citizens in self-governing communities has in recent years also introduced an unfavorable element. Finally, the caucus has gained a foothold in many towns so that the election of officers and the determination of important policies are often controlled by a small group of persons who get together prior to the town meeting and prepare a "slate" which is put through without adequate discussion. It is also to be noted that with the growth of population, many of the towns have become too populous to be governed effectively by mass meeting. Frequently the town hall is too small to accommodate all the voters who attend, and satisfactory debate under such conditions is impossible. Often when a town reaches this size it organizes itself into a municipal corporation, and a city council takes the place of the popular assembly, but there are many places of considerable size which still retain the town organization.

**Town Officers.—***Selectmen.*– From the beginning of town government it was necessary to choose agents to look after the affairs of the community during the interval between town meetings. These persons were called *selectmen*, and they have retained the name until the present day.

Every town now has a body of selectmen chosen at the annual meeting, usually for one year (in Massachusetts for three years)

to act as a general managing board for the community. The number for each town varies from three to nine according to the size of the town, three being the most usual number. Reëlections are frequent; one selectman in Brookline, Massachusetts, served nearly forty years. Their duties vary in the different towns. Generally they issue warrants for holding town meetings, lay out roads, impanel jurors, grant licenses, abate nuisances, arrange for elections, control the town property, hear complaints, sometimes assess taxes (especially in the small towns), and may appoint police officials, boards of health, overseers of the poor, and other local officers if they are not chosen by the voters assembled in the town meeting.

*The Town Clerk.*– Besides the selectmen, there are various other officers of the town, the number varying according to its size and importance. One of the most important of these is the *clerk*, who performs some duties discharged by the county clerk in states outside of New England. The town clerk is elected at the annual town meeting, and is frequently reëlected from year to year. His principal duties are to keep the records of the town meetings, and of the meetings of the selectmen, issue marriage licenses, and keep registers of births, marriages, and deaths.

*Assessors and Treasurer.*– In the large towns there are assessors of taxes, who prepare tax lists; in the smaller ones, as stated above, the selectmen act as assessors. In all of the towns there is a town treasurer who receives and takes care of all taxes collected from the citizens, turning over to the proper officers

the portion which goes to the state and to the county. He also keeps an account of all receipts and disbursements and makes an annual report to the town meeting.

*Overseers of the Poor.*– To care for the pauper and dependent class there are usually one or more overseers of the poor elected by the town meeting, though in the smaller towns the selectmen perform this duty. Their principal function is to determine who shall receive public aid.

*Constables.*– In every town one or more constables are elected. Formerly this office, like that of sheriff, was one of dignity and influence, but it has lost much of its early importance. As the sheriff is the peace officer of the county, the constables are the peace officers of the town. They pursue and arrest criminals and execute warrants issued by the selectmen and by the justices of the peace. In addition they sometimes summon jurors and act as collectors of the taxes.

*School Committee.*– Generally there is also a school committee elected at the town meeting. It is charged with establishing and visiting schools, selecting teachers, prescribing the courses of instruction, and appointing truant officers.

*Other Town Officials* are justices of the peace; road surveyors or similar officers with other titles, charged with keeping public roads and bridges in repair; field drivers and poundkeepers, who take up and keep stray animals until claimed by their owners; fence viewers, who settle disputes among farmers in regard to partition fences and walls; sealers of weights and measures, who

test the accuracy of scales and measures; surveyors of lumber; keepers of almshouses; park commissioners; fish wardens; inspectors of various kinds; and a host of other minor officials, some of whom bear queer titles, and many of whom serve without pay or receive only trifling fees for their services. In some of the small towns, officials are so numerous as to constitute a goodly proportion of the population. The town of Middlefield (Mass.), for example, with only eighty-two voters recently had a total of eighteen officials.[2]

**Town Government in the West.–** Town government is not confined to New England; it has been carried to many Western states where immigrants from New England have settled, though in none of them does it possess the vitality or play the important part in the management of public affairs that it does in the older communities where it originated. In the states of the South and the far West, there is no general system of town government. Counties, however, are usually divided into districts for a few unimportant purposes.

## COUNTY GOVERNMENT

**The County.–** The county[3] is a civil division created by the state partly for purposes of state administration and partly for local government. New York city embraces within its boundaries

[2] Hart, "Actual Government," p. 172.

[3] The corresponding division in Louisiana is called a parish.

five counties; other cities, like Chicago, Cleveland, Buffalo, and Cincinnati, contain within their limits the larger part of the population of the counties in which they are situated. The population of a large majority of the counties, however, is predominantly rural rather than urban in character, and where there is a large city within a county, most of the affairs of that portion of the county lying within the city limits are managed by the city government.

*Population and Area.*– The population of the counties, and their areas, vary widely. Several counties in Texas in 1910 had less than 400 inhabitants each, New York county, on the other hand, had more than 2,750,000. The most populous counties are in the Eastern states, and the least populous in the South and West. There are now about 3,000 counties in all the states, the number in each state ranging from three in Delaware and five in Rhode Island to 244 in Texas. In proportion to population Massachusetts has a smaller number (fourteen) than any other state in the Union. In many states the minimum size of counties is fixed by the constitution. The minimum limit where it is fixed by the constitution is usually 400 square miles, though in some states it is 600 or 700 and in Texas it is 900 square miles. Where no such restrictions have been prescribed, however, as in some of the old states, the area is sometimes very small. In Rhode Island, for example, there is one county with an area of only 25 square miles. New York has one county (New York) with an area of 21 square miles, and another (St. Lawrence) with an area of 2,880

square miles. On the other hand, Choteau county in Montana has an area of over 16,000 square miles, being considerably larger than the combined area of several of the smaller states.

To prevent the legislature from creating new counties or altering the boundaries of existing counties against the wishes of the inhabitants, and to secure to the people home rule in such matters, the constitutions of a number of states provide that new counties may be formed, or the area of existing counties altered, only with the consent of the inhabitants concerned, given by a direct popular vote on the question.

*Functions of the County.*– The county is a judicial and elective district, and the jails and courthouses and sometimes the almshouses are county rather than town institutions. Outside of New England the county is also often the unit of representation in the legislature; and it acts as an agent of the state in collecting taxes and executing many laws.

**County Officers.**—*The County Board.*– The principal county authority is usually a board of commissioners or supervisors (in Louisiana it is called the police jury), elected by the voters either from the county at large or from districts into which the county is divided. In most states it is a small board, usually three or five members; in some it is larger, being composed of one member from each township in the county. In a few Southern states (Kentucky, Tennessee, and Arkansas), the county court of justices of the peace still acts as the county board, as in Colonial days.

This board is both a legislative and an administrative body for the county, for the executive and legislative functions in local government are not always kept so separate and distinct as they are in the state and national governments. It levies taxes, appropriates money for meeting the public expenses, has general control of county finances, has charge of county buildings and other property, settles claims against the county, approves bonds of county officials, and in many states it establishes roads, lets contracts for the erection of bridges and other public works and for repairing them, licenses ferries and sometimes inns, saloons, peddlers, etc., cares for the poor and dependent classes, and performs numerous other services which vary in extent and character in the different states.

*The Sheriff.*– The most important executive officer of the county is the sheriff. This office is a very ancient one, though it has lost much of its former dignity and importance. The sheriff is elected by the people of the county, in all of the states except Rhode Island (where he is chosen by the state legislature), for a term ranging from one to four years, the most usual term being two years. The sheriff is usually assisted by a number of deputies, who are either regularly employed by him or especially summoned in case of emergencies. He is the general conservator of the peace of the county and is charged with attending the court as its executive officer and with carrying out its orders, whether it be to sell property for nonpayment of taxes, to seize and sell property in execution of a judgment, or to hang a convicted

criminal. He has the power, and it is his duty, to arrest offenders and commit them to the jail, of which he is usually the custodian, and to this end he may summon to his aid the *posse comitatus*, which consists of the able-bodied male citizens of the county. In case of serious disturbance and riot he may call on the governor for the aid of the militia. He must exercise reasonable care for the safe-keeping of prisoners in his custody, and in some states he may be removed from office by the governor for negligence in protecting them against mob violence. In some of the Southern states he is *ex officio* tax collector and in some he is also *ex officio* public administrator. Other duties of a special nature are imposed upon sheriffs in different states.

*The Coroner.*– Next to the sheriff among county officers in point of origin is the coroner, whose principal duty is to hold inquests upon the bodies of persons who are supposed to have died from violence or other unlawful means. In such cases it is the duty of the coroner to impanel a jury, usually of six persons, who from the testimony of witnesses, if there are such, and with the aid of a physician or other expert, decide the facts as to how the deceased met his death. A coroner's inquest, however, is not a trial but merely an inquiry into the circumstances of the death. By an old common-law rule, the coroner usually succeeds to the office of sheriff in case the latter dies or for any other reason is disqualified from acting.

*County Clerk.*– Usually in every county there is an official called the county clerk, who in most states serves both as the

clerk of the county board of commissioners, and as clerk of the county court and of the circuit court. In the former capacity he keeps a record of the proceedings of the meeting of the board. His books must contain a record of all bids for the erection of county buildings, of all contracts let, notices of elections ordered, licenses granted, roads laid out or changed, and indeed of all transactions of the board. As clerk of the court he must prepare and keep the docket of all cases for trial and of the judgments entered, issue processes and writs, certify to the accuracy of transcripts from the records of the court, and keep all papers and records of the court. In Pennsylvania and Delaware the clerk of the common pleas court is known as a "prothonotary"; in Massachusetts the clerks of the probate courts are styled "registers of probate."

In a few states these two sets of duties are intrusted to different officials, one of whom is styled the county clerk and the other the clerk of the court. Usually the county clerk is also an election officer, being charged with the giving of notices of elections, the preparation of ballots, and the keeping of election records. County clerks are usually elected by the people of the county for a period ranging from one to four years, and reëlection is much more frequent than is the case with other county officials, because of the greater need of experience and familiarity with the duties of the office.[4]

[4] In Vermont and Connecticut, however, they are appointed by the judges and hold during their pleasure, while in Rhode Island they are elected by the legislature annually.

*County Treasurer.*– An important county officer is the treasurer, who receives and has custody of the state and county taxes, though in a few states having the county system of local government there are special tax collectors, and, as we have seen, in some of them these duties are performed by the sheriff.[5] Nearly everywhere the office is filled by popular election, though in a few states treasurers are chosen by the county board or appointed by the governor. On account of the large sums of money often intrusted to their keeping, they are usually placed under heavy bond to insure the state and county against loss in case of defalcation or other misapplication of the funds in their charge. County treasurers frequently deposit the public funds in local banks and retain for themselves the interest which they receive therefrom. Recently the treasurer of Cook county, Illinois, agreed before his election to turn over to the county all interest received by him on county funds deposited in banks, and in 1904 nearly half a million dollars was thus paid into the county treasury by him.

*County Auditor.*– In a number of states the office of county auditor has been provided. Generally he keeps the accounts of the county, so as to show the receipts and expenditures of the public moneys, and issues warrants upon the treasurer for the payment of bills authorized by the county board. In some states his duties are limited merely to an examination of the accounts

[5] Rhode Island is the only state in which there is no such official as the county treasurer, the custody of local funds being intrusted to the town treasurers.

of county officers to see that they have been properly kept and that there has been no misapplication of public funds.

*Recorder of Deeds.*– In all the states there are officials charged with keeping records of certain legal documents such as deeds, mortgages, and leases. They are designated by different names, the most usual being register of deeds or recorder of deeds. They make exact copies of the instruments to be recorded, enter them in large books, and keep indexes by which such instruments can be readily found. In some states these duties are performed by the county clerk. The importance of the office is evident because upon the careful preservation and accuracy of the records must depend in many cases our rights to property.

*School Officers.*– In the states outside New England there is usually a county superintendent or commissioner of schools and in most of the Southern states a county school board. In a large majority of the states the county superintendent is elected by the people, though in a few he is appointed by the governor, elected by the local school boards, or chosen in other ways. The principal duties of the superintendent of schools are to examine teachers, issue certificates to teach, visit the schools, organize teachers' institutes, give advice on educational matters to teachers and school trustees, make reports to the state superintendent of public education, sometimes decide questions appealed to him from the district trustees, and in general watch over and promote the educational interests of the county. County school boards in the South establish schools as do the town school committees and

school district boards in other states.

*Other County Officials* are the surveyor, who makes surveys of land upon the application of private owners, prepares plats, and keeps records of the same; superintendent or overseers of the poor, who have charge of almshouses, hospitals, and poor farms where they belong to the county; health officers or boards of health, whose duties are indicated by their titles; and occasionally other minor officials with varying titles and duties.[6]

## THE COUNTY-TOWNSHIP SYSTEM

In most states the general type of local government is that which we have designated as the county-township system. It is a system in which there is a more nearly equal division of local governmental functions between the county and township than is found either in New England or in the Southern states.

**The Two Types.–** Growing out of the fact that the county-township system has two sources it has developed into two different types: the New York or supervisor type and the Pennsylvania or commissioner type.

*A. New York Type.–* In New York the town with its annual meeting early made its appearance, though the town meeting there never exhibited the vigor and vitality that it did in New England. Early in the eighteenth century a law was enacted in

[6] The county court and the justices of the peace are discussed in the chapter on the state judiciary (chapter vi).

New York providing that each township in the county should elect an officer called a *supervisor*, and that the supervisors of the several towns should form a county board and when assembled at the county seat should "supervise and examine the public and necessary charge of each county." In time the management of most of the affairs of the county was devolved upon the board of supervisors, and the system has continued to the present. This board is now composed of not only the supervisors of the townships but also the representatives of the various villages and wards of the cities within the county. The county board thus represents the minor civil divisions of the county rather than the county as a whole. It has charge of various matters that in New England are managed by the towns. The town meeting exists but it is not largely attended, and does not play the important rôle in local government that it does in New England. This system in time spread to those states, like Michigan, Illinois, and Wisconsin, which were largely settled by immigrants from New York.

*B. The Pennsylvania Type.*– As New York was the parent of the supervisor system, Pennsylvania became the parent of the commissioner system. Instead of a county board composed of representatives from the various townships in the county, provision was made for a board of commissioners elected from the county at large. The Pennsylvania system spread to Ohio and from there to Indiana and later to Iowa, Kansas, Missouri, Nebraska, North Dakota, and South Dakota. In some states

the commissioners are elected by large districts into which the county is divided for that purpose.

Thus, first to New York, and second to Pennsylvania belongs the honor of predetermining the character of local government in the West. The county-township system is the most widely distributed system of local government in the United States, and seems destined to become the prevailing system for the country as a whole.[7] The principal difference between the two types consists in the presence of the town meeting in the northern tier of states where the New York type prevails, and its absence in the states where the Pennsylvania type was introduced; in the different manner in which the county boards are constituted; and in the relative importance of the county and township in the local governments of the two groups of states.

**Conflict of Different Systems in the West.–** An illustration of the attachment of the people of different parts of the country to the local institutions to which they were early accustomed, is found in the conflict which took place in Illinois between the settlers in the northern and southern parts of the state. The southern part of the state was settled largely by people from the South, who brought with them the Southern ideas of local government, and as they constituted the bulk of the population of the state at the time it was admitted to the Union, the system of county government was established by law throughout the state; but the county board was organized on the Pennsylvania plan

[7] Goodnow, "Comparative Administrative Law," Vol. I, p. 178.

and not according to the old Southern system. The northern part of the state, on the other hand, was settled mainly by people from New England, who were likewise strongly attached to the local government to which they had been accustomed. They succeeded, therefore, in securing the adoption of a clause in the constitution (1848), allowing the people of each county to adopt the township system whenever the majority of the legal voters of the county voting at any general election should so determine. Under the operation of this "home rule" provision, 85 of the 102 counties of the state have adopted the township system. A somewhat similar conflict occurred in Michigan, where the Pennsylvania commissioner system was first introduced, but with the influx of inhabitants from New York and New England dissatisfaction with that system increased until finally it was displaced by the New York or supervisor type.

**References.–** Beard, American Government and Politics, ch. xxix. Bryce, The American Commonwealth (abridged edition), chs. xlvii-xlviii. Fairlie, Local Government in Towns, Counties and Villages, chs. iv-v, viii-xi. Fiske, Civil Government in the U. S., chs. ii-iv. Hart, Actual Government, ch. x. Hinsdale, American Government, ch. lv. Wilson, The State (revised edition), secs. 1035-1043. Willoughby, Rights and Duties of Citizenship, pp. 260-265.

**Documentary and Illustrative Material.–** 1. A map of the state showing its division into counties. 2. A map of the county showing the towns, townships, supervisors' districts,

or other civil subdivisions. 3. A copy of a town meeting warrant. 4. A copy of the proceedings of the county board or town meeting, as published in the local newspaper. 5. The legislative manual or blue book of the state in which lists of counties and their subdivisions, with their population, area, officers, and other information may be found. Usually this may be procured from the secretary of state. 6. Reports of county officers. 7. Copies of the state constitution, which may usually be obtained from the secretary of state; and, if possible, a copy of the revised statutes of the state. 8. Volume of the census report on population.

## Research Questions

1. What is the distinction between local self-government and centralized government? What are the advantages of a system of local self-government?

2. Why should counties, towns, and cities be subject in some measure to the control of the state?

3. What are the provisions in the constitution of your state in regard to local government?

4. How many counties are there in your state? What is the area and population of the largest? of the smallest?

5. How may new counties be created in your state? How may old counties be divided? How are county seats located?

6. Enter in your notebook a list of the county officers in your county. For how long a term is each elected?

7. Which one of the three forms of local government described above does the system under which you live most nearly approach?

8. How many members are there on your county board? Are they called commissioners or supervisors? Are they elected from the county at large or from districts?

9. What are the political subdivisions of your county called, and how many are there?

10. If you live in a state where the town system of local government exists, make a list of the town officers and state their duties.

11. Is the town meeting a part of the system of local government where you live? If so, how often is it held?

12. Are the public roads in your community under county or town control? the poorhouse? the assessment and collection of taxes?

13. How many justices of the peace and constables are there in your town or district? Give their names.

# CHAPTER II
# LOCAL GOVERNMENT, CONTINUED: CITIES AND VILLAGES

**Need of Municipal Government.–** The systems of local government described in the preceding chapter are those which have been devised mainly for rural communities, that is, communities containing a scattered population engaged principally in agricultural pursuits. In a sparsely settled community the governmental needs of the people are comparatively few, and a simple governmental organization is sufficient for supplying those needs. In a densely populated community, however, a more complex and differently organized form of government must be provided. When, therefore, a community becomes so populous that it cannot be governed effectively by town meetings, small boards, and the other forms of political machinery described in the previous chapter, it is incorporated as a municipality, that is, the state gives it a charter which confers upon it special powers and privileges and provides it with a somewhat different type of local government for the exercise of those powers. The minimum population necessary to constitute a city varies in the different states. They all require,

however, that there must be a considerable number of inhabitants occupying a comparatively small area of territory, before the community can be incorporated as a city. In Illinois, for example, any community having at least 1,000 inhabitants resident within an area not exceeding four square miles may become a city. In some other states, a population of not less than 5,000 is required, while in some a still larger number is required. The census bureau of the United States, for statistical purposes, has at different times taken 8,000 and 2,500 as the minimum population required to constitute a city.

**Growth of Cities.–** One of the most remarkable political and social facts of the past century was the growth of towns and cities. When the Constitution of the United States went into operation there were but thirteen cities in the whole country with populations exceeding 5,000 each. Only about four per cent of the people then lived under urban conditions: rural life was the rule, and city life the exception. Since the middle of the last century, however, there has been a remarkable change in the relative proportion of the total population living in the cities and in the country. According to the federal census of 1910 there were 1,232 cities in the United States with a population of more than 5,000 each, and in them lived 42 per cent of all the people. The number is now considerably larger. It is estimated that 90 per cent of the people of Massachusetts now live in cities of over 5,000 inhabitants, and in a few other states the urban population constitutes more than two thirds of the whole. More than half the

population of New York state is now found in the city of New York alone. Even in several states of the West, as Illinois, more than half the population is now living under urban conditions. What is even more remarkable has been the rapidity with which many American cities have grown to their present size. Thus New York in a period of 100 years grew from a city of 50,000 inhabitants to a city of more than 4,000,000. The growth of Chicago was even more rapid. In 1907 there was still living in that city the first white person born within its present limits. This person saw Chicago grow from a petty prairie village to a city of more than 2,000,000 souls.

**Causes of City Growth.–** The causes that have led to the extraordinary growth of cities are partly economic and partly social. With the more general use of labor-saving machinery in agriculture the number of men necessary to cultivate the farms and supply the world with food has decreased relatively, leaving a larger number to engage in the manufacturing and other industries which are generally centered in the cities. One man with a machine can now do the work on the farm which formerly required several, so that fewer farmers in proportion to the total population are needed. On the other hand, the development of trade and commerce and the rise of the manufacturing industries have created an increasing demand for city workers. Many persons are also drawn away from the country by the social attractions and intellectual advantages which the cities offer. In the cities, good schools are abundant and convenient. There also

are colleges, libraries, picture galleries, museums, theaters, and other institutions for amusement and education. There the daily newspaper may be left at one's door often for a cent a copy; there are to be found fine churches with pulpits occupied by able preachers; there one finds all the conveniences of life which modern science and skill can provide – everything to gratify the social instinct, and little or none of the dullness of country life. These are some of the attractions that lure the young and the old as well from the rural communities to swell the population of the cities. These are the forces that are converting us from a nation of country dwellers to a nation of city dwellers.

**Consequences of City Growth.–** The congestion of the population in the towns and cities has had far-reaching economic, social, and political effects.

*Economic Results.–* As the city population becomes more dense the number of those who are able to own their own homes becomes less, and thus the city tends more and more to become a community of tenants. According to the census of 1900, while more than 64 per cent of the families of the United States living on farms owned their own homes, less than 35 per cent of those living in cities were owners of the houses they occupied. In New York city the proportion was only about 12 per cent, and in the boroughs of Manhattan and the Bronx it was less than 6 per cent. Of these hardly more than 2 per cent owned homes that were clear of mortgages.

*Social Results.–* Another result of the movement of the people

to the cities is the evil of overcrowding. Manifestly where the area of a city is limited, as is often the case, there must come a time when the population will be massed and crowded together under circumstances that are dangerous to the health, morals, and comfort of the people. In some of the large cities to-day the conditions resulting from overcrowding are truly shocking. According to the census of 1900, while the average number of persons to a dwelling throughout the country as a whole was about five, the number in New York city was nearly fifteen, and in the boroughs of Manhattan and the Bronx it was more than twenty. In several parts of the city there are blocks containing more than 1,000 persons to the acre. Under such circumstances the rate of mortality is necessarily high, and immorality and vice are encouraged. In the great cities one finds a large floating population with no local attachment or civic pride, and thousands of persons, foreigners and natives alike, with low standards of life. There also the individual is lost in a multitude, and the restraining influence of public opinion, which is so powerful in the country, is lacking. Thus the tendency to wrongdoing is greatly accentuated.

*Political Results.*– Finally, the growth of the cities has had important political consequences, in that it has given rise to conditions that have increased enormously the problems of local government. As long as the population of the nation was predominantly rural and the cities few in number and small in size, the difficulties of local government were not serious. But the

presence of such conditions as those described above, together with the task which devolves upon the city of performing so many services for the people that are not required in sparsely settled communities, has made the problem of city government the most difficult of all governmental problems.

**Movement to Check Immigration to the Cities.–** The abandonment of the farms and the movement of the people to the cities is viewed by many persons with regret, not to say alarm. There are some who think that the cities are the plague spots of the country, that city life tends to produce an enfeebled race with low moral standards; that they are tending to make of us a nation of tenants, tramps, anarchists, and criminals; and that the economic welfare of the country is being endangered by the drift away from the farm. Such a view, of course, represents an exaggerated conception of the dangers, though it will be readily admitted that the change is not without serious evils.

Lately we have heard a great deal of discussion among thoughtful men as to the possibility of checking the movement of the young to the cities. And notwithstanding the movement from the country to the city it is evident that the conditions of rural life are much more favorable than formerly. The daily free delivery of mail at the doors of the farmers, the introduction of the telephone and the interurban railway, to say nothing of the use of labor-saving machinery, have done much to add to the attractiveness of country life and to diminish the hardships of farm life and other rural occupations. But these advantages have

not checked the movement to the cities, and other remedies must be found.

**The Position of the City in the State.–** The city occupies a twofold position in the state of which it is a part. In the first place, it is an agent of the state for carrying out certain state laws and policies. Thus it acts for the state when it protects the public health, cares for the poor, maintains peace and order, supports education, and collects the taxes for the state. In the second place, the city undertakes to perform numerous services which are of interest to the people of the locality alone and which do not concern the people of the state as a whole. When acting in this latter capacity, the city is merely an organ of local government and not an agent of the state. Thus the city sometimes supplies the inhabitants with light and water, protects them against fire, maintains sewers, disposes of garbage and other refuse, builds wharves, docks, and bridges, and maintains public libraries, museums, bath houses, and other institutions.

*State Control of Cities.–* The organization, powers, and privileges of the city are determined for the most part by the state constitution and laws. In a few states the financial transactions of city officials are subject to state inspection and audit, and in practically all of them their power to levy taxes and borrow money is placed under restrictions. It is felt that if the cities were left entirely free from state control they could not always be relied upon by the state to carry out the laws which they are charged with enforcing, and that in other respects their action

might not be in harmony with the general policy of the state. In those matters, however, which are of purely local interest, the state should interfere as little as possible. Interference in such cases is contrary to the ideas of local self-government which Americans cherish as one of their most valuable rights. However, the right of the people living in cities to regulate their own local affairs according to their own notions is not always recognized, and there are frequent complaints that state legislatures have interfered when the interests of the state did not justify it.

**The City Charter.–** The city, unlike the county, township, and other minor civil divisions described in the preceding chapter, has a charter granted to it by the state which gives the city more of the character of a public corporation. The charter contains the name of the place incorporated, a description of its boundaries, its form of organization, and a detailed enumeration of the powers which it may exercise. It is granted by the state legislature, though, unlike the charter granted to a private corporation, such as a bank or a railway company, it is not a contract but simply a legislative act which may be repealed or altered at the will of the legislature. Thus, legally, the city is at the mercy of the legislature. Its charter, indeed, may be taken away from it and the city governed directly by the legislature in such manner as it may choose, and this has sometimes been done in the case of cities which grossly abused their powers or got themselves into such hopeless financial condition that they were unable to meet their obligations or properly discharge their

duties.

*Methods of Granting Charters.*– Formerly it was the custom in most states for the legislature to frame a charter for each city as application was made. The result was that different cities received different kinds of charters, some more liberal than others. Besides, the time of the legislature was taken up with the consideration of applications for charters, and abundant opportunities were offered for favoritism and for the use of improper influences upon members of the legislature by cities that desired new charters or amendments to existing charters. To avoid these evils many states adopted the practice of passing a general law for the government of all cities in the state, under which any community which desired to be incorporated as a city might by fulfilling certain prescribed conditions be organized under this general act, which then became the charter of the city. Under this system all cities in the state would have practically the same organization and powers.

*"Home Rule" Charters.*– The feeling that the people concerned should be given some power in framing the charters under which they are to be governed has led in comparatively recent times to the adoption of "home rule" provisions in the constitutions of a number of states – that is, provisions allowing the people of each city, under certain restrictions, to frame their own charters. Thus the Missouri constitution, adopted in 1875, allows each city of more than 100,000 inhabitants to prepare its own charter, which, when approved by the voters,

shall go into effect provided it is not inconsistent with the state law. Other states having "home rule" charter provisions in their constitutions are California, Oregon, Washington, Minnesota, Colorado, Oklahoma, Michigan, Wisconsin, Texas, Ohio, Nebraska, Arizona, and Connecticut.

*Powers of Municipal Corporations.*– With the exception of a few cities, of which Houston, Texas, is an example, the powers that may be exercised by a city are specifically enumerated with great detail in the charter, and where that is done no other powers may be exercised by the city except such as are clearly incidental to, or implied in, those enumerated. Thus when the city of New York wished to build an elevated railway, it had to secure express authority from the legislature, which body insisted that the work should be carried out under the supervision of a state commission. Likewise when the city of Chicago wanted power to prescribe the width of wagon tires to be used on its streets, recourse had to be made to the state legislature for permission, though in neither case was the matter involved one which concerned directly anybody except the people of the cities affected.

**Legislative Interference in the Affairs of Cities.**– The power of the state legislature over the cities has sometimes been employed to interfere in their local affairs and to force upon the cities measures or policies to which they were opposed. Thus the legislature of Pennsylvania passed an act requiring the city of Philadelphia to build an expensive city hall which cost the

taxpayers of the city something like $20,000,000, though it was not a matter of direct interest to the people outside of the city. Likewise the legislature of Ohio required the city of Cleveland to erect a soldiers' monument at a cost of $300,000 against the wishes of the taxpayers who had to bear the expense.

Sometimes the legislature employs its power of control over the cities in the interest of the political party which happens to be in control of the legislature, and it frequently passes laws relating to the hours of opening and closing of saloons in the cities when local sentiment may be opposed to such laws. But as to the moral right of the legislature to enact such laws as the last mentioned, there is a difference of opinion. The disposition of the legislature to interfere in the affairs of the cities by means of special acts – that is, acts applying to a single city – has come to be a crying evil and has been a cause of complaint from the people of nearly every large city. The New York legislature during a period of ten years passed nearly four hundred laws applying to the city of New York.

**Constitutional Protection Against Special Legislation.–** To protect the cities against special legislation and at the same time to remove the opportunity which such a practice offers for bribery and the employment of other improper means to secure special legislation or to prevent it, when it is not desired, the constitutions of many states contain provisions absolutely prohibiting the legislature from enacting laws applying to particular cities except where general laws are

inapplicable. Where such constitutional provisions have been adopted, the legislatures have frequently evaded them by a system of classification by which acts are passed applying to all cities within a class when in reality there may be but a single city in such a class. And the courts have generally held such acts to be constitutional where the classifications are not unreasonable.

The New York constitution recognizes that special legislation applying to larger cities may sometimes be desirable, and instead of forbidding such legislation absolutely it classifies the cities of the state into three classes according to population, – New York City, Buffalo, and Rochester constituting the first class, – and allows the legislature to enact laws affecting a single city within a class, subject to the condition that the proposed law must be submitted to the authorities of the city affected, for their approval, and if disapproved it is void unless repassed by the legislature. Likewise by recent amendment to the constitution of Illinois the legislature of the state is allowed to pass special laws affecting the city of Chicago alone, but such legislation cannot take effect until it has been approved by the voters of the city at a general or special election.

**Functions of Municipal Government.**– The functions and activities of city government are numerous and varied, much more so, of course, in large cities than in small ones. First of all, the problem of police protection, the punishment of crime, and the care of the public safety in a community where thousands of persons of all nationalities and with varying standards of

respect for law are living in close proximity, is very difficult and requires a small army of officials which would be entirely unnecessary in a rural community. Likewise the duty of caring for the public health, of preventing the spread of disease, of securing a wholesome water supply, of protecting the people against impure and adulterated food, and of securing wholesome and sanitary conditions generally, is very much greater in cities than in sparsely settled rural districts or in villages and small towns. Then there are the problems of fire protection, gas and electric light, street railway transportation, the construction and maintenance of streets, education, building regulations, the care of the poor and dependent class, disposal of sewage and waste, the maintenance of hospitals, libraries, museums, and other institutions, the regulation of traffic on the streets, and many other activities too numerous to mention.

**The City Council.–** The legislative branch of most city governments is a council composed of members elected by the voters for a term ranging from one year in some of the cities of New England to four years in certain other parts of the country, the most usual term being two years. The number of members ranges from 9 in Boston to more than 130 in Philadelphia. The city of New York has a council of 67 members; Chicago, 70; and San Francisco, 18. In the large majority of cities this council, unlike the state legislatures, is a single-chambered body, though in a few important cities, notably Philadelphia, Baltimore, St. Louis, and Louisville, it is composed of two houses.

*Mode of Election.*– Generally, the members of the city council are chosen by districts or wards, usually one member from each, though in some cities several are elected from each district; in Illinois cities two members are elected from each ward into which the city is divided. Where the council is composed of two houses, the members of the upper house are sometimes chosen from the city at large on a general ticket, and the members of the lower house by wards. In San Francisco, where the council is composed of but one house, the eighteen members are elected from the city at large. The same is true of Boston, whose council under the new charter is composed of but nine members.

The method of election by wards is open to the objection that it tends to the election of inferior men and of men who are likely to consider themselves the special representatives of their wards rather than the representatives of the people of the city at large. On the other hand, election from the city at large, or election of several members from large districts on a general ticket, unless coupled with a system of minority representation, is likely to give the majority party an undue advantage. Perhaps the best plan would be to elect a certain number from the city at large and the rest by wards.

Moreover, in some cities, of which Chicago is a conspicuous example, the ward system has led to inequality of representation. Thus it has sometimes happened that certain wards which are largely inhabited by the worst elements of the population are over-represented as compared with wards in other parts of the

city inhabited largely by the better class of citizens. Finally, where the ward system prevails, the ward becomes the seat of a local political organization whose methods are so often corrupt and dishonorable that they constitute a great hindrance to good city government.

**Powers of City Councils.–** Unlike the state legislature, which is an authority of general powers, the city council in America has only such powers as are conferred upon it by the charter of the city. These powers are numerous and varied and relate to such matters as the laying out and care of streets, the protection of the public health, the regulation of the sale of liquor, the control of places of public amusement, markets, bathing places, traffic on the streets, the suppression of vice and immorality, protection against fire, the disposal of waste, the lighting of the streets, and in general the preservation of the good order and peace of the community. Its powers are exercised usually through acts called ordinances, which are framed and enacted after the manner followed by the legislature in enacting laws for the government of the state. The power of the council is frequently limited by the state constitution or laws. Thus very frequently it is forbidden to incur debts beyond a certain limit, or to levy taxes above a certain amount, and frequently the purposes for which taxes may be levied and money appropriated are carefully specified.

**Franchises.–** One of the most important powers of a city council is the granting of franchises to street railway, gas, electric light, water, and other public service companies to maintain

tracks, wires, pipe lines, etc., in the streets and other public places. As these franchises are often of great value to the companies receiving them, a temptation is thus created for the employment of bribery and other improper means for securing concessions of this character. In some cities aldermen have been paid large sums of money for their votes on franchise grants, and indeed the practice has been so often resorted to that there is a popular belief that most public utility franchises in the larger cities are secured in this way. Formerly franchises were frequently granted for long periods of years or for an indefinite period, and often without adequate compensation to the city. This abuse became so common that the people gradually came to adopt constitutional provisions or state laws limiting the periods for which public service franchises could be granted, and indeed a few, notably those which have adopted the commission form of government, have gone to the length of making all such grants subject to the approval of the voters of the city at an election held for the purpose.

**The Mayor.–** The chief executive officer of the city is the mayor. With a few unimportant exceptions he is elected by the qualified voters of the city and serves for a term varying from one to four years, the most usual term being two years. In Boston, Chicago, and New York city, however, the term is four years.

*Powers and Duties.–* It is the duty of the mayor to enforce the ordinances of the city and also such laws of the state as he may be charged with executing. Like the sheriff of the county,

he is a peace officer and as such is charged with the maintenance of order and the suppression of riots, and if a disturbance becomes so great that it cannot be suppressed by the police he may, like the sheriff, call on the governor for the militia. In some cities he is the presiding officer of the city council, though not a member of it. Generally he is required to submit messages to the council concerning the condition of the city, and may recommend measures for its consideration. Practically everywhere he has the power to veto ordinances passed by the city council, and some mayors have made extensive use of this power. The council, however, may pass an ordinance over the mayor's veto.

One of the important powers of the mayor is the appointment of officials, though usually the assent of the council is necessary to the validity of most appointments. In recent years there has been a considerable extension of this power in a number of the large cities, where the mayor has been given the absolute power of appointing the heads of the administrative departments. Indeed, the tendency now seems to be in the direction of concentrating larger powers of appointment in his hands as a means of fixing responsibility more definitely. There is also a tendency in the direction of giving him a large power of removal, subject to the provision that the official shall be removed only for good cause and that he shall be given a hearing and an opportunity to answer the charges made against him.

Finally, the mayor usually has the power to grant pardons

for violations of the ordinances of the city, and this power is sometimes extensively used. Thus during the year 1909 the mayor of Chicago released more than 1,100 offenders who had been committed to prison, or about 10 per cent of the whole number committed. In some cities also he may remit fines that have been paid for violations of city ordinances.

**Administrative Departments.—***Single Commissioner System vs. the Board System.*– In every large city there are, in addition to the mayor, a number of departments each charged with the conduct of some particular branch of the city's affairs. They are organized on one of two principles: each is under the control either of a board or of a single commissioner. Each method of organization has its advantages and disadvantages, but experience has shown that the single-headed department is the one best calculated to secure efficiency and responsibility, and it is the one most generally employed. The board system is well adapted to secure deliberation, but not promptness and unity of action nor responsibility, because one member may easily shift the responsibility for an error or blunder upon his colleagues. But for certain branches of administration such as the civil service, park administration, school administration, assessments, and possibly others, the board system has important advantages.

*Number of Departments.*– The number of these administrative departments varies widely among the different cities of the country. In general we find the following departments: a finance department, a law department, a health department, a fire

department, a police department, a department of charities, and a department of public works. In some cities, however, the number of departments is much larger than this. Thus in some we find a street cleaning department, a department of buildings, a sewer department, a department of parks, a department of docks, and so on.

*Choice of Heads of Departments.*– The heads of these departments are in most cases appointed by the mayor, to whom they are responsible, though nearly everywhere the approval of the council is necessary to his appointments. In recent years there has been more or less criticism of the practice of choosing administrative officials by popular election. In every large city there is a great mass of unintelligent voters who are easily controlled by corrupt and scheming politicians. Moreover, it is impossible for the voters in a large city, however intelligent they may be, to become acquainted with the merits of all the numerous candidates when there are a considerable number of offices to be filled. It is believed by many municipal reformers, therefore, that better results could be obtained by allowing the mayor to choose all the heads of important departments, except possibly the chief finance officer, who might properly be chosen by the people. For the selection of the large number of subordinate officials, the best method yet devised is that known as the civil service system, which has been introduced in most of the larger cities. Under this system appointments are made on the basis of merit and fitness, which qualities are ascertained by

an examination by a board of civil service commissioners.

**City Finances.–** One of the most remarkable features of American municipal development has been the extraordinary growth of municipal expenditures. The functions and activities of modern city government are indeed so numerous and varied as to require a larger number of officials and a greater expenditure of money than is required for the conduct of any other of the various governments under which we live. By far the larger part of the taxes contributed by those who live in the cities go to meet the expenses of municipal government. In 1920 the budget of New York city was over $270,000,000, while that of Chicago was about $130,000,000, in each case the amount being about five times as great as the appropriations for the support of the government of the state in which the city is situated. The annual cost of operating our largest city exceeds what was required to maintain the national government in its early days, and is greater than the national budget of a number of European countries to-day. New York city in 1910 had a debt almost as large as the national debt, her annual interest account alone being in the neighborhood of $30,000,000. The proper raising and expenditure of such vast sums of money is one of the most difficult tasks of a city government. For this purpose there are assessors, collectors, treasurers, comptrollers or auditors, and various other officials. The levying of the taxes is everywhere a power of the city council, though in many states the amount of taxes which may be levied by it is limited – usually to a certain

percentage of the value of the taxable property within the city, and in some states the limit is fixed so low that the cities are handicapped in raising sufficient revenue to meet their expenses. The purpose of such restrictions is to prevent extravagance and wastefulness, and the history of many of our cities proves that they have, in general, served a good purpose.

*Sources of Municipal Taxation.*– The principal source of income for city, as for state and county, purposes is the general property tax, though cities are usually allowed to levy a great variety of other taxes, such as taxes on certain trades and businesses. Street peddlers are in many cases required to pay license fees. Before the liquor traffic was prohibited, many cities derived a large portion of their income from license taxes on saloons. Some cities receive a considerable income from franchises granted to public corporations. Thus Chicago receives a large percentage of the earnings of some of the street railways, the amount aggregating more than $1,500,000 a year. In many cities the expense of public improvements, particularly street paving and the laying of sidewalks, is met by what are called "special assessments," that is, assessments laid upon the owners of the property benefited, in proportion to the benefits received from the improvement.

*Municipal Expenditures.*– Appropriations are in most cities made by the city council subject to certain rules and restrictions prescribed by state law. In New York city, however, the budget is prepared by a board of estimate and apportionment composed of

a few high city officers, and in a few other cities the preparation of the budget is intrusted to other authorities than the city council. To secure accuracy and honesty in the expenditure of city funds, provision is commonly made for auditing the accounts of financial officials, and in a few states like Ohio, Indiana, and Iowa, provision is made by law for state inspection and audit of municipal accounts by state examiners. This plan has proved very effective. In one state, these inspectors found that municipal officials had misappropriated more than $500,000, over half of which was recovered and turned into the proper treasuries. In a number of cities where the commission form of government has been adopted provision is made for monthly financial statements which must be published in the local newspapers, and for annual examinations of city accounts by expert accountants.

*City Debts.–* For the construction of permanent improvements, the erection of public buildings, and the establishment of commercial enterprises such as waterworks and gas works, cities must borrow money; and so one of the powers always given them is that of incurring debts. This power, however, was greatly abused in the early history of our municipal development – so much so that many cities found themselves on the verge of bankruptcy. In order to check this evil, many states have placed a limit upon the municipal borrowing power, and some have provided that whenever a debt is incurred, provision shall be made at the same time for payment of the interest and the principal within a certain period of years. The debt limit

is usually a certain percentage of the assessed valuation of the taxable property within the city. It ranges from 2 per cent in Boston, to 10 per cent in New York. In some cases the limit is so low that cities have been handicapped in constructing needed permanent improvements. Thus in Chicago, where property has been assessed at only one fifth of its real value, the result of the debt limitation has been to render extensive improvements very difficult, and to compel the city to meet the expense of many absolutely necessary undertakings out of its current revenues when the cost should have been distributed over a period of years. Chicago, as a consequence, has the smallest debt of any of the large cities of the country.

**Police Protection.**– Where large numbers of people are living together in close proximity the problem of maintaining order and preventing some from violating the rights of others is very much greater than in sparsely settled rural communities. One of the principal tasks of the authorities in a city, therefore, is to provide police protection for the inhabitants. This is done through the agency of a body of men organized and uniformed somewhat after the manner of an army. The size of this force varies ordinarily in proportion to the population of the city. In New York city, for example, the entire police force numbers more than 10,000 men – a body as large as the army of the United States was in the early days of our history. In Chicago there are altogether some 8,000 men in the police service of the city.

*Organization.*– The management of the police force is usually

under the direction of an official called a commissioner, superintendent, or chief, though in some cities it is controlled instead by a board. In a few cities this board is appointed by some state official, usually the governor, for it is believed by many persons that since the police are charged with enforcing state laws as well as municipal ordinances, they should be under state rather than local control. Where they are entirely under local control, it is sometimes difficult to secure the enforcement of such state laws as those requiring saloons to be closed at certain hours during the night and on Sundays, especially when local sentiment is opposed to such restrictions. Below the head of the police force are usually deputy chiefs, inspectors, captains, sergeants, roundsmen, and finally the patrolmen. The city is usually divided into precincts, in each of which there is a police station under the charge of a sergeant or some other official. A number of precincts are grouped together in districts with an inspector in charge of each, and so on. In the large cities there are also usually special detachments of the police force organized for special services. Such are the mounted police, the bicycle squad, the river and harbor police, the sanitary police, and the detective force.

*Police Corruption.*– The control of the police branch of the city service is very difficult because of the opportunities for corruption which are open to the members of the force. It has not infrequently happened that the police in the large cities have systematically sold the right to violate the law. Gambling

houses, saloons, and other places of vice sometimes regularly pay members of the police force for the privilege of violating the law, and the heads of the force have frequently found it impossible to prevent the practice. A recent police commissioner in New York, for example, said that there was an organized system among the police of his city for selling the right to violate the law; that many of the captains and inspectors had grown rich out of the proceeds, and that the system was so thoroughly intrenched that he was powerless to break it up.

**Health Protection.–** In densely populated districts the danger from the spread of disease is much greater than in rural communities where the conditions which breed disease are less prevalent, and where the spread of epidemics may be more easily prevented. In the smaller cities the chief health authority is a board, but in the large cities there is usually a department of health at the head of which is a single commissioner. Other officials are inspectors of various kinds, analysts, collectors of statistics, superintendents of hospitals, etc.

*Work of the Health Department.–* Among the principal duties of the health authorities are the inspection and abatement of unsanitary places and the suppression of nuisances; the inspection of public buildings and sometimes of private dwellings with special reference to drainage; the removal of garbage and other refuse (in some cities); the inspection of the city water supply; the inspection of food, particularly milk; the control of certain establishments of an offensive character, such

as slaughterhouses, soap factories, and fertilizer factories; the vaccination of school children and often of other persons, as a precaution against smallpox; the isolation and quarantine of persons suffering from contagious diseases; the maintenance of pesthouses and hospitals; and the collection of vital statistics.

One great source of disease in cities is impurity of the food supply, especially of milk, and much of the activity of the health department is directed toward the inspection of milk and other food. Crowded, ill-ventilated, and poorly constructed dwellings are another source of disease, and many cities have undertaken to prevent this evil as far as possible through tenement house laws and building regulations requiring dwellings to be constructed according to plans prescribed by law. The enforcement of these laws often devolves upon the health department, which carries out a rigid system of inspection.

In recent years much more attention than formerly has been given to the problems of health administration, and great improvement has been made. So efficient is the health administration of some of our large cities that the death rate in proportion to the population is actually lower than it is in many small country towns where little or no attention is paid to this important branch of administration.

**Fire Protection.–** The danger from fire, like that from disease, is obviously greater in crowded cities than in country districts. Therefore, every large city and most small ones maintain an organized fire department. In the days of small

cities reliance upon voluntary unpaid fire companies was the rule, and this is true even to-day in many of the smaller towns and cities. In the larger cities, however, there are organized professional companies, the members of which give all their time to the service and are paid regular salaries. New York city has more than 5,000 men in its fire department, some 900 pieces of apparatus including more than a dozen fire boats, and hundreds of thousands of feet of hose. At the head of the department there is usually an official called a fire chief or fire marshal, appointed by the mayor. The rank and file of the department are under civil service rules, the employment is of a permanent character, and many cities have provided a system of pensions for members who have grown old or are disabled from injuries.

Great improvement has been made in the methods of fighting fires and in the character of the apparatus employed, so that the danger from loss by fire has greatly diminished. Furthermore, the more general use of brick and stone for building purposes in the larger cities has made the danger from fire much less than in the old days when most houses were built of wood. Many cities have what are called "fire limits," that is, districts in which it is forbidden to erect wooden buildings.

**Municipal Public Utilities.–** People crowded together in cities depend largely upon public service companies for their water supply, for electric light and gas, for telephone service, and for the means of transportation. The furnishing of each of these services, from the very nature of the case, tends to become a

natural monopoly. Moreover, such companies must use the city streets in serving their patrons. It follows, therefore, that they must be subject to public control, otherwise the public might be charged exorbitant prices and the use of the streets by the citizens unnecessarily interfered with. Before engaging in a service of this kind, therefore, the street railway company must secure permission from the city to lay tracks on the streets and to operate cars thereon. Likewise a telephone or electric light company must have permission to erect its poles on the streets or alleys, and a gas or water company must have authority to tear up pavements and put its pipes and mains under the streets.

*Franchises.*– The permit thus granted is called a "franchise," and is in the nature of a contract between the city and the company. Public service franchises are often of great value to the companies which receive them, for the business of these companies in a large city is apt to be very profitable. Sometimes the dividends which they pay their stockholders are very large, and not infrequently, to deceive the public as to the real amount, the profits are concealed by "watering" the stock, that is, by increasing it beyond the amount of the capital actually invested. Experience has shown that in granting franchises certain restrictions or conditions should be placed on the companies to whom they are granted.

First of all, the duration of the franchise should be limited. Formerly, it was not uncommon to grant franchises for fifty or one hundred years, and indeed sometimes for an indefinite

period. The objection to this practice is that with the growth of the city, the increased value of the franchise resulting from such growth goes entirely to the company, while the city is deprived of the opportunity of making a better bargain with the company. A franchise ought, however, to be for a period sufficiently long to enable the company to derive a reasonable return on its investment. Obviously, no company could afford to establish an electric light plant or gas plant if its franchise were limited to a period as short as five years. The better opinion now is that twenty or twenty-five years is a reasonable period, and the constitution or statutes of a number of states forbid the granting of franchises for a longer period.

Frequently the franchise contains provisions in regard to the rates to be charged and the quality of service to be performed. In many states there are state commissions which have power to supervise the operations of all public service corporations and in some cases even to fix the rates which they shall be allowed to charge. As long as such rates are reasonable, that is, high enough to allow the corporation a reasonable return on its investment, the courts will not interfere.

It is now the practice to require public service companies to pay a reasonable compensation for the franchises which they receive. This is usually a certain percentage of the gross receipts, or sometimes, in the case of street railway companies, a certain sum for each car operated. When the compensation is a certain percentage of the receipts, provision ought to be made for

examination of the books of the company in order to prevent the public from being defrauded of its share of the earnings.

**Municipal Ownership.–** Sometimes, instead of relying upon private corporations to supply the people with water, gas, and electric light, the city itself undertakes to do this. Very many cities own their waterworks,[8] while some own their electric light plants, and a few own their gas plants. In Europe, municipal ownership and operation of such public utilities is very common, and even the telephone and street railway services are often supplied by the city.

The advantages claimed for municipal ownership are that better service will be furnished when the business is conducted by the city, because in that case it will be operated solely with the interest of the public in view; and, secondly, the cost of the service to the community will be less because the earning of large dividends will not be the main end in view. The principal objection urged against municipal ownership in the United States is that "spoils" politics still play such an important part in our city government that the management of such enterprises is likely to fall into the hands of incompetent politicians and party workers. Experience with municipal ownership has been satisfactory in a great many cases where it has been tried, although the principle upon which it rests is contrary to the notions of many people in regard to the proper functions of government.

---

[8] The Census Bureau reported in 1916 that 155 of the 204 cities having populations in excess of 30,000 owned their water supply systems.

**Municipal Courts.–** In every city there are certain inferior courts called by various names, police courts, magistrates' courts, or municipal courts, which have jurisdiction over offenses against the ordinances of the city. These courts constitute a very important part of our governmental machinery, and they have rarely received the consideration which their importance requires. They are practically courts of last resort for a large number of persons charged with minor offenses, and from them many ignorant persons in the large cities gain their impression of American institutions. In the city of New York, for example, more than 100,000 persons are brought before these courts every year.

The magistrates who hold municipal courts are often men of little or no legal training, and the experience of some cities has been that many of them are without integrity. Recently there has been much discussion of how to improve the character and usefulness of these courts, and in several cities notable reforms have already been introduced. The Chicago municipal court recently established is an excellent example of what can be accomplished in this direction. It consists of thirty-one judges, and the salary paid them is sufficiently large to attract well-trained lawyers of respectability. The procedure of the court is simple and it is so organized as to dispatch rapidly the cases brought before it, so that justice is administered more swiftly, perhaps, in this city than in any other in America.

**The Commission Plan of Government.–** The increasing

dissatisfaction with the government of our cities by mayor and councils has recently led a number of cities to abandon the system for a new method known as the commission plan. The principal feature of this method is that all the powers of government heretofore exercised by the mayor and council are intrusted to a small commission usually chosen from the city at large. The plan was first put into operation in the city of Galveston after the great storm of 1900 which destroyed the lives of some 6,000 of its citizens and left the city in a condition of bankruptcy.

Under the new charter which was adopted, practically all the powers of government were vested in a mayor and four commissioners, each of these men being put in charge of one of the five departments into which the administrative service was divided.

*Merits.*– Several advantages are claimed for this plan of municipal government. In the first place, it does away with the evils of the ward system by providing that the commissioners shall be chosen from the city at large, and this tends to secure the election of men of larger ability. Again, it is argued that a small body of men is better fitted to govern a city than a large council composed of members who consider themselves the special representatives of the petty districts from which they are chosen. The affairs of a city are necessarily complex and often technical in nature and require for their special management skill and efficiency. City government is often compared to the management of a business enterprise like a bank or a

manufacturing concern, which, as experience has shown, can be better conducted by a small board of directors than by the whole body of stockholders. Finally, the concentration of the powers of the city in a small body of men tends to secure a more effective responsibility than can be secured under a system in which the responsibility is divided between the mayor and council.

*Objections.*– The chief objections that have been urged against the commission plan are that, by intrusting both the legislative and the executive power to the same hands, it sacrifices the principle of the separation of powers – a principle long cherished in America. In the second place, by doing away with the council, it sacrifices to a certain extent the representative principle and places all the vast powers of the city in the hands of a few men.

Nevertheless, the system has much to commend it, and it has been adopted in about four hundred towns and cities.

**The City Manager Plan.–** A still more recent form of municipal government vests the management of the affairs of the city in a single person, called the city manager. He is paid a reasonably high salary and is chosen by the commission because of his expert knowledge. This plan has been introduced in Dayton, Springfield, and Sandusky, Ohio; Newburgh and Niagara Falls, New York; Sumter, South Carolina; Jackson, Grand Rapids, and Kalamazoo, Michigan; San Diego and Alameda, California; and some seventy other cities and towns.

**Village Government.–** Differing from cities chiefly in size and in the extent of governmental powers, are small

municipal corporations variously called villages, boroughs, and incorporated towns. The procedure of incorporation is usually by petition from a certain number of the inhabitants, and a popular vote on the question. The law generally prescribes a minimum population, which is usually small – sometimes as low as one hundred inhabitants.

*Village Officers.*– The principal authority is usually a small board of trustees or a council, consisting of from three to seven members elected from the village at large, though in some instances the number is larger, and some villages have the ward system. The village board is empowered to adopt ordinances relating to police, health, and other matters affecting the good order and welfare of the community. They may levy taxes, borrow money, open and construct streets, construct drains, establish water and lighting plants and the like, and may license peddlers, hack drivers, and other persons who use the streets for the conduct of their business. The chief officer of the village is the mayor, president, or chairman of the trustees, elected either by the voters or by the trustees. There is also usually a clerk or recorder, a treasurer, a marshal or constable, and sometimes a street commissioner, a justice of the peace, and an attorney.

When the population reaches a certain number, which varies in the different states (pp. 25-26), the village organization is put aside, the community organizes itself into a city, takes on a more elaborate organization, receives larger powers, and undertakes a wider range of activities.

**References.–** Beard, American Government and Politics, chs. xxvii-xxviii. Bryce, The American Commonwealth (abridged edition), chs. xlix-li. Goodnow, City Government in the United States, chs. vi-xiii. Hart, Actual Government, ch. ix. Howe, The City the Hope of Democracy, chs. i-iv. Strong, The Challenge of the City, chs. ii-iii. Wilcox, The American City, chs. ii, iii, iv, v, vi, ix, x, xii, xiii.

**Documentary and Illustrative Material.–** 1. A copy of the city charter or municipal code of the state. 2. A copy of the revised ordinances of the city. 3. The volume of the last census report dealing with the population of cities. 4. The latest census bulletin on statistics of cities. 5. A map of the city showing its division into wards, police and fire districts, sewer districts, etc., and the location of the city building, police stations, fire stations, the source of the water supply, parks, slum districts, etc. 6. A copy of the last city budget and tax ordinance. 7. A copy of a paving or other public improvement ordinance.

## Research Questions

1. What is the population of the largest city in your state? its area? How many cities in your state have a population of 8,000 or over? What percentage of the total population is found in the cities? How much faster has the city population grown during the past decade than the rural population? What percentage of the

population of your city is foreign-born?

2. Why do cities require a different form of government from that which is provided for rural communities?

3. What are the provisions in the constitution of your state, if any, in regard to the government of cities?

4. How many representatives does the largest city of your state have in the legislature? What proportion of the total membership is it? Are there any constitutional restrictions upon the number of members of the legislature which may be elected from any one city?

5. Are there any restrictions upon the power of the legislature of your state to enact special legislation applying to a single city? If so, what are they?

6. If you live in a city, when did it receive its present charter? What are the provisions in the charter relating to the organization and powers of the city?

7. Do you think the people of a city should be allowed to frame their own charter and govern themselves without interference on the part of the state legislature?

8. How many members are there in the city council of your city? Are they chosen by wards or from the city at large? What is their term and salary? In what ward do you live, and what is the name of the alderman or aldermen from that ward?

9. For what term is the mayor of your city or town elected? To what political party does he belong? Does he preside over the meetings of the city council? What officers, if any, does he

appoint?

10. Name the administrative departments in your city. Are they organized according to the board system, or is each under the control of a single official?

11. Does your city have a civil service law under which appointments to the municipal service are made on the basis of merit? If so, what are its principal provisions?

12. Does the city own and operate its waterworks plant, or is the water supply furnished by a private company? Does the city own and operate any of its other public utilities, such as the electric light or gas plant? If not, what are the terms of the franchises under which they are operated by private companies? Do these companies pay the city anything for the privilege of using the streets?

13. What are the duties of the public utilities commissions in New York and Wisconsin? Do you think the policy of regulation preferable to municipal ownership and operation?

14. How is the cost of street and sidewalk paving met in your city, – by special assessment on the property benefited, or by appropriation out of the city treasury?

15. What is the method of garbage disposal in your city?

16. Describe the organization and activities of the health authority in your city. What does it do to secure a supply of clean and pure milk?

17. Are there any improvement leagues or civic organizations working for the uplift and good government of your city? What

are their methods, and what are some of the specific services they have rendered?

18. What are the principal sources of revenue in your village or city? What is the rate of taxation on the taxable property?

# CHAPTER III
# THE STATE GOVERNMENTS

**Place of the States in Our Federal System.–** Proceeding upward from the county, township, and city, we come to the state, the authority to which the local governments described in the preceding chapters are all subject. The consideration of state government properly precedes the study of national government, not only because the states existed before the national government did, and in a sense furnished the models upon which it was constructed, but because their governments regulate the larger proportion of our public affairs and hence concern more vitally the interests of the mass of people than does the national government.

The states collectively make up our great republic, but they are not mere administrative districts of the union created for convenience in carrying on the affairs of national government. They do not, for example, bear the same relation to the union that a county does to the state, or a township to the county. A county is nothing more than a district carved out of the state for administrative convenience, and provided with such an organization and given such powers of local government as the state may choose to give it. The states, on the other hand, are not creations of the national government; their place as constituent

members of the union is determined by the Federal Constitution, framed by the people of the United States, and their rights and obligations are fixed by the same authority. Each state, however, determines its own form of government and decides for itself what activities it will undertake.

**Division of Powers.–** The Federal Constitution has marked out a definite sphere of power for the states, on the one hand, and another sphere for the national government on the other, and each within its sphere is supreme. Upon the domain thus created for each the other may not encroach. Each is kept strictly within its own constitutional sphere by the federal Supreme Court, and the balance between the union and its members is harmoniously preserved.

The states were already in existence with organized governments in operation when the national government was created. The founders of the national government conferred upon it only such powers as experience and reason demonstrated could be more effectively regulated by a common government than by a number of separate governments; they left the states largely as they were, and limited their powers only so far as was necessary to establish a more effective union than the one then existing. Experience had taught them, for example, that commerce with foreign countries and among the states themselves should be regulated by a single authority acting for the entire country: only in this way could uniformity be secured, and uniformity in such matters was indispensable to the peace and

perpetuity of the union. Accordingly, the national government was vested with power over this and other matters which clearly required uniformity of regulation, and the remaining powers of government were left with the states, where they had always been. Thus it came about that the national government was made an authority of enumerated or delegated powers, while the states have reserved powers.

*Prohibitions.*– It was thought wise, however, to prohibit both the national government and those of the states from doing certain things, and thus we find provisions in the Federal Constitution forbidding both governments from granting titles of nobility, from passing ex post facto laws, bills of attainder, etc. Likewise the states were prohibited from entering into treaties with foreign countries, from coining money, from impairing the obligation of contracts, and from passing laws on certain other subjects which it was clearly unwise to leave to state regulation.

**Powers of the States.**– The powers left to the states, unlike those conferred upon the national government, cannot be enumerated. They are so varied in character, and so extensive, that an attempt to enumerate them would involve cataloguing all the multitudinous business and social relationships of life. The powers of the national government seem much greater by comparison than those of the states, partly because they are set forth in the Constitution and partly because of their application throughout the entire country, but in reality they are not only far less numerous but affect less vitally the great mass of the people.

The powers of the states include such matters as the regulation of the ownership, use, and disposition of property; the conduct of business and industry; the making and enforcing of contracts; the conduct of religious worship; education; marriage, divorce, and the domestic relations generally; suffrage and elections; and the making and enforcement of the criminal law. In the division of governmental powers between the nation and the state, says Bryce, the state gets the most and the nation the highest, and so the balance between the two is preserved.

> "An American," says Mr. Bryce, "may, through a long life, never be reminded of the federal government except when he votes at presidential and congressional elections, buys a package of tobacco bearing the government stamp, lodges a complaint against the post office, and opens his trunks for a customhouse officer on the pier at New York when he returns from a tour in Europe. His direct taxes are paid to officials acting under state laws. The state or local authority constituted by state statutes registers his birth, appoints his guardian, pays for his schooling, gives him a share in the estate of his father deceased, licenses him when he enters a trade (if it be one needing a license), marries him, divorces him, entertains civil actions against him, declares him a bankrupt, hangs him for murder; the police that guard his house, the local boards which look after the poor, control highways, impose water rates, manage schools – all these derive their legal powers from his state alone."

**Rights and Privileges of the States as Members of the**

**Union.**– The states have certain rights and privileges which are guaranteed them by the Federal Constitution, and of which they cannot be deprived by the national government without their consent.

*Republican Government.*– Thus it is made the duty of the United States to guarantee to every state in the union a republican form of government, that is, a government by the chosen representatives of the people of the state. In a few cases rival governments have been set up in a state, each claiming to be the legitimate government and entitled to the obedience of the people; the one recognized by the federal authorities has always prevailed.

*Protection Against Invasion.*– It is also made the duty of the national government to protect the states against invasion. This is right and proper, since the states are forbidden by the Constitution to keep ships of war or troops in times of peace.

*Protection Against Domestic Violence.*– Again, it is made the duty of the national government to protect the people of the states against domestic violence arising from insurrection or riots, *provided* that application has been made by the proper state authorities. The purpose of this proviso is to remove the temptation to federal interference in state affairs for political or other reasons against the wishes of the people of the state. The ordinary procedure for the suppression of a local disturbance is for the sheriff of the county, or the mayor of the city, to make use of the local police, and if necessary he may call

upon the citizens to come to his aid. If this is not effective, the governor may be called upon to order out the state militia for the suppression of the riot. If, however, the riot should spread and assume such proportions that the power of the state and local authorities is insufficient, it becomes the right and duty of the governor, or the legislature if it be in session, to call on the President of the United States for the assistance of national troops. If in the President's judgment the situation is one which warrants federal intervention, he sends a detachment of troops from a near-by military post to restore order. Many times in our history federal troops have been used to put down riots where the state authorities had shown themselves incapable of maintaining order; two recent examples being in connection with strikes among the miners of Nevada in 1907, and of Colorado in 1914.

Ordinarily the President has no lawful right to interpose in the affairs of the state by the employment of troops until he has received an application from the governor or the legislature, but if the disturbance is one which interferes with the operations of the national government or with the movement of interstate commerce, the President may intervene whenever in his opinion the situation calls for federal action. Thus during the Chicago strike riots of 1894, President Cleveland ordered a detachment of federal troops to that city against the protests of the governor, upon being assured that the strikers were interfering with the movement of the mails and with the conduct of interstate

commerce and were also disregarding the writs and processes of the United States courts. The interference of the President was criticized by some persons, but the great body of citizens approved his course, and the United States Supreme Court upheld the validity of his action.

*Other Rights of the States.*– Among the other rights of the states under the Federal Constitution may be mentioned the right of equal representation in the senate, a right of which no state can be deprived without its consent, and the right of territorial integrity: no new state may be created within the jurisdiction of another state, nor may any state be formed by the junction of two or more states or parts of states, without the consent of the states concerned.

**Obligations and Duties of the States.–** Rights and privileges usually imply obligations, and so we find that the states owe certain duties to one another and to the union of which they are a part, and the harmony and success of the federal system are dependent in a large measure upon the performance of these duties in good faith.

*Full Faith and Credit.*– First of all, each state must give full faith and credit to the acts, judicial proceedings, and records of the other states. This means, for example, that a properly authenticated copy of a will or deed duly executed in one state will be taken notice of and rights depending on it will be enforced in other states as though the instrument were made therein. Likewise, a marriage legally celebrated in one state will usually

be treated as valid in another state, and the facts of a case at law will be recognized in other states without the necessity of retrial. The provision as to full faith and credit does *not* mean that one state must enforce within its borders the laws of other states, or that its courts in reaching their decisions are bound by the decisions of the courts of its sister states. As a matter of practice, however, courts in one state in deciding difficult questions of law will examine the decisions of the courts of other states on similar points for their own enlightenment, and will show respect for these decisions, the degree of deference depending on the standing of the judges rendering the decision and upon the similarity of the laws and policies of the states concerned.

*Surrender of Fugitives from Justice.*– In the next place, it is made the constitutional duty of the executive of each state to surrender criminals escaping from other states, in order that they may be returned for trial and punishment in the state from which they have fled. The demand for the surrender of such fugitives is made by the governor of the state from which the criminal has fled, and the governor upon whom the demand is made ought to comply with it unless for very substantial reasons. There is no way, however, by which this obligation may be enforced, and there have been many cases where governors have refused to deliver up criminals escaping from other states – usually for the reason that, in the governor's opinion, the fugitive would not receive a fair trial in the state from which he had fled.

*Treatment of Citizens of Other States.*– Still another obligation imposed by the Federal Constitution on the states is that of treating the citizens of other states as they treat their own citizens, i. e., without discrimination. But this obligation has reference rather to civil rights than to political privileges. It does not mean that an illiterate man who is allowed to vote in Illinois may go to Massachusetts and vote where an educational qualification for the suffrage is required; nor does it mean that a woman who is allowed to practice law in one state may therefore practice in another state which excludes women from engaging in that profession. What the provision does mean, is that whatever privileges and immunities a state allows to its own citizens, it must allow the citizens of other states on the same terms, and subject to the same conditions and no more. Thus a state cannot subject the citizens of other states to higher taxes than are imposed upon its own citizens.

*Other Obligations.*– Finally, it goes without saying that it is the duty of each state to treat its sister states in the spirit of comity and courtesy; to carry out the mandates of the Federal Constitution relating to the election of senators, representatives, and presidential electors so as to keep up the existence of the national government; and, in general, to perform in good faith all their other obligations as members of the union, without the performance of which the republic would be a mere makeshift. The existence of the states is essential to the union, and their preservation is as much within the care of the Constitution as is

the union itself. Indeed, the Constitution in all its parts, said the Supreme Court of the United States in a famous case, looks to an indestructible union of indestructible states.

**The State Constitution; how Framed.–** The governmental organization of each of the states is set forth in a written instrument called a constitution. Unlike the constitutions of some of the European states, which were granted by kings, and unlike, also, those of the British self-governing colonies, which were enacted by Parliament, all the American constitutions now in existence were framed by constituent bodies representing the people, and in most cases they were approved by the people before they went into effect. As Mr. Bryce has remarked, the American state constitutions are the oldest things in the political history of America. Before the Federal Constitution was framed each of the thirteen original states had a constitution of its own, most of them being framed by popular conventions chosen especially for the purpose.

Later, when a territory asked to be admitted to the union as a new state, Congress, through what is called an "enabling act," empowered the people of the territory to choose a convention to frame a constitution which, when submitted to the voters and approved by them, became the fundamental law of the new state. In a number of cases, however, the people of the territory went ahead on their own initiative, and without the authority of an enabling act framed their constitution and asked to be admitted, and sometimes they were admitted as though they had acted

under the authority of Congress. Whenever an existing state wishes to frame a new constitution for itself, the usual mode of procedure is for the legislature either to pass a resolution calling a convention, or to submit to the voters the question of the desirability of a new constitution. A resolution calling a convention usually requires an extraordinary majority of both houses of the legislature, two thirds of the members being the most common rule.

**Ratification of New Constitutions.–** When the draft of the constitution has been completed by the convention, it is usually submitted to the voters of the state at a general or a special election, and if it is approved by a majority of those voting on the constitution, or (in some states) of those voting at the election, it supersedes the old constitution and goes into effect on a day prescribed. In some instances, however, new constitutions were not submitted to popular vote; instead, the convention assumed the right to put them into effect without popular approval. Of the twenty-five state constitutions adopted before the year 1801, only three were submitted to the voters for their approval, but as time passed the practice of giving the people an opportunity to approve or reject proposed constitutions became the rule. In the twenty years between 1890 and 1910 eight new constitutions were submitted to the people, and only five were put into force without popular ratification, namely, those of Mississippi (1890), South Carolina (1895), Delaware (1897), Louisiana (1898), and Virginia (1902).

**Frequency of New Constitutions.–** The frequency with which the states revise their constitutions varies in different sections of the country. In New England new constitutions are rare, while in the states of the West and the South new constitutions are framed, on an average, at least once in every generation and sometimes oftener. Since the Revolution more than two hundred constitutions have been made by the states, though some of them never went into operation. Several of the states within a period of less than one hundred years have had as many as six, and a few have had even more. The constitution of Massachusetts of 1780, with several subsequent amendments, is still in force; but outside of New England there are few constitutions that are more than thirty years old. Some of the states, indeed, have inserted provisions in their constitutions making it the duty of the legislature at stated intervals to submit to the voters the question of calling a convention to revise the existing constitution or to adopt an entirely new one. In this way the people are given an opportunity to determine whether the constitution under which they live shall be revised or superseded by a new one, independently of the will of the legislature.

**Contents of State Constitutions.–** The early state constitutions were brief documents and dealt only with important matters of a fundamental and permanent character. They were remarkably free from detail and rarely contained more than 5,000 words. As time passed, however, there was an increasing tendency to incorporate in them provisions in regard to many

matters that had formerly been left to the legislature to be regulated by statute, so that some of the constitutions of the present day are bulky codes containing detailed provisions concerning many matters that might more properly be dealt with by statute. The constitution of Virginia, for example, has expanded from a document of a few pages to one of seventy-five, from an instrument of about 1,500 words to one of more than 30,000. The present constitution of Alabama contains about 33,000 words; that of Louisiana, about 45,000; and that of Oklahoma, about 50,000. The Virginia constitution contains a lengthy article on the organization of counties; one on the government of cities, constituting a code almost as elaborate as a municipal corporations act; one on agriculture and immigration; one on corporations, containing fourteen sections; one on taxation and finance, etc. The constitution of Oklahoma contains an article of seven sections on federal relations, one of which deals with the liquor traffic; elaborate provisions regarding the referendum and initiative; a section describing the seal of the state; a detailed enumeration of those who are permitted to accept railroad passes; an article on insurance; one on manufactures and commerce; and one on alien and corporate ownership of lands.

*Parts of a Constitution.*– A typical constitution consists of several parts: (1) a preamble; (2) a bill of rights; (3) a series of provisions relating to the organization of the government and the powers and duties of the several departments; (4) a number

of miscellaneous articles dealing with such matters as finance, revenue and debts, suffrage and elections, public education, local government, railroads, banks, and other corporations generally; (5) an article describing the procedure by which amendments may be proposed and ratified; and (6) a schedule. Many constitutions contain an article defining the boundaries of the state, and most of them one on the distribution of the powers of government. Some of the newer constitutions also prescribe numerous limitations upon the legislature, so great is the popular mistrust of legislatures to-day; while others lay down various rules as to the procedure of the legislature. The schedule contains provisions for submitting the constitution to the voters and making necessary arrangements for putting the new constitution into effect.

**The Bill of Rights**, says Bryce, is historically the most interesting part of the state constitution, and if we may judge by the space devoted to these provisions and the attention paid to their framing, they constitute a very important part of the constitution. In a sense they are the lineal descendants of great English enactments like Magna Charta, the Bill of Rights, and the Act of Settlement, and of the various declarations of the Revolutionary Congresses in America. They consist of limitations upon the government and of statements of the fundamental rights of man.

*Some Provisions of the Bills of Rights.*– Examining these bills of rights, we find that they all contain declarations in

favor of freedom of religious worship, freedom of assembly, freedom of speech and of the press, and most of them forbid the establishment of a state church or the appropriation of money for the establishment or support of any religious denomination. Most of them contain declarations providing for trial by jury in criminal cases, indictments by grand jury, the privilege of the writ of habeas corpus, the right of the accused to a speedy and public trial; a declaration of the right of citizens to bear arms; the prohibition of excessive bail, cruel and unusual punishments, general search warrants, and imprisonment for debt; the prohibition of titles of nobility, ex post facto laws, and bills of attainder[9]; and provisions forbidding the taking of private property except for public purposes and then only when just compensation is made.[10] Many of them contain philosophical enunciations of political doctrines such as the assertion that all governments originate with the people, and are instituted solely for their good; that all men are equal; that all power is inherent in the people; and that the people have at all times the right to alter, reform, or abolish their government. Some of the newer constitutions declare that monopolies and perpetuities are contrary to the principles of free government; that every citizen

[9] An ex post facto law is retroactive, making criminal an act that was not a crime when committed, or increasing the punishment for past crimes. A bill of attainder is a law convicting an accused person without a trial, and imposing on him the penalties of treason.

[10] The inherent power of the state to take private property for public use is called the right of eminent domain.

shall be free to obtain employment wherever possible; that a long lease of office is dangerous to the liberties of the people; that aliens shall have the same rights of property as citizens; and so on.

The real importance of the bills of rights, now that executive tyranny is a thing of the past, is not very great.

**Amendment of State Constitutions.–** The practice of inserting in the constitution many provisions which are temporary in character, makes frequent alteration a necessity if the constitution is to meet the rapidly changing needs and conditions of the state. Some of the early constitutions contained no express provision for their own amendment, but as time passed changes became manifestly necessary, and in time they were all amended or supplanted entirely by new ones, notwithstanding the absence of amending provisions. Ultimately the advantage of pointing out in the constitution a legal and orderly way of amendment came to be generally appreciated, and at the present time all of the constitutions contain amending provisions. These clauses provide that amendments may be proposed, either by a convention called by the legislature, or by the legislature itself, usually by an extraordinary majority; in either case the proposed amendment must be submitted to the voters for their approval, and it becomes a part of the constitution only if ratified by a majority of those voting on the proposed amendment or, in some states, by a majority of those voting at the election at which the proposed amendment

is submitted. A new method of amendment by popular initiative was adopted in Oregon in 1902. According to this method a proposed amendment may be framed by the people by petition and submitted to a popular vote without the necessity of the intervention of the legislature in any form.

In spite of the restrictions imposed, most of the constitutions are frequently amended. During the two decades from 1900 to 1919, 1500 amendments were proposed by the legislatures of the several states, or by popular initiative, and of these about 900 were ratified. At the general election of 1918, no less than 130 amendments were voted on by the people of the different states, and a number of others were awaiting the action of the legislatures soon to meet. In five western states alone 270 amendments were submitted from 1914 to 1919.

**References.–** Beard, American Government and Politics, chs. xxii-xxiii. Bryce, The American Commonwealth (abridged edition), chs. xxxiv-xxxv. Dealey, Our State Constitutions, chs. ii-iii. Hart, Actual Government, ch. vi. Hinsdale, The American Government, chs. xl, xli, xlix, l. Wilson, The State, secs. 1087-1095. Willoughby, Rights and Duties of Citizenship, ch. x. Willoughby, The American Constitutional System, chs. ii-x.

**Documentary and Illustrative Material.–** 1. Thorpe's Constitutions and Organic Laws, or Poore's Charters and Constitutions, both published by the Government Printing Office. 2. Pamphlet copies of state constitutions can usually be obtained from the secretaries of state of the various

states. 3. The legislative manual of the state, where usually a review of the constitutional history of the state may be found.

## Research Questions

1. In what two senses is the word "state" used? In what sense is New York a state and in what sense is it not?

2. Were the states ever sovereign? What were the two views in this country prior to the Civil War in regard to the sovereignty of the states?

3. The constitution and laws of the United States are declared to be supreme over those of the states; what is the meaning of that provision? Does that mean that any law passed by Congress will override a conflicting law passed by a state, even though the law passed by the state is clearly within its powers?

4. Distinguish between *reserved* powers and *delegated* powers.

5. Do you believe the powers of the national government should be increased so as to include the regulation of such matters as marriage and divorce, the business of corporations, factory labor, and insurance?

6. What is the purpose of the commissions on uniform legislation in the different states, and what are they seeking to accomplish? Is there such a commission in your state?

7. Which of the following matters fall within the jurisdiction of the United States and which within the jurisdiction of the

states? (1) the levying of tariff duties, (2) the transfer of land, (3) the building of lighthouses, (4) the protection of religious worship, (5) the granting of passports, (6) punishment of crime, (7) the granting of pensions, (8) the regulation of labor in mines and factories, (9) the protection of the public health, (10) the support of schools, (11) the regulation of navigation, (12) the erection of fortifications.

8. Name some powers that may be exercised by both Congress and the states; some that may be exercised by neither; some that may be exercised by the states only with the consent of Congress.

9. May the United States government coerce a state? Suppose a state should refuse or neglect to perform its constitutional duties as a member of the union, could it be punished or compelled to fulfill its obligations?

10. May a state be sued by a citizen of the state? by a citizen of another state? by another state itself?

11. Suppose a state should refuse to pay a debt which it has incurred, has the person to whom the debt is due any remedy?

12. Will a divorce granted in Nevada to a citizen of Massachusetts be recognized as valid in Massachusetts?

13. Suppose a man, standing on the New Jersey side of the Delaware River, should fire a shot across the river and kill a man in Pennsylvania, would the governor of New Jersey be bound to surrender the criminal upon demand of the governor of Pennsylvania, in order that he might be tried in Pennsylvania?

14. What is the difference between a constitution, a statute,

and a charter? Between a written and an unwritten constitution?

15. When was the present constitution of your state adopted? Was it submitted to the voters before being put into effect? How many constitutions has your state had since its admission to the union? Were they all adopted by popular ratification? Who was the delegate from your county to the last constitutional convention?

16. How may the constitution of your state be amended? Is a majority of those voting at the election necessary to ratify, or only a majority of those voting on the proposed amendment? How many times has the present constitution of your state been amended? Do you think the method of amendment is too rigid?

17. What is the purpose of a preamble to a constitution? Does the preamble of your constitution contain a recognition of God?

18. What are the provisions in the bill of rights to your constitution in regard to the rights of an accused person? in regard to freedom of the press? freedom of assembly? freedom of worship? right of the people to change their government?

# CHAPTER IV
# THE STATE LEGISLATURE

**Powers of the State Legislatures.–** The powers of the state legislature, unlike those of the city council and those of the Congress of the United States, are not set forth in the constitution. In general, a state legislature may exercise any powers which are not denied to it by the Constitution of the United States or by the constitution of the state. Its powers, in other words, are residuary in character, rather than delegated or granted.

*Limitations.–* In recent years, however, mainly on account of the popular distrust in which our legislatures have come to be held, numerous limitations upon their powers have been imposed by the constitutions of many states. Thus they are frequently forbidden absolutely to pass local or special laws where a general law is applicable, or they are allowed to enact such laws only under certain restrictions. In most states, also, the legislature cannot run the state into debt beyond a certain amount, and its power to impose taxes and appropriate money is generally restricted. Finally, its power of legislation has been limited by the present practice of regulating many important matters in the constitution itself. In the newer constitutions especially we find a large number of provisions relating to schools, cities,

towns, railroads, corporations, taxation, and other matters. To that extent, therefore, the legislature is deprived of its power of legislation on these subjects.

*Extent of the Legislative Power.*– In spite of the numerous restrictions, however, the power of the legislature is very large. It enacts the whole body of criminal law of the state; makes laws concerning the ownership, use, and disposition of property, laws concerning contracts, trade, business, industry, the exercise of such professions as law, medicine, pharmacy, and others; laws relating to the government of counties, towns, cities, and other localities; laws concerning the public health, education, charity, marriage and divorce, and the conduct of elections; laws concerning railroads, canals, ferries, drainage, manufacturing, eminent domain, and a great variety of other matters. The subjects concerning which the legislatures may enact laws are indeed so numerous and varied that it would be impossible to enumerate them all. For that reason the legislature is by far the most important branch of the state government, and it is highly important that it should be composed of honest, intelligent, and efficient members. Unfortunately, however, in many states the legislature has declined in public esteem. In the early days of our history the legislative branch of the government was all-powerful. It was not only practically unlimited as to its power of legislation, but it was intrusted with the choice of many important officers of the state. Now, however, there is a disposition to cut down its powers and place restrictions on the exercise of those that are

left to it. In many states the people have secured the power to legislate for themselves by means of the initiative and referendum (pp. 85-89); and, to diminish the power of the legislature to enact useless laws, many constitutions limit the length of the sessions to forty or sixty days in the hope of compelling it to devote its time to the consideration of important measures of general interest.

**Structure of the Legislature.–** Every state legislature today consists of two houses. At first several states followed the example of the Congress of the Confederation and tried the single-chamber system, but they soon found its disadvantages serious, and substituted legislatures with two houses. The principal advantage of a bicameral legislature is that each house serves as a check upon the haste of the other and thus insures more careful consideration of bills. Nevertheless, proposals have recently been made in several states to establish a single-chambered legislature, and the question was voted on by the electors of Oregon in 1912 and in 1914, and by those of Arizona in 1916.

The lawmaking body popularly known as the legislature is officially so designated in some states, but in others the formal name is the general assembly or the legislative assembly, and in two, Massachusetts and New Hampshire, the colonial title, "general court," is still retained. In all the states the upper house is styled the senate. In most of them the lower chamber is known as the house of representatives, though in a few it is styled the assembly and in three the house of delegates.

Both houses of the state legislature are chosen by the people. The principal differences in their make-up are, that the senate is a smaller body and therefore each senator represents a larger constituency, the senators in many states are chosen for a longer term, and usually the senate is vested with special functions such as the approval of executive appointments to office, and the trial of impeachment cases.

*The State Senate.*– The size of the senate varies from seventeen members in Delaware to sixty-seven in Minnesota, the average number being about thirty-five. In about two thirds of the states the term of senators is four years; in New Jersey their term is three years; in Massachusetts it is one year; in the remaining states it is two years. In about one third of the states the terms of the senators and the representatives are the same. In some states the senators are divided into classes, and only half of them retire at the same time.

*The House of Representatives.*– The house of representatives everywhere is a more numerous body than the senate, and in a few states the disproportion is very great. Thus the New Hampshire legislature with a senate of 24 members has a house of representatives of more than 400 members, the largest in any state, a body about as large as the national house of representatives. The Connecticut legislature is composed of a senate of 35 members and a house of representatives of 258 members; Vermont has a senate of 30 members and a house of representatives of 246; Massachusetts has a senate

of 40 members and a house of 240. The smallest houses of representatives are those of Delaware and Arizona, each consisting of 35 members.

*Apportionment of Senators and Representatives.*– Senators and representatives are apportioned among districts, usually on the basis of population. Political units, however, are often taken into consideration, and in some states such units rather than the number of inhabitants are the determining element. Thus it is frequently provided that each county shall be entitled to one senator, though the population of some counties may be many times as great as that of other counties. In some of the New England states the inequalities of representation are so glaring as to constitute a great injustice to the more populous towns. In Connecticut, for example, the members of the lower house are distributed among the towns of the state, without regard to their population. As a result each of the small towns of Union, Hartland, Killingworth, and Colebrook, with an average population of less than 1,000 persons, has two representatives, while New Haven, with 133,000 inhabitants, has only two. Hartford, with about 99,000, has only two, and so has Bridgeport with a population of 102,000, and Waterbury with 73,000. These four cities comprise about one third the population of the state, but they have only one thirty-second part of the membership of the house of representatives. A similar system of representation exists in Vermont and in the senate of Rhode Island.

Moreover, as a result of "gerrymandering" by the political

party in control of the legislature the legislative districts are frequently so constructed as to give the majority party more than its fair share of representatives. As a result there are in some states great inequalities of representation among the different counties or legislative districts.

In order to prevent large cities from controlling the legislature and thereby dominating the state, a few constitutions limit their representation in the legislature. Thus in New York it is provided that no county, however populous, shall have more than one third of all the representatives, and a somewhat similar provision is contained in the constitutions of Rhode Island and Pennsylvania.

**Minority Representation in the Legislature.–** Where there are two political parties in the state, it is worth considering whether some provision should not be made for allowing each party to choose a number of representatives in proportion to its numerical strength, or at least for allowing the weaker party some representation in the legislature. It not infrequently happens under the present system that the majority party in the state succeeds in electing nearly all the representatives, leaving the other party practically without representation, although it may be strong enough to cast hundreds of thousands of votes in the state as a whole. In the Oregon state election of 1906, for example, the Republican party, with only 55 per cent of the voting strength, elected eighty-eight members of the legislature, while the Democratic party, though casting 34 per cent of the total vote, elected only seven representatives.

The present constitution of Illinois contains a clause which makes it possible for the minority party in each of the fifty-one legislative districts into which the state is divided to elect at least one of the three representatives to which the district is entitled. Each voter is allowed three votes, and he may give one vote to each of three candidates, or he may give all three to one candidate, or two to one candidate and one to another. Usually the party having the majority in the district elects two candidates and the minority party one, the voters of the latter party concentrating all their votes on the one candidate.

**Legislative Sessions.–** In the great majority of states the legislatures hold regular sessions every two years. In New York, New Jersey, Massachusetts, Rhode Island, Georgia, and South Carolina the legislature meets every year in regular session. Alabama is contented with a session once in every four years. In California the session is divided into two parts, the first being devoted exclusively to the introduction of bills. The legislature then takes a recess of a month to enable the members to consult their constituents in regard to the bills introduced, after which it reassembles for the enactment of such legislation as seems to be demanded. In all the states the governor is empowered to call extraordinary sessions for the consideration of special matters of an urgent character.

There is a popular belief that legislatures waste much of their time in the consideration of petty matters, and in many states the constitution either limits the length of the session, –

sometimes to forty, fifty, or sixty days, – or provides that where the session is prolonged beyond a certain number of days, the pay of members shall cease. The wisdom of limiting the sessions to such brief periods, however, is doubtful, and several states that once imposed such restrictions have since removed them.

**Legislative Compensation.–** In all the states, members of the legislature receive pay for their services. This is either in the form of a definite amount per year, term, or session, or so much per day. The largest legislative salaries are those of Illinois ($3,500 per biennial session), New York ($1,500 per year), Massachusetts and Ohio ($1,000 per year), and Pennsylvania ($1,500 per biennial session). In New Hampshire, on the other hand, the salary is only $200 per biennial session, in Connecticut $300, and in South Carolina $200 for each annual session. In thirty states the per diem method of compensation prevails, the amount ranging from three dollars per day, which is the salary paid in Kansas and Oregon, to ten dollars per day, in Kentucky, Montana, and Nebraska, the most usual sum being four or five dollars per day. In several states, however, the per diem compensation ceases, or is reduced to a nominal amount, after the legislature has been in session 60 days or 90 days. Mileage ranging in amount from ten cents per mile to twenty-five cents is usually allowed, and in a number of states there is a small allowance for postage, stationery, and newspapers. In some states the pay of the legislators is fixed by the constitution, and hence the matter is beyond control of the legislature. Indeed, in

only a few states is the matter of legislative pay left entirely to the discretion of the legislature without restriction.

In a number of them the constitution either forbids members to accept free passes on the railroads, or makes it the duty of the legislature to pass laws prohibiting the acceptance of such passes.

**Organization of the Legislature.–** Each house is usually free to organize itself as it may see fit, though where the office of lieutenant governor exists, the constitution designates that official as the presiding officer of the senate.

*The Speaker.–* The presiding officer of the lower house is styled the speaker, and in all the states he is chosen by the house from its own membership. He calls the house to order, presides over its deliberations, enforces the rules governing debate, puts motions and states questions, makes rulings on points of order, recognizes members who desire to address the house, appoints the committees, signs the acts and resolutions passed by the house, and maintains order and decorum. He usually belongs to the political party which is in the majority in the house, and in making up the committees and recognizing members for the purpose of debate he usually favors those of his own party.

*The Clerk.–* Each house has a clerk or secretary who keeps the journal of the proceedings, has custody of all bills and resolutions before the house, keeps the calendar of bills, calls the roll, reads bills, and performs other duties of a like character. He is often assisted by other clerks such as a reading clerk, an engrossing clerk, sometimes an enrolling clerk, etc.

*Sergeant-at-arms.*– To execute the orders of the house in preserving good order and enforcing the rules, there is an officer called a sergeant-at-arms. He usually has custody of the hall in which the meetings are held, makes arrests when the house orders an outsider to be taken into custody for contempt, compels absent members to attend when ordered by the house to do so, and sometimes keeps the accounts of the pay and mileage of members.

*Other Officers and Employees.*– Usually, also, there is a chaplain who opens the session with prayer, though he is not always a paid employee; a postmaster; and a number of miscellaneous employees such as doorkeepers, janitors, copying clerks, stenographers, pages, etc.[11]

*Committees.*– For convenience in legislation the members of each house are grouped into committees, the more important

[11] The California house of representatives, consisting of eighty members, had in 1907 a total of 335 employees, with salaries ranging from $3 to $8 per day. The senate, composed of forty members, had 228 employees. Since then an amendment to the constitution of that state has been adopted, limiting to $500 per day the amount that may be expended by the legislature for clerical assistance. In some other states the number of employees of the legislature seems excessive, and restrictions similar to that now found in the constitution of California might not be out of place. Thus in 1903 there were 226 employees of the legislature of Illinois, 315 in Missouri, 299 in New York, and 225 in Oregon. The expense account of legislative employees in Illinois for the session of 1913 amounted to more than $95,000; the amount in New York was over $250,000; and in Wisconsin over $76,000. One of the arguments now being urged in some states in favor of a single-chamber legislature is that it would make possible a material reduction in the number of legislative employees and a corresponding diminution of expenses.

of which are those on agriculture, corporations, finance or appropriations, ways and means, judiciary, railroads, labor, education, manufactures, engrossment and enrollment, and insurance. In the Western states there are usually committees on immigration, mining, dairies, forestry, fish and game, drainage, swamp lands, irrigation, levees and river improvements, etc. The number and size of the committees vary in different states. In some of the states there are as many as fifty or sixty committees, and occasionally as many as forty members are placed on a single committee. In addition to the standing committees of each house there are frequently select committees appointed for special purposes, and there are usually a number of joint committees made up of members of both houses. In the New England states most of the committee work is done by joint committees, there being usually only four or five standing committees in each house.

**How Bills are Passed.–** Each house is empowered to frame its own rules of procedure, but in order to insure publicity and careful consideration of bills the state constitutions have placed restrictions upon the legislature in the consideration and passage of bills. Thus in all the states each house is required to keep a journal of its daily proceedings; in most states it is provided that no law shall be passed except by bill, that no bill shall embrace more than one subject, which shall be clearly expressed in the title of the bill, that no money shall be appropriated except by law, that every bill shall be read at least three times before being passed,

that no existing law shall be amended by mere reference to its title but the amended portion must be set out in full, and that the yeas and nays shall be recorded upon demand of a certain number of members. Some states require that every bill shall be referred to a committee, that every bill shall be printed and placed on the desk of each member, that no bill shall be introduced after the legislature has been in session a certain number of days, and that bills of a local or private character shall be introduced only after public notice has been given in the locality affected and to be valid must be passed by a two-thirds majority of each house; and so on.

In general these constitutional restrictions represent an attempt to eliminate the evils of undue haste, lack of consideration, extravagance, and objectionable local and private bills, and to compel the legislature to do its work openly, carefully, and in the interest of the public good.

*Order of Procedure.*– A common order of the procedure in passing bills is the following: 1. Introduction and first reading. 2. Reference to a committee. 3. Report of the committee. 4. Second reading. 5. Third reading. 6. Vote on passage. 7. Enrollment. 8. Approval by the Governor. This order of procedure, however, is often departed from under a suspension of the rules or by unanimous consent.

Usually any member can introduce a bill on any subject and at any time[12] except where the constitution forbids the introduction

[12] In Wisconsin and some other states, "legislative reference bureaus" furnish

of bills after a certain date, and some legislatures have even found a means of evading this restriction. In most states a bill can be introduced by filing it with the clerk. It is then usually read the first time, though only by title, and referred to the appropriate committee for consideration and report. The committee may "pigeonhole" it and never report, or it may make a report so late in the session that consideration of the bill is impossible. If the bill seems worthy of being reported, the committee reports it to the house with a recommendation that it be passed either with or without amendments, or that it be rejected. If reported favorably it is placed on the calendar for consideration in its turn. At this stage it is open for general discussion and for amendment by the house. If the bill meets the approval of the house, it is finally ordered to be engrossed and read a third time. It is then put in shape by the committee on engrossment, after which it is read a third time and finally passed. It then goes to the other house, where the procedure is substantially the same. If passed by the second house, it is ready for the signature of the governor. If amended by the second house, it comes back to the first house for concurrence in the amendments. If the first house refuses its concurrence, a conference committee is usually appointed by the two houses to consider and recommend a compromise. The bill is not ready to send to the governor until it has been passed by both houses in exactly the same form.

---

members with information regarding subjects of proposed legislation, and aid them in the drafting of bills.

**Lobbying and Bribery.**– In all our states a large proportion of the legislation enacted affects directly or indirectly the interests of particular persons, classes, or localities. As a result, interested parties bring great pressure to bear upon the members to pass certain bills or to reject certain others.

*Methods of the Lobbyist.*– Usually when the legislature meets, the paid representatives of interested individuals, corporations, or local governments appear on the scene to urge legislation in their interests or to defeat bills introduced that are unfavorable to them. These persons are known as "lobbyists," and the means they employ to secure or prevent legislation are often improper and sometimes venal. Sometimes money is used to bribe members to vote for or against pending measures, and there are few states indeed where charges of this kind have not been made. In one state recently, money was contributed in large quantities by persons interested in preventing certain legislation, and the sum thus contributed was known as the "jack pot" fund, out of which members were handsomely paid for their votes. In a special message to the legislature of New York state, Governor Hughes declared that certain disclosures had "caused honest citizens to tingle with shame and indignation and made irresistible the demand that every proper means should be employed to purge and purify the legislature." The situation described by the governor as existing in New York, unfortunately exists in other states as well.

*"Strike" Bills.*– Some of the great corporations maintain

regularly paid lobbyists at the state capitals when the legislature is in session, not so much for the purpose of securing legislation in their interests as to prevent the enactment of laws to which they are opposed. Sometimes they are practically forced to have lobbyists on the ground to prevent the enactment of what are called "strike" bills, that is, bills introduced by unscrupulous members for the purpose of extorting money from the corporations to pay for defeating them.

*Anti-lobbying Legislation.*– The evils growing out of the practice of the special interests in maintaining paid lobbyists near the legislature have led to attempts in a number of states to restrict such abuses by legislation. This legislation, in general, makes it unlawful to attempt to influence improperly any legislator. In several states lobbyists are required to make known the purpose of their business and to register their names with the secretary of state, and after the adjournment of the legislature to file a sworn statement of their expenses.

**Direct Legislation: the Initiative and the Referendum.**– The legislature is not the only agency for enacting law and determining the public policies of the state. Laws on certain subjects may be made by the people themselves acting directly in their primary capacity as well as through the agency of representatives. This is done through what are called the initiative and the referendum. The initiative is a device by which the people themselves may propose laws and have them submitted to the voters for their approval or rejection. Through the referendum

the people reserve the power to approve or reject by popular vote certain laws enacted by the legislature.

*Varieties of Referendum.*– The referendum may be obligatory or optional in character, that is, the approval of the electorate may be required by the constitution before certain laws shall go into effect, or the legislature in its discretion may refer a law to the people for their opinion. Thus the constitutions of many states declare that no law for increasing the debt of the state beyond a certain amount shall be valid until it has been submitted to the voters and approved by them. Again, the referendum may be mandatory or advisory in character. Under the mandatory form, the legislature is required to carry out the will of the electorate as pronounced on any subject referred to the voters, while the advisory referendum is nothing more than an expression of opinion which may or may not be followed by legislative action.

Again, the referendum may be state-wide in its scope, as where a general law or question of public policy is submitted to the voters of the whole state, or it may be of a local character, as where a law affecting a particular community is referred to the voters thereof.

The referendum as a device for adopting constitutions and constitutional amendments is as old as the republic itself, and is now the general practice (pp. 65, 70). In all the states except Delaware proposed amendments must be submitted to the voters at a general or special election, and must be adopted by them before going into effect. The use of the referendum for ordinary

lawmaking is also an old practice, though it is much more generally resorted to now than formerly. Thus very early in our history it was employed for such purposes as the incorporation of towns, borrowing money, the location of county sites, division of counties, subscription to stock in railroads and other enterprises by states, counties, or towns, and the levying of special taxes for the support of schools. One of the important uses to which it was put was the determination of the question whether intoxicating liquor should be sold in a particular locality. In time what were called local option laws were passed in many states, giving the people of towns, cities, or other local divisions of the state the privilege of determining by popular vote whether liquor should be sold within their limits. Other matters that have frequently been made the subject of a referendum are: the granting of the suffrage to negroes, and sometimes the enfranchisement of women; the location of state capitals; the sale of school lands; the incorporation of state banks of issue; the granting of aid to railroads; the adoption of the township form of local government; the construction of canals; the erection of public libraries; and many other matters too numerous to mention. There is no state in which the referendum is not provided by the constitution for certain kinds of legislation, and there is hardly a general election held nowadays in which the voters are not called upon to pass judgment upon some proposed act of the legislature or some question of public policy.

In Illinois there has been enacted what is known as the "public

opinion law," which provides that upon petition by 10 per cent of the registered voters of the state the legislature is required to submit to the voters any question of public policy for their opinion. The popular vote, however, is nothing more than an expression of opinion by the voters and is not binding upon the legislature.

*The Oregon System.*– The idea of the initiative and the referendum has been carried out most fully in Oregon, whose constitution provides that 8 per cent of the voters may by petition propose an amendment to the constitution, and when so proposed it must be submitted to the voters and if approved by a majority of them the amendment becomes a part of the constitution. Likewise the constitution of Oregon provides for the initiation and adoption of ordinary laws by the people. It further provides that upon the petition of 5 per cent of the voters any act of the legislature, with certain exceptions, before going into effect, must be submitted to the people for their approval, and if not approved by a majority of those voting, it shall not go into effect. From 1904 to 1914, 130 constitutional amendments and statutes were submitted to popular vote, of which 46 were adopted. For the information of the voters, "publicity pamphlets" are provided, containing an explanation of the measures upon which they are called to vote, together with arguments for and against each proposition. In 1912 these arguments (on 37 measures) made a book of 252 pages.

*Initiative and Referendum in other States.*– Various other

states (South Dakota, Utah, Colorado, Montana, Idaho, Missouri, Maine, Arkansas, Oklahoma, Nebraska, Arizona, Nevada, California, Washington, Michigan, Ohio, North Dakota, Massachusetts, and Mississippi) have established both the initiative and the referendum in some form or other. The initiative and referendum are in use also in many cities, especially those under the commission plan of government. Usually the number who are empowered to initiate a proposed law or ordinance is 8 or 10 per cent of the registered vote. In Texas the referendum is applied to the formulation by political parties of their party policies, 10 per cent of the voters being allowed to propose policies which must be submitted to the party for their opinion.

*Merits of the Referendum.*– One of the chief merits of the referendum is that it serves as a check on the vices, follies, and errors of judgment of the legislature. Another merit claimed for the referendum is its educative effect upon the electorate. Where the voters are frequently called upon to pass judgment upon the acts of the legislature or upon questions of public policy, they must, if they discharge their duty properly, study the measures submitted to them and thus become trained in public affairs. The enjoyment of such a privilege also tends to stimulate their interest in political affairs and increase their feeling of responsibility for the good government of the state.

The advantage of the initiative is that it puts in the hands of the people the power to bring forward needed measures of legislation

and secure a vote on them whenever the legislature refuses to act in obedience to the popular mind.

**References.–** Beard, American Government and Politics, ch. xxv. Bryce, The American Commonwealth (abridged edition), ch. xxxix. Dealey, Our State Constitutions, ch. vii. Hart, Actual Government, ch. vii. Reinsch, American Legislatures and Legislative Methods, chs. iv-x. Wilson, The State, secs. 1128-1142.

**Documentary and Illustrative Material.–** 1. The legislative manual or blue book of the state. 2. A map showing the division of the state into legislative districts. 3. Rules of procedure of the two houses of the legislature. 4. Specimen copies of bills and resolutions. 5. Messages of the governor to the legislature. 6. The last volume of the session laws of the state.

## Research Questions

1. How many members are there in the senate of your state legislature? How many in the house of representatives? What is the term of the members of each house? What are the qualifications for membership? What is the salary?

2. What is the principle of apportionment of the members of each house? Are there any inequalities of representation among the districts or counties from which the members are chosen? What county has the largest number of representatives? What

county the smallest number? Have any charges been made that the state is "gerrymandered" in the interest of the dominant party?

3. How many committees are there in each house? Of what committees are your representatives and your senator members? What is the average number of members on each committee? Name some of the most important committees. What are the principal officers and employees of each house?

4. How often does the legislature of your state meet in regular session? Are there any constitutional restrictions on the length of the sessions? Have any extraordinary sessions been held in recent years? If so, for what purpose? Are there any restrictions on the power of the legislature when in extraordinary session?

5. How many acts were passed at the last regular session? How many joint resolutions were adopted? What is the difference between an act and a joint resolution?

6. What are the provisions in the constitution of your state in regard to the procedure of the legislature in passing bills? Find out from the rules of each house how a bill is introduced, considered, and passed. How are special and local acts passed?

7. Is there a law in your state to regulate lobbying? What is the penalty for accepting a bribe?

8. Is there a legislative reference bureau or other agency in your state for collecting information for the benefit of members or for assisting them in the preparation of bills?

9. Are there any provisions in the constitution of your state

in regard to the initiative or referendum? Do you know of any instance in recent years in which the people of the state were called upon to vote on a proposed legislative act or a question of public policy? Is there a local option liquor law in your state? If so, have the people of your county or city taken advantage of it?

10. Do you think members of the legislature when instructed by their constituents to vote for or against a certain measure, should obey the instructions, or vote according to their own judgment of what is best without regard to the expressed will of the people?

11. Is there any organization in your state for studying the records of members and for securing the election of honest and efficient legislators?

# CHAPTER V
# THE STATE EXECUTIVE

**The Governor; Election and Qualifications.–** Each state has a chief executive styled a governor, who is charged with the execution of the laws. In all he is elected by the people. In nearly all, a plurality of the popular vote is sufficient to elect, but in a few states a majority is required and if no candidate receives a majority of the popular vote, either the legislature makes the choice, or a second popular election is held.

To be eligible to the office of governor, a man must have attained a certain age, usually thirty years, and generally he must be a citizen of the United States; in many states he must have been a citizen for a period ranging from five to twenty years. He is also usually required to have been a resident of the state for a period ranging from one to ten years.

**Term.–** The term of the governor in twenty-five states is two years; in the others it is four years except in New Jersey, where it is three years. Formerly the term was one year in several states, but by 1920 all of them had changed it to two years. A one-year term seems to have little to recommend it, for experience is as necessary for the successful administration of public affairs as for the conduct of private business, and familiarity with the duties of an office of such importance cannot be acquired in so

short a time. However, where the one-year term prevailed, it was customary to reëlect the governor to a second term. In a number of states, the governor is ineligible to two successive terms, the idea being that if reëligible he would make use of his official power to secure his reëlection. A few state constitutions wisely provide that he may hold office until his successor has qualified, and thus the danger of a vacancy is obviated.

**Salary.–** The salary of the governor is everywhere comparatively small, though in recent years the tendency has been to increase it. In three fourths of the states now the salary is $5,000 per year or more. In California, Massachusetts, New Jersey, New York, Ohio, and Pennsylvania, it is $10,000 per year, and in Illinois it is $12,000. The smallest salary is $2,500 per year, which is the amount allowed in Nebraska. Frequently the state provides the governor with a residence styled the "executive mansion." A contingent fund out of which to meet the expense of emergencies in the execution of laws is usually placed at his disposal, but this fund cannot be used for private purposes. Some governors, however, have not been very careful to distinguish between private and official purposes, and not infrequently the use made of this fund has been the subject of legislative investigation and of popular criticism.

**Organization of the Executive Department.–** The organization of the executive department of the state government is different in one important respect from that of the executive department of the United States. In the national government

the responsibility for the administration of executive affairs is concentrated in the hands of the President, and the heads of the various departments are all his appointees; they are responsible directly to him for the discharge of their duties, are, within the limits of the law, subject to his direction, and may be removed by him for any reason which to him may seem expedient. The executive power of the state, on the contrary, instead of being concentrated in the hands of the governor, is really divided between him and a number of other state officers, who are generally elected by the people and over whom he has little or no control. They are, in short, his colleagues rather than his subordinates. This method of organizing the executive power has justly been criticized on the ground that it introduces a division of responsibility and lack of co-ordination in the state administration. Thus, although the governor is charged with the execution of the laws, he usually has no power to direct the attorney-general to institute proceedings against a person or corporation for violating the law, as the President of the United States might do in a similar case. Again, he may have reason to believe that the state treasurer is a defaulter, but in most of the states he has no power to examine into the affairs of the treasurer's office, or to remove him from office. And so with the other principal officers that collectively make up the executive department. The responsibility of these officials is usually to the people alone, and responsibility in such cases cannot always be enforced, for they are elected for specific terms and cannot

be removed before the expiration of their terms, except by the cumbersome method of impeachment.

*The Lieutenant Governor.*– In about two thirds of the states there are lieutenant governors chosen for the same time and in the same manner as the governor. About the only duty of this official is to preside over the deliberations of the senate. In case of a vacancy in the office of governor on account of death, resignation, or removal, or in case of his absence from the state, the lieutenant governor performs the duties of the office for the time being.

*Executive Councils.*– Three of the New England states (Massachusetts, Maine, and New Hampshire) have executive councils – survivals of colonial days – which share the executive power with the governor to a considerable extent. Their consent is necessary to the validity of many of his acts, such as the making of appointments, the granting of pardons, and the like. A modified form of the executive council is found in a few other states.

**Other Executive Officers.–** Besides the governor, who is the chief executive, there are in every state a number of state officers each in charge of a particular branch of the administrative service.

*Secretary of State.*– The first of these in rank is the secretary of state, who is the custodian of the state archives and of the great seal of the state; has charge of the publication and preservation of the laws; countersigns the proclamations and commissions issued

by the governor and keeps a record of them; issues certificates of incorporation to companies incorporated under the laws of the state; and discharges other miscellaneous duties which vary in the different states. He is elected by the people in all the states except a very few where he is either appointed by the governor or chosen by the legislature.

*The Treasurer* of the state, as the name indicates, is the keeper of the public moneys, such as taxes, trust funds, and the like, and upon warrants issued by the auditor or other proper authority, he pays out money appropriated by the legislature. Everywhere he is elected by the people, usually for a short term, and is required to give a heavy bond so as to insure the state against loss in case of his carelessness or dishonesty. He is generally paid a salary, which is increased in some cases by the practice of treasurers depositing the state's money in banks from which they receive interest. The treasurer of a certain Western state received thousands of dollars a year in this way, until the legislature passed a law requiring him to turn into the state treasury all moneys received in the form of interest on state deposits.

*Auditor.*– Another financial officer found in all the states is the auditor or comptroller, whose duties, in general, are to audit the accounts of the state and issue warrants upon the treasurer for the payment of moneys which have been appropriated by the legislature. A warrant issued by the auditor is the treasurer's authority for paying money out of the treasury, and without such an order he has no lawful right to make a disbursement. Other

duties of a miscellaneous character are imposed upon auditors in the different states.

*Superintendent of Education.*– Another important official is the superintendent or commissioner of public education, who has charge of the larger educational interests of the state. He supervises the administration of the school laws, distributes the school fund among the local districts, makes rules and regulations in regard to the holding of teachers' institutes, makes reports to the legislature concerning the educational conditions and needs of the state, and is frequently a member of the state board of education and of the boards of trustees of the state educational institutions.

*Other Officers.*– Besides the officials mentioned above, there are a multitude of other officers and employees in the larger states, such as the commissioner of agriculture, the commissioner of immigration, the commissioner of labor, state engineer, railroad commissioners, superintendent of public works, state printer, factory inspectors, pure food and dairy commissioners, state architect, land commissioner, mine inspectors, superintendents of insurance, and many others too numerous to mention. Of course, not every state has all these, but some of the more populous ones such as New York and Massachusetts have most of them and others in addition.

**The Governor's Powers.–** The powers and duties of governor may be roughly grouped into four classes: (1) his share in the making of the laws; (2) his power to execute the laws and

administer the affairs of government; (3) his military power; and (4) his power to grant pardons for violations of the laws.

**Legislative Powers.**—*Power to Call Extra Sessions.*– Everywhere he is empowered to call the legislature together in extraordinary session. He uses this power in case of emergencies, and also to secure the enactment of needed legislation which has been overlooked or neglected by the legislature at the regular session. In New York recently, when the legislature adjourned without enacting a promised law against race track gambling, the legislature was summoned in extraordinary session and executive pressure and public opinion were brought to bear upon it to compel the enactment of the law. Sometimes a great catastrophe occurs when the legislature is not in session; for example, the California earthquake, the Cherry mine disaster in Illinois, and the Galveston storm, each of which required the immediate attention of the legislature. In order to prevent the legislature when in extraordinary session from taking action for which there is really no need, the constitutions of most states forbid it to consider any subjects not submitted to it by the governor; and in some states the length of an extra session is limited to thirty or sixty days.

*The Executive Message.*– The governor is generally required to give the legislature information concerning the affairs of the state and to recommend the enactment of such laws as in his judgment the public good requires, the idea being that he is more familiar than any one else with the defects of

the existing laws and with the legislative needs of the state. This information, with the accompanying recommendations, is communicated to the legislature in a message at the beginning of the session,[13] and is often followed by special messages from time to time recommending consideration of particular matters that may arise in the course of the session. The weight which the recommendations of the governor have with the legislature depends, of course, upon his influence with the members and his standing with the people. If he belongs to the same political party which is in control of the legislature, and the party is not divided, or if he is especially aggressive and is backed by a strong public opinion throughout the state, his recommendations carry more weight than they would under opposite conditions.

*The Veto Power.*– Finally, in every state except North Carolina the governor has the power to veto bills passed by the legislature. Owing to fear of executive tyranny, the veto power was generally withheld from governors for a considerable time after the Revolution; in fact, in only two states (Massachusetts and New Hampshire) was this power granted to the governor before the close of the eighteenth century. The worst fears of executive tyranny, however, proved to be without foundation, and the advantage of vesting in the hands of the governor the power to correct the mistakes of the legislature by refusing to approve

[13] The constitution of Illinois requires the governor to transmit a message to the legislature also at the end of his term, summing up the condition of affairs of the state at the time.

objectionable laws soon came to be generally appreciated. Under the interpretation of the veto power the governor may refuse to sign a bill either because, in his judgment, it is inconsistent with the constitution which he has sworn to support, or because he thinks it unwise or inexpedient, in either case his judgment being conclusive. But manifestly, an absolute veto is too great a power to intrust to a single person, however wise he may be. The constitutions of all the states, accordingly, empower the legislature to override the veto of the governor by repassing the vetoed bill, in which case it goes into effect notwithstanding the executive objection. To do this, however, a majority of two thirds or three fifths of the members of the legislature is usually necessary, the idea being that the judgment of so large a proportion of the legislature ought to be allowed to prevail over that of the governor in case of a difference of opinion. In the few remaining states a bare majority of the members of the legislature may override the executive veto, though not infrequently the statement of objections by the governor in his veto message serves to convince some of those who voted for the vetoed bill that it is unwise, and thus the veto will be sustained. When a bill is presented to the governor for his signature he is allowed a period ranging from three to ten days in which to consider it before taking action. A subject of criticism in some states is the practice of the legislature of delaying final action on many bills until the last days of the session and then sending them all at once to the governor so that the time allowed him for

considering their merits is necessarily too short.

A wise provision found in the constitutions of about thirty states is one which allows the governor to veto particular items in appropriation bills. Thus if the legislature passes a bill carrying appropriations for a variety of objects, some worthy and others objectionable, the governor is not under the necessity of approving or rejecting the bill as a whole, but may approve the desirable portions and veto the others. In this way wasteful and objectionable appropriations of the public funds may be prevented without inconvenience. In a few states the governor may also veto particular sections of other bills.

**Executive and Administrative Powers of the Governor.–** The governor is generally charged by the constitution with taking care that the laws are faithfully executed, though, as already stated, the executive power is really divided between him and a number of colleagues.

*Power over State Officers.–* He generally has a certain power of oversight over the other principal state officers, but little power of control over them. There is a tendency, however, to enlarge his power in this respect.[14] Several constitutions, for example, empower him to require reports from the principal officers, and in some states he is given the right to examine into the condition of the treasurer's and comptroller's offices and under certain

[14] By an important act passed in Illinois in 1917 a large number of bureaus and commissions were consolidated and placed under the authority of departmental heads appointed by the governor, who has a large power of control over them. A number of other states have since done likewise.

conditions to remove the incumbent from office. In a very few states, also, the governor may remove sheriffs or mayors for negligence or abuse of power in the enforcement of the state laws.

*Power of Appointment.*– The governor's principal executive power consists of the right to appoint certain officers and boards, and sometimes to remove them, subject to certain restrictions. In the early days of our history, many of the state officers were chosen by the legislature, but with the growth of the democratic spirit the selection of these officials was taken from the legislature and they were made elective by the people. In a very few states the legislature still retains a considerable power of appointment. In most states, however, the governor appoints all officers not elected by the people. In a few states he appoints the judges; in half a dozen or more he appoints several of the principal state officers, such as the secretary of state and the attorney-general, and in most of them he appoints some of the important administrative officers and the members of various boards and commissions. In New York, for example, he appoints the superintendent of insurance and banking, the members of the two public service commissions, the superintendent of public works, the commissioner of agriculture, the commissioner of health, and other important officials. In some states he appoints the railroad commissioners, the trustees of public institutions, members of the state board of health, the members of various examining boards, pure food commissioners, factory

inspectors, game commissioners, mining inspectors, and so on. As compared with the President of the United States, his power of appointment, however, is very small. Moreover, his power to appoint is usually limited by the condition that his nominations must be approved by the senate or the executive council where there is such a body.

*Power of Removal.*– The governor can usually remove the officials whom he appoints, but rarely any others. But the power of removal must exist somewhere, because it would be intolerable to have to retain in the public service men who are dishonest, incapable, or otherwise unfit. The other methods of removal provided are impeachment, removal by resolution of the legislature, and occasionally removal by the courts. Removal by impeachment takes place by the preferment of a charge by the lower house of the legislature and trial by the upper house. This method, however, is cumbersome and is rarely resorted to – never in the case of minor officials. Removal by resolution of the legislature is sometimes employed for getting rid of unfit or corrupt judges. In several states, the method of recall has been instituted, by which, on petition of 25 per cent of the voters, the officer must submit his case to the voters, and if a majority of them pronounce in favor of his recall, he must retire.

**The Military Powers of the Governor.**– In every state the governor is commander in chief of the military forces of the state and also of the naval forces where there are any – a power which means little in times of peace. Whenever there are riots or serious

disturbances, however, this power becomes important. When the disturbance is too great to be suppressed by the local authorities, the governor may order out a portion of the militia and may, if he elects, take charge of it himself. There are few states where the governor has not at some time or another been compelled to make use of this power. Mobs sometimes break into jails and take out prisoners and lynch them; and sometimes strike riots occur in mining or manufacturing communities, in which cases the governor may be called upon to send troops to the scene of the disturbance and keep them there until quiet and order have been restored.

*Power to Suspend the Writ of Habeas Corpus.*– A usual part of the governor's military power is the right to suspend the writ of habeas corpus in communities where great disorders prevail, that is, to suspend the power of the courts to release prisoners charged with violations of the law, thus leaving unhampered the power of the military authorities to restrain persons they may imprison. This power, however, is one which might be grossly abused; therefore many state constitutions forbid the suspension of the writ except under extraordinary conditions, and a few, indeed, permit it to be suspended only by the legislature.

*The Military Forces of the State* consist usually of a number of regiments of citizen soldiers, who are organized, uniformed, and officered after the manner of the regular army of the United States, who attend an annual encampment for purposes of drill and practice, and who must always be ready to respond to the call

of the governor. At the head of the state militia is an officer called the adjutant general, through whom the military orders of the government are issued and carried out. The governor also has a military staff which accompanies him on occasions of ceremony such as the inauguration of the President of the United States, grand army reviews, and the like.

**The Pardoning Power.–** In every state the governor is vested with the power of pardoning offenders against the laws of the state, but in most states the exercise of the power is subject to restrictions. The purpose of vesting this power in the governor is to make it possible to correct the errors of courts and juries, as where subsequent to the conviction evidence is brought to light showing that the person convicted is innocent, and has been wrongfully convicted, or where it becomes evident before the full penalty has been paid that the offender has been sufficiently punished and should be released.

In many states boards of pardon have been provided for sharing with the governor the responsibility for the exercise of this important prerogative.[15] These boards are of two kinds: first, those whose powers are limited to the hearing of applications for pardons and the making of recommendations to the governor, who is not bound by their advice; and second, those whose approval is necessary for the validity of any pardon granted

[15] In several states certain of the state officers, one of whom is the attorney-general, serve as the pardon board; in others, it is the senate; and in Massachusetts and Maine it is the executive council.

by him. Convictions for treason and in impeachment cases are frequently excepted from the list of cases in which the governor may grant pardons, though in the case of treason he is sometimes given the power to suspend the execution of the sentence to await the action of the legislature. In a number of states notice of an application for a pardon must be published in the community where the applicant was convicted, in order that the people of the community who have been injured by his crime may have an opportunity to protest against the granting of a pardon to him. Sometimes also the approval of the presiding judge of the court in which the criminal was convicted is necessary before a pardon may be granted. It is usual to require the governor to make a report to the legislature at each session of all pardons granted, and at the same time give the reason in each case why a pardon was issued.

Generally with the right of pardon is included the power to grant reprieves, that is, stays of execution; commutations, that is, the substitution of a lesser punishment in the place of the one imposed; and remission of fines and forfeitures. The right also usually includes the power of amnesty or the power of granting by proclamation pardons to large numbers of persons, as in the case of uprisings or insurrections against the laws and authority of the state. A pardon may be absolute or conditional; in the first case, it is granted without restriction; in the second case, it is valid only on certain conditions, as where the offender is required to lead an upright life or where he is required to leave the state.

Generally the governor of the state, unlike the President of the United States, has no power to grant a pardon to an individual offender before he has been convicted.

**State Boards and Commissions.–** One of the remarkable political tendencies of recent years has been the multiplication of boards and commissions to aid in the government of the states. Every state now has a number of such boards, and in some of the populous commonwealths such as New York and Massachusetts there are upwards of a hundred of them. Hardly a legislative session passes that does not create one or two commissions for some purpose or other. These boards or commissions fall roughly into five classes, as follows:

First, many of these boards are of an industrial character, such as boards of agriculture, food and dairy commissions, live stock, fish, and mining commissions, and the like. In general their purpose is to promote the agricultural, mining, and industrial interests, generally, of the state, through the collection and dissemination of information concerning the best method of conducting those industries.

A second class of boards are of a more distinctly scientific and research character, such as boards of health, bureaus of labor and statistics, geological commissions, forestry boards, and the like. Although some of these, like the board of health, are charged with the execution of certain laws, the general purpose of all of them is scientific research and the collection of data.

A third class of boards are those charged primarily

with the supervision of certain businesses or industries affecting the public interest, and with the enforcement of the laws relating to such businesses. Such are the railroad commissions, commissions of insurance, public utility commissions, commissions of inland fisheries, and the like. In some instances these commissions not only have power to prescribe rules for businesses affected with a public interest, but also to fix the rates which they may charge.

A fourth group of commissions or boards are those charged with examining applicants for admission to practice certain professions or trades such as medicine, dentistry, pharmacy, architecture, and plumbing. The purpose of requiring such examinations is to secure a standard of efficiency, and to protect society against quacks.

A fifth class includes those which have supervision over the public institutions of the state, educational, penal, reformatory, charitable, etc. In recent years there has been a marked tendency to consolidate boards of this class, by putting all the charitable and penal institutions under the control of a single board, or under two boards, one for charitable and the other for penal institutions. In a few states all the higher educational institutions are under one board.

Members of all these classes of boards are usually appointed by the governor, though occasionally a board is made up of members chosen by popular election.

*State Administrative Reorganization.*– In 1917 a more

systematic organization of state administration was established in Illinois. Nine main departments were established, each under a director, in place of a large number of former offices, boards, and commissions. Similar reorganizations have since taken place in a number of other states.

**The State Civil Service System.–** The number of persons necessary to carry on the state government in its various branches is very large. In order to provide a method by which subordinate employees can be selected with regard to their fitness rather than with reference to their party services, New York, Massachusetts, Illinois, Wisconsin, and other states have enacted civil service laws establishing the merit system of appointment.

The recent civil service laws provide, in general, for the classification of all positions other than those filled by popular election, by executive appointment, or by legislative choice, and for appointment to these positions only after an examination of the candidates. Generally, those who pass the examination successfully are placed on an eligible list in the order of the grades which they receive, and when an office is to be filled, the appointing officer is required to make his choice from the three candidates highest on the list. For the filling of certain positions requiring technical skill, special non-competitive examinations are given and less consideration is given to academic qualifications. Certain positions are not placed under the civil service rules, and the appointing authority is allowed to make his choice without the necessity of examinations. Such

are the positions of private secretary, chief clerk, and other employees who occupy a confidential relation to the heads of departments.

# Конец ознакомительного фрагмента.