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THE ORIGIN OF THE CONSTITUTION OF THE STATE OF WASHINGTON*

The Constitutional Convention of the Territory of Washington met at Olympia, on July 4, 1889, pursuant to the Enabling Act of Congress and the election therein authorized to form a constitution for the proposed new state. The convention was composed of seventy-five members, elected by the people, drawn from different callings, professions, and avocations, and truly represented the strength and wisdom of the growing commonwealth. These men were locally distinguished for their high sense of honor, their integrity, ability, and purpose to serve the state well, and to give it a broad, comprehensive, and liberal fundamental law; but what was far better, they were endowed with the full measure of human common sense. They thoroughly understood local conditions, and the imminent dangers that would threaten the new, growing state, and were actuated by one motive only, which was to give the proposed new state the benefits of their energy, wisdom and experience in the fundamental law which they should frame. They were well versed in the foundations of the science of justice, and thoroughly understood that this science is most intimately concerned with all living human interests, and therefore with the rights and duties of civilized men; that its spirit is not only in accord with, but is essential to, the prosperity and progress of all our people. They understood that the development of this science can be realized only in the use of scientific methods; by carefully collecting the facts of human experience under all the varied conditions afforded by local and national history; by the comparison and classification of these facts, and by deducing from them the rules and principles upon which human conduct may be regulated and the laws of the expanding commonwealth based. In determining the origin of our constitution then, it is necessary to set forth the general historical basis, and to trace the historical development of our particular form

*Prepared as a thesis for the Master of Arts degree in the University of Washington. The debates and proceedings of the convention were never published. Mr. Knapp gleaned information from survivors of the convention and newspapers of that day.

of government. The state constitution supplements that of the federal government, which reserves to the people all power not expressly conferred; but a striking distinction exists between the two, contained in the oft quoted expression, "The United States constitution is a grant of power; the state consitution is a limitation on legislation," and, as the necessity for such limitations appears in the ordinary growth and development of political institutions, state constitutions become more and more explicit in dealing with questions that affect the welfare of the whole community. In keeping with the growing distrust of the people in legislative bodies, the constitution of Washington, as well as all late constitutions, enters fully and explicitly into the field of legislative restriction. Some powers there are which are altogether withheld. They are granted neither to congress nor to the legislatures of the state. Such is the power to grant any person or class of persons any exclusive political honors or privileges, and the power to abridge in any way the rights of life, liberty, and property. As a matter of fact, these principles have been so long recognized as an essential part of American political institutions, that nothing is added to the real force or value of state constitutions by their incorporation in that part of the constitution known as the Bill of Rights, but which custom has rendered almost universal among the states, Michigan being the only exception. State governments depend for their structure and power entirely upon written fundamental law, upon constitutions prepared in conventions by the representatives of the people, and adopted by a vote of the electors of the state. It was upon models and precedents furnished by England and the thirteen original states that the federal government was constructed. The state governments proceed from authority higher than themselves not less distinctly than does the federal government. A very great uniformity of structure is observed in the organic law of the several states. One of the most obvious points of resemblance between them is the complete separation and perfect coordination of the three great departments of government, and these are set apart and organized under the state constitutions with a very much greater particularly than characterizes the provisions of the federal constitution. We find then, that the political institutions of the United States, are, in all their main features, simply the political institutions of England, as transplanted by the English colonists, and developed in the course of the centuries preceding the formation of our own constitution. They were worked out through fresh development and new environment to their new and characteristic forms, and always embody the highest and best of the civilization they represent. Though now possessing so large a mixture of foreign blood, a large majority of the people of the United States are of British extraction, and the settlements of New

England and the South at first contained no other element. In the North, and at the mouth of the Mississippi, there were French settlements; in Florida there were colonists from Spain. The Dutch had settled on the Hudson, and held the great port at its mouth, and the Swedes had established themselves on the Delaware. All along the coast there was rivalry among the western nations of Europe for the possession of the new continent; but by steady, and for the most part easy, steps of aggression, the English extended their domain and won the best regions of the great coast. New England, Virginia, and the Carolinas were never seriously disputed against them; and these once possessed, the intervening foreigners were soon thrust out, so that the English power had presently become a compact and centered mass which could not be dislodged, and whose ultimate expansion over the whole continent it proved impossible to stay. England was not long in widening her colonial borders; the French power was crushed out in the North; the Spanish power was limited in the South, and the colonists had only to become free to develop energy more than sufficient to make all the occupied portions of the continent thoroughly Anglo-American.

The growth of English power in America involved the expansion of English local institutions of government; as America became English, English institutions in the colonies became American, and adapted themselves to the new problems and the new conveniences of political life in separate colonies. These colonies were weak and struggling at first, then expanding, uniting, and at last triumphing, and, without losing their English character, gained American form and flavor. However, it would be utterly erroneous to say that the English planted states in America; they planted small isolated settlements, and these settlements grew into states. The process was form local, through state to national organization, and not everywhere among the English of the new continent, was the form of local government at first adopted the same. There was no invariable pattern, but everywhere a spontaneous adjustment of political means to place and circumstances. English precedent was followed by all settlements alike, but not the same English precedent. Each colony with the true English sagacity of practical habit, borrowed what was best suited for its own situation. New England had one system, Virginia another, New York and Pennsylvania still a third compounded after the other two; yet the government of these states bore in all its broader features much the same character as the rural government of England. Organization in the colonies was effected either through the machinery of counties or compact townships, and in either case, the executive power corresponded to that of similar governments in England. Contitutions are supposed to be

bodies of laws by which government is constituted and given its organization and foundation. The regulation of the relation of citizens in their private capacity does not fall within their legitimate province. The principle is fully recognized in the construction of our federal constitution, which is strong and flexible because of its admirable simplicity and its strictly constitutional scope. Constitution making in the states has proceeded upon no such idea. Ours, as well as all late constitutions, goes much more into details in its prescriptions, touching the organization of government. In this it goes far beyond organic provisions and undertakes the very ordinary but different work of legislative enactment. The statutory character of our constitution is evident in the articles on education, public indebtedness, finance, corporations and municipalities. This leaving the field of legitimate constitution making the invading the legislative department is doubtless a reflex of the industrial condition of the times, and the sentiment which placed the responsibility of financial distress upon the legislative bodies of the country.

Some of the important provisions of the state constitution are the following: The legislative power is vested in a senate and in a house of representatives, the latter to consist of not fewer than sixty-three nor more than ninty-nine members, the former to contain not more than one-half nor less than one-third as many as the latter. Senators shall be elected for four years, and the representatives for two years. The legislature shall never authorize any lottery or grant any divorce. Private and special legislation is forbidden. After January 1, 1890, the labor of convicts is not to be let out by contract, and the legislature may provide for the working of convicts for the benefit of the state. The legislature shall provide for a general and uniform system of public schools, which includes common schools, normal schools, and such technical schools as may hereafter be established. The principal of the school fund shall remain irreducible and permanent. The consolidation of competing lines of railroads is forbidden. The existence of monopolies and trusts in the state is forbidden. The use of the water of the state for irrigation, mining and manufacturing purposes shall be deemed to be a public use. Among the older states of the union there is a more noticeable variety of laws relating to the terms of senators and representatives than in our own. In Massachusetts and Rhode Island the term of representatives and senators is for a single year. In New eJrsey senators are elected for three years, one-third of the senate being renewed every year at the time of the election of representatives, who are elected for one year. A large number of the states, both old and new, limit the term of senators to one year, but in Louisiana both representatives and senators are given a term of four years.

The qualifications required of senators and representatives vary widely in the different states, but not in any essential point of principle. It is universally required that members of the legislature shall be citizens, and it is usually required that they shall be residents of the districts for which they are elected, and generally an age qualification is required. In all the states the legislature consists of two houses, a senate and a house of representatives, and in most of them the term of senators is four years, that of representatives two years, one-half of the senators being renewered every two years at the general election. There is no such difference in character, however, between the two houses of the state legislature as exists between the senate and house of representativs of the United States. Connecticut seems to have furnished the suggestions upon which the framers of the national constitution acted in deciding upon the basis and character of the representation in the two federal houses; for, in the Connecticut legislature of that time, the senate represented the towns, as the confederate unit of the state, while the house of representatives represented the people more directly. Even Connecticut has now abandoned this plan of government, and in almost all the states, representation in both houses is based directly upon population; the only difference between the senate and house being that the senate consists of fewer members representing larger districts. Often each county in the state is entitled to send several representatives to the lower house of the legislature, while several counties are combined to form a senatorial district. There is consequently no such reason for having two houses in the state as exists in the case of the federal government. The object of the federal arrangement is the representation of the two elements upon which the national government rests, namely, the popular will and a federal union of states. The state legislatures have two houses simply for the purpose of deliberation in legislation in order that legislation may be filtered through the debates of two coordinate bodies, representing slightly different constituencies both coming directly from the people, that they may escape the taint of precipitation often attached to the conclusions of a single, all powerful, popular chamber. The double organization represents no principle, but only an effort toward prudence. The historical grounds of double representation are sufficiently clear; the senate of our states are lineal descendants of the councils associated with the colonial governors, though, of course, they now represent very different principles. The colonial council emanated from the executive, while our senate emanates from the people. There is also the element of imitation of English institutions. One hundred years ago, England possessed the only great free government in the world; she was our mother land and the statesmen who

formed our constitutions naturally adopted the English fashion of legislative organization, which has since become the prevailing form among all advanced liberalized governments. They may have been influenced by more ancient examples. The two greatest nations of antiquity had double legislatures, and, because such legislatures existed in ancient as well as modern times, it was believed that they were of a superior kind. Greeks, Romans, and English alike, had at first only a single great lawmaking body, a great senate representing the elders and nobles of the community, associated with the king, and, because of the power or rank of its members, was a guiding authority in the state. In all three nations special processes produced at length legislatures representing the people also; these popular assemblies were on one plan or another, coordinated with the aristocratic assembly, and later the plan of an aristocratic chamber, and a popular chamber in close association appeared in full development. The American colonies and states copied the English chambers when they were in this stage of real coordination, before her legislature had sustained that great change which Greece and Rome had also witnessed, whereby all real power came to rest again with a single body, the popular assembly.

Our fathers determined the principles upon which government should be founded. Equally important is the task of the present generation to settle the principles upon which government shall be administered. This question the framers of our constitution attempted to approach by entering and limiting the field of legislative enactment. Had they gone farther in this field, they would have framed a more effective constitution and would have put in force many useful provisions, which have heretofore failed because of the want of legislative enactment.

Passing to a more specific consideration of the scope of local constitutions, it may be observed that the only occasion on which the people in their individual capacity possess any law making power, is in the adoption of their constitution. From that date the exercise of power is surrendered to those who are designated by the constitution to be rulers, but the constitution contains the decrees of the real sovereign, the edicts that are to bind the lawmakers of the future as well as themselves.

The virtue of a written constitution lies in its permanency. If social conditions were permanent, a constitution suitable for one generation would be suitable for the following; but old conditions have proved to be inadequate to the new adjustment of affairs in the states where they were adopted, and in the later states many new and perplexing problems must be solved. We may not expect the institutional life of the Anglo-Saxon race to become so settled and determined that it may be circumscribed

by a code of permanent laws, fundamental or otherwise. The circle must always expand, and the constitutional as well as other laws must constantly change. For the present the *form* of republican government is settled, but all the constitutional details deduced therefrom are in a state of transition. In this state of changing institutional life, one generation is not endowed with a sufficient mental acuteness to legislate for the succeeding. Could our constitution makers become a permanent body, endowed with a few centuries of life and activity, and meet every score of years to revise their preceding work, we might have a constitution approaching completeness and perfection.

The constitution of Washington, like that of other states, with one exception, commences with a Bill of Rights. The declarations contained therein are brief, general and comprehensive declarations of the rights of individuals which are deemed to be sacred. These rights are, by common understanding, considered to be inherent in the constitution of things, and are based on principles which no government can rightfully deny, and the assertion of them in constitutional provisions is not supposed to add materially to the tenure by which they are held. These declarations, of which there are thirty-two sections in the constitution of Washington, are divided into the following classes: First, those declaratory of the general provisions of republican government; such as, "All political power is inherent in the people," and "Governments derive their just powers from the consent of the governed." Second, those that are declaratory of the fundamental rights of the citizen, as, "Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right," that the rights of the people to be secure in their houses, persons, and property against unreasonable search and seizure shall not be violated. Third, those which insure to the citizen the right of an impartial trial, as "The right of trial by jury shall be preserved." "No person shall be subject to be twice put in jeopardy for the same offense." With different degrees of fullness, all the constitutions agree upon the abstract principle of equality before the law, private ownership of property, religious liberty, and they attempt to safeguard man's pursuit of happiness, but when we come to the provisions for the protection, security, and defense of these rights of the individual against the demands of the country, we find almost as much variety in substance as in form. Upon the question of property rights, the field must inevitably widen, and even the question of religious liberty permits a divergence of opinion. When we enter the field of procedure, the means of enforcing and defending fundamental rights, we find that nothing is settled. The constitution either provides that the legislature shall pass laws to enforce its provisions, or it expects the leg-

islature to pass them, but as it is impossible for the constitution to dictate what laws the future legislatures may pass, many provisions of our constitution remain nugatory. The practical statement of these inalienable rights is, that by reason of the enlightened age in which we live most people are entitled to them, but that any person may forfeit any of them by violation of the laws governing society, and may lose some of them by misfortune without violating any law. We see then that these declarations found in our constitutions contain nothing original, and little of value. They are simply relics of the gage of battle thrown by the people before the oppressive rulers of past decades. They have been repeatedly expressed from the time of the first English Declaration of Rights until there is no one to dispute them in the abstract. A necessary incident to the security of the state is the lodgement of power somewhere to determine under what circumstances these natural rights may be abridged or denied. This is the work of the legislative power of society, and in its final analysis it embraces all power. There is no such thing as coordinate branches of government except so far as constitutional provisions create them. In the nature of things the legislature is supreme and legally omnipotent. A careful consideration of state constitutions will determine that they do not contain much of value except inhibitions, restraints and safeguards against legislative encroachments upon the rights of individuals either by direct enactment or through the agency of other branches of government. Under a government republican in fact as well as in form, such as are the American states, with suffrage nearly universal there is no fear of the invasion of the natural rights of man by those in authority, unless under the color of legislation. This applies to the extension of judicial authority by injunction so often complained of, and which the legislature has power to control. The clause of our constitution relative to the appropriation of money for the support of religious bodies seems to have been taken from the constitution of Oregon, although the provisions of the constitution of California, and the other code states relating thereto does not vary much from the one adopted. Declaration concerning religion and worship were very elaborate in the early contitutions, and, as questions relating to religious liberty have become generally accepted, the principles become more generally stated in the constitutions, but have proceeded with more or less detail to inhibit meddling with religious questions by the government.

In common with all other people who have inherited their system of jurisprudence from England, Americans have recognized the right of trial by jury as necessary to the maintenance of their liberties. The jury has its foundation in the thought that by such a tribunal the individual could be secure against all oppressive influence, but it has its support in the fact,

that in judging the affairs of men, of the meaning and intention of their conduct and words, the purposes inspiring their action, of the motives prompting their motions, the average judgment of a number of persons drawn together from the active business pursuits of the world, is more likely to be correct, than the judgment of any one person devoted for years to a special line of work or thought. Theorists and demagogues will continue to denounce the jury system as a useless and even harmful encumbrance upon the administration of justice, but practical, shrewd business men of the world, and the great mass of lawyers and judges, thoroughly familiar with the rights and privileges of the people and the processes of judicial administration, are not likely to agree with them. In order, however, to preserve the rights and safeguards of trial by jury, it is not necessary to hold sacredly to the ancient form of empannelling the jury, the number of jurors or a unanimity of agreement, especially in civil cases. Many of these fictions and obscurities were created in the dim past, and their only ground for respect and a place in modern jurisprudence is, that they have existed so long that the memory of man runneth not to the contrary. Such appendages and subtilities will continue to be created by unscrupulous lawyers to defeat the aims of justice, but wherever constitutional provisions simplify the law it promotes the ends of justice. Trial by jury must be treated as a living useful force, so flexible as to be adapted to the present needs of society, and not an unyielding petrification from the past. All the state constitutions contain substantially the following provision: "The right of trial by jury shall remain inviolate." All the code states, commencing with New York, have swept away the accumulated rubbish of ages concerning the drawing and testing of the jury, and in civil cases the sacred number of twelve and the unanimous verdict have received like treatment. The most advanced constitutional provisions before the framers of the Washington constitution on the subject of trial by jury were those contained in the constitution of California, where, in all civil cases two-thirds may render a verdict, and a trial by jury may be waived by the parties in all cases not amounting to felony, by the consent of both parties expressed in open court, and in civil cases and in misdemeanors the jury may consist of any number less than twelve upon which the parties may agree. There is no longer a necessity of a grand jury composed as is required by the common law. If a grand jury were a necessity, or could serve any good purpose, a small body of representative men, fairly selected, would be far more efficient, on the rule that small bodies work with more directness and greater effectiveness than larger ones. While the grand jury, which was once considered an efficient instrument of justice, has not been abolished,

it has received scanty recognition in all the constitutions of the code states, and is called only at the discretion of the trial judges. As an instrument of justice, it is known by attorneys to have lost much of its usefulness. It has little force or power of investigation not already in the hands of the court and district attorney. Unless a special prosecutor is appointed by the court, which is rarely done, the district attorney often virtually controls the acts of the grand jury. The calling of witnesses and their examination is usually left to him. No other attorney is present, and he becomes the judge before the grand jury of the sufficiency of the evidence produced to secure a conviction. He prepares the indictments for the grand jury, and also often writes their report to the court, which he usually so words as to whitewash the stains of suspicion that may rest on his friends in office, or to terrify his enemies. It is further a sort of star chamber proceeding, for the free for all discussion of the possible misdeeds of any or all persons in the community. Its usefulness is found in satisfying a popular clamor against officials in office and it also relieves the court and district attorney of the possible odium attached to the suspicion that they are not doing their whole duty in the matter of exposure and prosecution of official crookedness. As a rule, the grand jury creates a public sentiment against the person investigated or indicted, for the public is prone to regard the person even investigated by a grand jury as delinquent and a return of an indictment implies guilt to many people. The passing of the grand jury in some instances and its restriction by constitutional provisions in others, may be regarded as an advance in jurisprudence, and a clearing away of the judicial rubbish of the ages.

The Taking of Private Property for Public Use

Most of the constitutions now in force prohibit the taking of private property for public use without compensation, but experience has demonstrated that such a general provision is entirely inadequate to prevent great injustice, and often the most serious oppression. The taking of private property in many cases is of even less consequence than the injuries inflicted by the use of adjacent property; so, in many state constitutions, provision is made for that class of cases by adding the words "or damaged," in order that the rights of the individual to the enjoyment of his possessions shall not be invaded and he be wrongfully deprived of his property by measures not falling literally within the prohibition against taking private property. So far no state has receded from this provision wherever guaranteed in its constitution.

Citizenship and Suffrage

The constitution restricts the right of suffrage, except in school elections, to the male citizens over twenty-one years of age; but a clause was submitted for the vote of the electors of the state of Washington relative to woman suffrage, the same to be incorporated into the constituion if carried, but the clause was defeated at the same election when the constitution was adopted. The debates and proceedings of the convention show that much pressure and influence was used in the convention for the purpose of securing a clause that would extend the franchise to women; it was defeated and the framers of the constitution evidently acted wisely in the matter, as subsequent events showed that such a clause would in all probability have resulted in the non-ratification of the constitution. From the records of these debates it may be deduced that experience down to that time proved absolutely nothing, one way or another concerning harm, either to the commonwealth or to woman by the extension of the franchise permitting her to vote on all questions at both general and special elections. In the experiments tried in other states it was shown that the state had not been greatly benefited by it. Where the right had been extended the party machinery in the control of the state had not been weakened, and the political atmosphere had not been purified. On the other hand, intelligent and capable women had not neglected the right to vote when given the opportunity. Neither had they neglected home duties for politics, nor had they sought to fill or control the offices so long held by men. The state had not been humiliated or degraded by them, nor had politics been rendered more corrupt. No evidence was before the convention showing that the great mass of women wanted suffrage. As a practical and reasonable solution of the whole problem, it was suggested that the question be submitted to the female population of the state wherein it is proposed to confer the franchise, requiring a majority of at least three-fourths of such population to give the provision force.*

Judiciary

The plan of a judiciary organization adapted in Washington is substantially that which has been in force in California since the adoption by that state of the constitution of 1879. It is a most radical departure from the common law or itinerant system so long in force in England. In 1848 the state of New York became the pioneer in this reform and swept away the complicated machinery that had heretofore encumbered

*Note—Since this thesis was written the Constitution was amended so as to confer suffrage upon women.—Editor.

the administration of justice. Twenty-five states have since followed this reform procedure, and the British judiciary has also adopted it, and in many respects the reform has proceeded more radically and rapidly in England than in America. The judicial system of the federal courts, as with many of the traditional forms of the federal government, descend to us from our English ancestors, and the character thus impressed upon them, though modified somewhat, has not disappeared. The judges are still appointed by the executive head of the government, and with the consent of the senate, and hold office for life. A former citizen of the British Empire, of Scotch descent, contended with all the force in his power, in the Washington constitutional convention for an appointive judiciary. He sincerely believed that it would be subservient to a corrupt political ring and the whims of the rabble if constituted by popular election. This was the tendency and system of all the earlier states, and it was not given up by Oregon until 1878. The draft of our constitution as first submitted to the convention gave the supreme court revisionary power instead of appellate jurisdiction over the lower courts, but this system was not included in the report of the committee on the judiciary. The debates in the committee of the whole show a strong opposition to the executive appointment of judges; that the same is inconsistent with the spirit of republican government, and that the vestment of both original and appellate jurisdiction in the same court is objectionable in principle and inconsistent in practice. The election of judges by popular vote, their tenure fixed at a definite number of years, the vesting of revisionary jurisdiction in courts not composed of judges of the courts of original jurisdiction, seems to be now regarded as necessary to the best realization of republican government. None of the more recent constitutions contain the old judicial system, and the more ancient and cumbersome features of the system have gone out of most of the older ones. In Maine, New Hampshire, Massachusetts, and New Jersey, the governor still appoints, subject to the confirmation or rejection of the senate. In Vermont and Connecticut, the justices of the supreme court are elected by the legislature, and only three states now hold to the life tenure of any of the judges; and only one, namely, Delaware, applies it to any but to those of the supreme court. In Vermont the term of the supreme judges is one year; in Ohio five years; in Wisconsin, Iowa, Kansas, and Oregon six years; Maine, New Jersey, Indiana, and Minnesota, sevent years; Connecticut and Michigan, eight; Illinois, nine; Maryland and California, twelve, and Pennsylvania, twenty years. The convention discussed at length the Oregon plan with its separate county court, and the California system by which all civil and criminal jurisdiction, law, equity, and pro-

bate, excepting only the small matters given to the justice of the peace, is conferred originally upon a single court called the superior court, without term, always open and subject to the right of appeal to the supreme court. It appeared to the committee and the convention that the latter system is in many ways preferable. It is better adapted to the expediious transaction of business, to the correct, just and uniform application and administration of the law. The judicial committee of our constitutional convention met these questions with a determination to simplify the processes of the courts, and this committee, headed by one of the ablest lawyers the west has produced, took hold of the matter with intelligent purpose and demonstrated that much that had been thought necessary in judicial procedure was useless rubbish, and much that had been thought to promote justice only obstructed it. These reforms were carried through and made a part of the Constitution of the State of California against the opposition of many able, conservative lawyers, who naturally distrusted any scheme making a radical change in the practice of the courts; but it has proved satisfactory to the members of the bar of California, as well as in this state, where it was adopted by constitutional enactment. This method of procedure has been adopted by all of the new states and is being incorporated into the laws of many of the older states. The vesting of jurisdiction in all classes of cases, law and equity, civil and criminal, in the same court, dispenses with many embarrassing questions, and simplifies others very greatly. This also saves much time of the courts which under other circumstances is consumed in disposing of technical and jurisdictional disputes.

Corporations

The growth of power, and the arrogant disregard of laws and the rights of the people, by corporations made the question of limiting corporate power one of the most vital and earnestly discussed questions before the constitutional convention. The members were keenly awake to the situation, and knew that the growth and menacing attitude of this unscrupulous power must be curbed in some way. They were confronted with the problem of corporate land grabs; the extension of the claims of the Northern Pacific railway to lands not earned by its charter; the attempts to own and control the tide lands, and a strong legislative lobby attempting to pass provisions confirming territorial grants of land; the desire of a number of members to legalize by constitutional enactment the granting of subsidies from counties and cities to aid certain corporations in railroad building opened before the convention the whole question of corporate greed and dominance. It is, therefore, not strange that

the very first resolution introduced into the convention was one limiting corporate power. The convention was also confronted with the fact that Washington was a young, growing state needing corporate wealth for the development of her resources, and the members of the convention were alive to the fact that they must not place such burdensome restrictions in their constitution as would drive corporate enterprise out of the state. They early decided that it was impracticable to provide in the constitution a complete and detailed provision for the control of corporations, so they concluded that the best that could be done was to lay down restrictions that should prevent the oppressive use of crporate power, and to prevent such legislation, under the influence of passion or prejudice as should be unjust to those who risk their fortunes on legitimate corporate enterprises. They knew that if the state was to develop, the free use of capital must be encouraged, the investment of property be made secure, and, at the same time it was evident to all that the rapacity that seems too often to be developed in connection with large aggregations of capital must be restricted. The constitutional provisions enacted under this head have been demonstrated to be wise, and it is probable that little of value was withheld or too much added. It is to be regretted that subsequent legislatures have not acted with similar deliberation and wisdom in the discussion of this question.

Counties, Cities and Towns

The incorporation of cities and towns by special act of the legislature, has, in many instances, proven to be a fountain of evil in the states where it prevails. There is no branch of government more completely adapted to the purposes of those who make the filthiest a trade than the manipulation of city charters, where their enactment is controlled by special laws. The arena for the construction of these charters becomes the feeding ground of the labor lobbyists and corporate henchmen who are sure to besiege the legislators with offers of bribery in one form or another, whenever there is an opportunity in prospect for them to enrich themselves by municipal plunder. The plan of regulating municipal government by general law has been adopted in many of the states, and has proved an efficient remedy for the evil. The direct sources of those parts of the constitution relative to county, township and municipal government do not appear from the published reports of the convention, and their sources must be traced by analogy and comparison. The members of the convention were thoroughly familiar with the evils of special legislation as worked out in several of the states. Sufficient material was introduced on this provision the first ten days of the session to form the constitution.

Corporations, religious and benevolent societies, labor organizations, boards of trade, extreme theorists, and consrvative attorneys flooded the convention, and the committees, with their peculiar beliefs, and their suggestions concerning the contents of the constitution. Many members of the convention received impertinent, even insulting, letters from the advocates of different theories of government when some pet scheme did not receive the consideration at the hands of the convention its promoters thought it merited.

A very distinguished lawyer of the state prepared the full draft of the constitution taken from the organic laws of Oregon, California, Wisconsin and Iowa, supplemented with such original clauses as many years of experience in legislation and the interpretation of laws led him to consider desirable in a state constitution. While no part of the document prepared by Mr. Hill was adopted verbatim, its source and merit were such that it received the unbiased consideration of the members of the convention, and it probably contributed more to the finished product as adopted by the convention than any other written document. Mr. Hill's draft of a constitution was published on July 4, the date of the convening of the convention; it at once attracted the attention of all members, and copies of it were eagerly sought and read by the members present. This draft of a constitution was a finished and scholarly product, well adapted to the needs of the new commonwealth, and was the subject of complimentary remarks by many of the members, but just the amount of weight it had in determining the form and context of the adopted constitution can be estimated by none but the members of the different committees. While there are differences in the two states as to minor details, it may be said in general that the draft of the committee on county, city, and township organization, like the judiciary, follows very closely the California plan. For instance, section four in the California constitution of 1879 and the Washington constitution are identical in every respect, subject matter, context, words and punctuation marks. This section provides for the organization of county government which shall be uniform, and the legislature must provide by general law for township government, whenever a majority of the qualified electors of such county, voting at a general election, shall so determine. A similarity exists in other important features. The first part of section ten of the Washington constitution and all of section six are taken from the California constitution. This section provides that corporations for municipal purposes shall not be created by special laws. A long and spirited debate took place in the committee of the whole relative to the size of cities that should be permitted to frame their own charter. The views expressed by the dif-

ferent members of the convention favored a range of from five thousand to fifty thousand inhabitants, but as there were no cities in the state upon which the fifty thousand experiment could be tried, a satisfactory compromise was reached on twenty thousand. On the report of the committee on revenue and taxation it was proposed to limit municipal indebtedness to five per cent of the assessed valuation. Seattle had just suffered millions of dollars of loss in a great fire. Her streets, wharves, and public buildings were in ruins. Should the proposed clause become a part of the constitution, there could be no repairs or other public improvements in the city. The young city immediately manifested what has become known far and wide as the "Seattle Spirit." Public meetings were held. Protests were made. Resolutions were passed, and a delegation of representative men waited on the constitutional committee and presented the case of Seattle's need. The action of the city seems to have changed the minds of the committee. As a result, we have the very excellent provision of the constitution authorizing an additional five per cent indebtedness for supplying the city with water, artificial light and sewers, when the works for supplying such city or town with water, artificial light or sewers shall be owned and controlled by the municipality. This is the source of section six on Revenue and Taxation, and Seatttle's misfortune and extreme need is the source of municipal ownership of water and light in this state.

Public Lands

The subject of public lands, especially those belonging to the state by virtue of its sovereignty, lying between high and low water mark, at the margin of our navigable waters, presented many difficult problems to the convention for solution. Its importance in the state of Washington is far greater than in any staet that had heretofore been admitted into the Union. In solving these problems it was assumed from the beginning that whatever conclusions might be reached as to their disposal would be unsatisfactory to many persons. It is also noticeable that the question of the disposal of the public lands, especially tide lands, was one of the first subjects discussed in the convention, and was the last one definitely settled. To the honor of the convention and as proof of the integrity of its members, in spite of the powerful and influential lobby maintained by opposing interests, and the great wealth at stake, the convention made a wise and satisfactory disposal of these lands in the closing hours of the session. Some of the members were in favor of leaving the whole question to legislative enactment; others thought the land should never be sold, but that it should be retained by the state, and an income

derived from it perpetually. The situation in Washington was different from that in any other community. When the other states came into the Union the relation of the public and the individual to the lands held by the commonwealth was settled and defined by the previous condition of society. At this time, in most of the older states land was of little value, for the forces that give value to real property had not then been developed, and there was little cause to consider the problems that later developed in Washington in relation thereto. By the Enabling Act of Congress, on the entry of the state into the Union, it became possessed by federal grant of a large amount of valuable land, granted for school and other purposes. This land was recognized to be of great value for its timber as well as agricultural possibilities, and the members of the convention were alive to the fact that they should not be disposed of, or relinquished for a nominal consideration, as had been done with the lands of states that had previously come into the Union. The convention also recognized the fact that not by special grant, but by virtue of the inherent sovereignty of the state, it would hold more of the class of lands called shore lands than any other state of the Union, and by reason of the peculiar situation of these lands on a safe, warm harbor, facing the world's greatest center of population, they were destined to become of inestimable value. These lands embraceall of the shore or waterfront of all of its navigable waters between low water mark and ordinary high water. Their extent and value can hardly be appreciated. The following extract is taken from a paper read before the bar association of Tacoma during the session of the constitutional convention, and is undoubtedly a true representation of the public opinion that influenced the convention in its righteous action concerning these lands: "Every industry on Puget Sound is affected by the settlement of the ownership of the shore lands. Wherever we may turn we find a deadly conflict of interest, and the duty of the wise statesman should be to effect such a settlement as will produce the greatest good to the greatest number. But settled this question must be. There are over twenty-five hundred miles of coast line in the Territory of Washington, and the interests involved are altogether too great to allow doubts to longer exist as to the main points of the controversy. It is asserted that no other state has made constituional declaration as to its right to this land, and for that reason it is urged that the state of Washington should not do so. To no other state, save some of the original thirteen, has the question been of so great moment. The Gulf states, California and Oregon are the only other states in which this question could have had prominence, and the civilization of none of them had advanced to such an extent as to render the subject of such interest that

a declaration of the constitution would be warranted. It is only of late years that the question has become a mooted one. Some recent writers and recent courts are attempting to establish a different rule of law from that which formerly obtained, and for this reason, if for no other, the people of the state should declare what their rights are in the premises."

This forcible and clear declaration may be the true source of the clause of the constitution relating to the tide lands; at any rate it is a concise statement of the opinions held by many representative citizens of the state, and it is a noteworthy fact that the voice of the people here expressed was crystallized in the acts of the convention. There was possibly no legal ground for the adverse claims of settlers on the tide flats, or of the corporate interests that hoped to control them, for, before the formation of the constitution, it had been regarded as a settled principle, that all such lands were he property of the state by virtue of its sovereignty immediately on coming into the Union, from which would legally follow the right and power to dispose of them whether occupied by individuals, municipal or private corporations. It was also settled by a recent decision of the supreme court that any grant of land by the United States when the commonwealth was under territorial form of government, conveying any of these tide lands confers no title upon the grantee. Also that riparian or lattorial proprietors of land fronting upon the tide lands have no rights in them that the state is bound to respect. In the state of Oregon, the legal position with respect to these lands was identical with that of Washington before it became a state. This question came before the supreme court of the state of Oregon in the case of *Hinman vs. Warren*, and, following the decision of the supreme court of the United States, the state court held that a United States patent was insufficient to convey tide lands, and that the title derived from the state was the true title to the lands in dispute. A glance over the history of the states that have come into the Union will show that the public lands of these states have been generally a temptation and inducement to schemes of speculators, and have thus become a field of jobbery and a source of corruption. These lands, which should be held as a sacred trust for the people, had in most cases been squandered, and the people have realized little from them in proportion to their true value. In the case of Washington the great value of all of these lands tended to aggravate the evils of private and corporate greed, and became the inspiration for original schemes for their capture. It was, therefore, fortunate that state ownership was distinctly declared in the constitution and legislative restrictions placed on their disposal. It is impossible, however, for constitutional provisions to convert professional lobbyists into honest citizens, or speculators into dis-

interested patriots, or to entirely preclude, in all cases, a combination of these classes from partial success in their undertakings. These tide lands are useful for the most part for sites for manufacturing and commercial establishments, and as approaches to the water. The problem before the convention, therefore, was to preserve these lands from the cupidity of the unscrupulous speculator, and to make provisions whereby the state should realize something like the actual value of these lands as circumstances and time should increase their value. All the cities and towns lying on the waterfront are necessarily centers of trade and commerce. Their streets, alleys and public buildings are for the use of the whole people and it is eminently proper that so far as they are needed for streets or other public uses they should be freely devoted to that purpose and no claim or equity of persons who have merely taken possession of them should be allowed to stand in the way of the people in the enjoyment of their higher right in them. It was early apparent that a powerful railroad lobby would be maintained at Olympia opposed to any constitutional restrictions on the subject of tide lands, in order that the whole matter might go over to future legislation, for it was believed by this lobby that if action could be deferred a legislature might some time be favorable to, and amenable to corporate influence, and the complete failure of the lobby in its purpose demonstrates the honesty and democratic tendency of the convention.

Legislature, Scope of the Subject

An examination of the proceedings of the convention in the committee of the whole on the legislative branches of the government does not definitely reveal the source of the article under consideration. It contains, in common with all recent constitutions, a great many restrictions on legislative enactment. Some of them are found in the proposed constitution of '78; some in the constitution of California; others are evidently reflections of the experience and sentiments of individual members of the convention. Changes in the form and wording of the different clauses were made in the committee, and the principal debates seem to cluster around the question of the number that should constitute the house and senate respectively. So far as can be learned, no extreme views concerning the formation of the legislature were expressed. The three departments of government were accepted without question, and the two branches of the legislature were recognized. The proposition for an annual session of the legislature was not taken seriously, nor was the problem of only one legislative body, which was discussed so long and seriously in Dakota, referred to except in a facetious manner. In entending the scope of leg-

islative power the members of the convention seem to have acted with extreme caution. While it has been a settled principle for many generations that the people possess all legislative power, in the past, this has been committed in a most general way to the state legislatures, reserving and saving such restrictions only as are imposed by the constitution of the state. In the absence of these restrictions, the legislature may exercise all power not strictly judicial or executive. The great difficulty of recent conventions has been to define and limit this legislative power. Probably the state suffers from no cause more than from the prolixity of incompetent legislation, which fills the codes with provisions that are inoperative or useless, because of the carelessness or incompetency of lawmakers. Of this a recent session of the legislature afforded a brilliant example, especially in the new criminal code enacted. The general and larger class of legislative prohibitions and restrictions are fixed by the general principles of the law, and they spring from the fact that the purpose sought to be accomplisehd by statute is either affected by judicial proceedings or is an invasion of judicial authority. One of these is given in our constitution extending prohibitions to acts authorizing the sale or mortgaging of real or personal property of minors or others under disability. The theory of this prohibition is, of course, that such persons are wards of the state under its special care and guardianship, that all questions of their condition and the disposal of their property become special objects of trust, and matters of judicial determination only. Legislative invasion of this field, therefore, would be manifestly an usurpation of the judicial function of government. Another constitutional prohibition is found in the clause prohibiting the legislature from granting divorces or authorizing the adoption of children. These questions and the consequences growing out of them are usually considered as judicial, and, therefore, their control by legislative authority would be an invasion of the function of the judiciary. Similar reasons might be given for the eighteen prohibitions against legislation in the constitution. That these prohibitions are not copied verbatim from any other constitution shows that the convention contained men of sufficient originality, ability and legal training to formulate these prohibitions along lines they believed to be important. In regard to the limitation of legislative power, the states have been drifting further and further from the fountain head, the source of our form of government. "The power and jurisdiction of Parliament," says the distinguished English authority, Sir Edmund Coke, 4 Inst. 36, "is so transcendent and absolute that it cannot be confined within any bounds." "It has sovereign and uncontrolled authority in the making, confirming, restraining, abrogating, and expounding of laws of all possible deominations, ecclesiastical

or temporal, civil, military, maritime, or criminal." "True it is that what Parliament doth, no authority upon earth can undo; so it is a matter most essential to this kingdom that the members of this most important trust be most eminent for their probity, their fortitude, and their knowledge." No such legislative power exists in America, except in the constitutional conventions, when the representatives of the people are assembled to declare the basis of the law, and to impose restrictions upon those that may in the future represent them in the functions of government. It is not believed that the framers of the constitution went beyond their rightful authority in Article Eleven, creating and defining the limits of legislative authority. This article in the constitution of Washington contains thirty-nine sections; that of the constitution of Montana forty-five sections; and the constitution of California thirty-five sections. The clauses creating the legislature, providing for the manner of election, term of office and the organization of the legislature, are similar in all of the constitutions, and we need look no further than to these instruments for the origin of similar clauses in ours. As to the number of members constituting the house and the relative size of the senate, there was a wide dieffrence of opinion. None of the members favored a very small house, for the reason, as they expressed it, that there would be danger of corporate control. Many favored a senate one-third the size of the legislature, and the compromise of section two, fixing the size of the house at not less than sixty-three, nor more than ninety-nine members, and the senate at not more than one-half nor less than one-third of the legislature, was finally passed. Among the provisions not found in many of the late constitutions are the following: "Any bill may originate in either house of the legislature." "A bill passed by one house may be amended by the other." This section is taken verbatim from the proposed constitution of '78, and is an advanced step in democratic government, refuting the time-honored fiction that the senate represents a different factor of the commonwealth than the house, an idea borrowed, of course, from the English Parliament. "The offense of bribery and corrupt solicitation of members shall be defined and punished by law." The constitution here follows that of California in substance, and the clause indicates a growing distrust in the minds of the people of the legislature. California, in her constitution of '79, goes even further and attempts to prevent lobbying for the purpose of influencing the legislature. Another extraordinary and possibly unjust measure is contained in the sweeping declaration against the ownership of land by aliens, and declaring that every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibi-

tion. Efforts have been made to enforce this section literally, but its rigors have been modified by judicial construction, to the extent that titles to property acquired by foreigners and afterward sold, have been pronounced valid. These radical prohibitions contained in the constitution may be traced to their source. About the time of the meeting of the convention curb-stone orators of both domestic and foreign extraction, hypocritical college professors, newspaper and economic writers were again exploiting the time honored and high sounding sentiment "America for Americans." This phrase was used as a shibboleth to gain favor with the numerous labor organizations that were so prominent in politics just at that time. Several papers and journals which were circulated among the members were given exclusively to the advocating of the principle of the reservation of the public domain, and all lands, exclusively to citizens of this country. The statistics contained in these papers, together with numerous resolutions on the subject from organized bodies, were read in the convention. California was still under the control of her foreign sand-lot orators, and had passed radical restrictive legislation, both civil and constitutional, against the Chinese. All the influence that organized labor in all of its departments could command was brought to bear on this question. Undoubtedly the members of the convention with their democratic tendencies also saw a serious menace to the country in the steady absorption of land in large tracts by foreign corporations, but, instead of providing a reasonable restriction upon such ownership, they greatly retarded the industrial development of the state by the sweeping prohibition incorporated in the constitution. In a convention simultaneously held, Montana provided in her constitution that foreigners and denizens and aliens should have the same rights as citizens to hold mining property, and all other lands and hereditaments appurtenant thereto, while South Dakota declared in her constitution that there should be no discrimination between citizens and foreigners as to the rights to hold land. As these states had so many interests in common with Washington adopted a different rule on that subject, we must conclude that the influence of the constitution of California, in which were crystallized many of the peculiar interests of the coast states, predominated here. The last clause of the draft presented by the legislative committee is probably original with some member of the convention, for it had not been incorporated in any state constitution prior to that date. Section thirty-nine reads: "It shall be unlawful for any person holding public office in this state to accept or use a pass, or to purchase or accept transportation from any railroad or other corporation otherwise than as the same may be purchased by the general public, and the legislature shall pass laws to enforce this provision." This

section was undoubtedly passed against individual self interest, and in the interest of the unrestrained administration of public affairs. The attempts and success of great corporations in influencing legislation, and the administration of laws at the period of the state convention is well known. No person could be elected to any public office in which the railroad companies had the slightest interest, but he immediately became the object of the kindest solicitude of those corporations. If an attorney, he was immediately visited by the eminent counsel of the railway companies, and consulted concerning legal business that might possibly arise, and in token of the high esteem of the corporation was given a retainer, which he was informed, would in no case interfere with the discharge of his official duties and his duties to his constituents. He was asked to sign a receipt for the retainer, which consisted of a small piece of neatly printed colored pasteboard numbered ———, by which the honored recipient had the privilege of free transportation over the lines of the company within the state, and often, in the case of the legislators, the courtesy of special trips was extended to the members of his family; but in all cases the donor, always, in unmistakable words disclaimed any intention of seeking or expecting to secure any favorable consideration where the donee's official duty would prompt him to a different course. All state, most county officials, judges, members of congress and the state legislature had the free and honorable rights of going on trips of pleasure or profit as guests of the railway companies, while their less favored constituents, riding in the same cars, paying their fares, knew that they must also pay for their more fortunate neighbors. Meanwhile the honorable duly elect, who lived only to serve the needs of the people, became suddenly awakened to the fact that these corporations were in truth much abused great public benefactors. He was also made to see that the country could not possibly have been developed to any great extent without them, and that legislative restriction on the corporate will would at once arrest all industrial development. It was, therefore, his duty as a good public servant, and especially if a state's attorney, to see that these beneficent corporations were not oppressed with a multiplicity of suits. If a judge, he would hear with undivided attention the interesting and able arguments of counsel for the corporation and carefully examine all cases cited bearing on the subject. If a legislator, he would so guard the people's interests that oppressive legislation restricting the powers of these great public benefactors should not pass except over his protests and efforts. If an assessor, he would surely see that the unproductive corporate realty should be measured by a fair standard and not too high. As a matter of fact, the members of the convention recognized that these al-

leged gifts and retainers were one of the most effective means ever used for official bribery and corruption. Most of them knew from experience that no man accepting and riding on a pass has the same equitable balance of mind between the corporation and the people that he has without it. In some instances it might truly be said to be a means of removing an unjust prejudice from the mind of the recipient, but in all cases the person holding the pass could not be regarded otherwise than a paid attorney of the corporation. These restrictions on legislative action then, we may conclude, are indicative of the onward march of true democracy, for, of all oppressive and unjust instruments of government the legislature is the greatest and most irresponsible. This has been demonstrated in all states and ages of history, and it seems probable that the time will come, when, by constitutional restrictions, state legislation will be limited to a definite field of activity. So long as legislators enter a mad race for the enactment of laws, the courts must be burdened with cases giving construction to the irresponsible and unintelligible acts of the legislature. The spirit of democracy demands that the right of the people to a settled and economical administration of government be recognized, and this the people have as much right to demand as any other right enumerated in the fundamental law. We may then predict that future conventions, taught by the necessities of the past, will restrict the sphere of the legislature more and more. The Dakota plan for one house is not so undemocratic or dangerous as might at first appear. The reasons for a bicameral state legislature are entirely obsolete, and experience shows that nothing would do more to secure an economical and effective administration of government than the abolishment of the biennial session of the legislature. Future constitutional conventions will be called to consider and settle the problems of the administration of government. It has been said by a foreign writer that America has settled the utility of democratic government, but that America has not yet learned the first principle of governmental administration. Future conventions may, therefore, create an elective branch that will be charged with the administration of all governmental affairs.

Specific Work of the Convention

The specific work of the convention may be summarized as follows: It met simultaneously with the constitutional conventions of Montana, Idaho, North Dakota and South Dakota. The delegates were elected by popular vote and formed a body of able, conscientious men representing all the avenues of life. The permanent chairman was a distinguished citizen, honored for his fairness, impartiality and integrity. The temporary

chairman reflected the sentiments of the members of the convention in his introductory remarks, which were as follows: "I am grateful, gentlemen, for this honor. We are here at this time in the discharge of a most important duty. We are here for the purpose of making history, and from this good hour we will be more or less remotely connected with the history of the state. There is nothing in this connection that I can say that will enlighten you as to your duties. It has always seemed to me, as it does to every gentleman in this body, that all men cannot be great, but there is one consolation in this reflection, that every man can be true to his duty. Upon the memorable occasion of the battle of Trafalgar, in which the British forces were led by that magnificent historical hero, Lord Nelson, a pennant was run up to the head of the vessel, upon which were these words: 'England expects every man to do his duty.' The people of Washington Territory, and those who come after us expect us to enter upon the discharge of duty, and they expect and require at our hands that every man shall discharge that duty. What I have to say upon this occasion, if I would impress any one thing upon you more than another, is that we shall move up to action, every one of us with the firm resolve to do his duty. We have the defense of this commonwealth in our keeping, and if we do our duty will have the consolation of having preserved the faith, and discharged the trust imposed upon us, and future generations of this Territory will say that we have fought a good fight."

On July 5 the committee on rules reported the committees thought to be necessary for the transaction of the business of the convention. A debate immediately arose on the appointment of the membership of these committees, whether by election or by the chairman. The question was decided in favor of appointment, and the convention adjourned until July 9, when the president of the convention, Judge Hoyt, announced the appointment of the several committees, and the rules to govern the convention were read and approved. The spirit of the times, the democratic tendency and determination to effectively curb the growing power of monopolistic combinations, was shown in the first resolution introduced in the convention, which may be taken as the foundation of the corporation legislation that was soon to become part of the constitution. This resolution on Trusts and Monopolies, introduced by Mr. Kinnear of Seattle, was as follows:

"WHEREAS, The formation of trusts and combinations for the purpose of fixing the prices and regulating the production of the various articles of commerce is one of the existing and growing evils of the day, preventing fair and honest competition in the various industries in which

our people are engaged and certain to retard the onward march of the new state to commercial greatness; therefore, be it

"RESOLVED, That this subject be referred to the appropriate committee with instructions to prepare and submit to the convention a clause providing in substance that no incorporated company in the state of Washington shall directly or indirectly combine or make any other contract with any other incorporated company, foreign or domestic, through their stockholders or the trustees or assignees of such stockholders, or in any manner whatever for the purpose of fixing the prices or regulating the production of any article of commerce; and that the legislature be required to pass laws for the enforcement thereof by adequate penalties to the extent, if necessary for the purpose, of the forfeiture of their property and franchise."

Mr. Kinnear argued in favor of this resolution. Mr. Buchannan, of Ritzville, followed in an earnest speech against trusts and the accumulation of immense fortunes at the expense of the people who receive no adequate return for the great sums absorbed from them. Mr. Sullivan, of Whitman County, advocated the adoption of the resolution with the added suggestion that they be forever afterward precluded from doing business in the state. Mr. Cosgrove approved the resolution, but thought it was not broad enough, that it ought to include the corporations and monopolies that fix freight and railroad fares. After extended debate it was moved to refer the resolution to the committee on corporations. This motion prevailed by a vote of forty-three to twenty-three.

In the published convention notes of the day, it is stated that the numerous woman suffrage advocates present were furious because the committee having that question in charge was said to be opposed to the whole question in any shape, manner or form.

On July 10, resolutions of the Tacoma Typographical Union were read, requesting that the following provisions be incorporated in the constitution.

1. Provisions for an absolutely secret ballot.
2. The selection of all servants of the people by the elective method, no appointive power to be invested in any state or municipal officer.
3. Minority representation.
4. That when one-third of the members of the legislature demand the submission of a measure to popular vote, it shall be so submitted.
5. Enabling municipalities to own and conduct such municipal enterprises and public conveyances as the people may choose to own and control.

6. The taxation of land held for use equally as high as that actually used.

7. The preservation by the state of tide lands, school lands, and all lands ceded to the state by the United States forever. The same to be treated so as to secure the highest possible perpetual income to the state and schools.

8. Forbidding the operation of all private detective agencies. No arrrests to be made or laws enforced by others than the constitutionally qualified officers.

9. Providing for annual sessions of the legislature, and that no restrictions shall be placed on the length of the session.

10. An expeditious method of amending the organic law so as to make it conform to changing conditions.

These resolutions were not afterwards referred to in the report of the committees, or in the debates, so they cannot be said to be the source of any part of the constitution. But another matter bearing on the origin of the constitution is mentioned in the notes of the day as follows:

"The admirable draft of a State Constitution by W. Lair Hill, which appeared in the Oregonian of the 4th inst., has been the theme of many of the members, who look upon it in the main as just such a constitution as is needed for the new state. The Oregonian of that date has been largely in demand by the members ever since its issue."

The notes of the convention show that from the day of the organization of the committees they were flooded with resolutions, which, until the rules were amended, were required to be reported to the convention within three days after submission. Outside of the complete draft of a constitution above referred to, sufficient material was submitted during the first ten days of the session to make a dozen complete constitutions. Among the more important were the following, a resolution submitted by Mr. Griffiths, to the effect that lands owned by the state, save certain lands dedicated by special grant for school and other purposes, shall never be sold, but that the title shall remain forever in the state; also a proposition prohibiting the ownership of lands by aliens, excepting where the same are acquired by inheritance, and declaring that all future conveyances to aliens shall be void; also a proposition to the effect that no county, city, or other municipal corporation shall give any subsidy or loan its credit to any corporation or person. Mr. Prosser submitted a clause for the constitution providing that tide lands between the meander line of the United States survey and deep water belong to the state by right of eminent domain, and shall not be sold, but remain

the property of the state forever, subject, however, to be leased for any term not longer than twenty years. Mr. Sharpstein submitted a resolution to the committee on corporations, providing that no corporation shall be created except by general law, except that municipal corporations may be created by special laws; also that the credit of the state shall never be given or loaned to any corporation or person; also that no city or county shall create an indebtedness exceeding four per cent of its last assessment roll; also that no city or county shall loan its credit to any person or corporation except on a vote of two-thirds of the taxpayers at a meeting especially called and held for that purpose; also that monopolies and trusts shall never be allowed and that combinations for controlling transportation shall never be permitted. Mr. Goodman also presented a resolution for the control and regulation of railroad corporations.

The committee on the legislative department, consisting of nine members, was the first to report, and presented to the convention its draft for the legislative department on July 12. The report was considered in the committee of the whole, and a discussion immediately arose over the size of the legislature. Mr. Comegys, of the committee, in reporting the draft, said that his own preference would be for a senate of twenty-five members and a house of fifty, but the committee had made the number thirty and sixty in the hope of amendment, as a sort of compromise, and for one, he did not wish to fix a maximum number. He thought that ninety men were enough to manage the legislative affairs of the state; that large bodies were slow in handling public business, and that on the score of economy, the smaller number was preferable. Mr. Kinnear expressed similar views, and thought it unnecessary to make the house three times as large as the senate. "If," said he, "corporations desire to influence legislation, they invariably attack the smaller branch." Mr. Turner favored an increase in the number of representatives, believing that there would be less chance of corruption by corporate influences. Mr. Warner coincided with Judge Turner as to the size of the legislature, but he opposed the ratio of three to one and would have the two branches near an equality in matter of numbers. Mr. Cosgrove favored seventy as the number for the house. He thought the plan of having two out of three from one party a most fruitful source of trouble, and disapproved of it. Mr. Dunbar said the corporations could obstruct in small bodies, but that would not help them get through pernicious legislation. Washington would have a greater diversity of interest than perhaps any other state in the Union, and all of these multiform interests must be represented. Again a small legislature that could be controlled by reason of the fewness of its members might cost the state millions in the end. Mr. Buchan-

nan suggested that the number be thirty-six in the senate, and seventy-two in the house, but submitted an amendment providing that the number of representatives shall never be less than sixty-four nor more than one hundred, and that the senate shall be composed of not more than fifty nor less than thirty-two members, and the senate shall always have one-half as many members as the house. Sucksdorf moved to substitute that the house consist of fifty-four and the senate of eighteen members. As finally determined in the committee of the whole, the house of representatives shall consist of not less than sixty-three nor more than ninety-nine members. The number of senators shall be not less than one-third nor more than one-half of the number of the house of representatives. The first legislature shall be composed of seventy members of the house of representatives and thirty-five senators. The following propositions were also proposed for the constitution by Mr. Weir: A preamble, bill of rights, and several articles of a proposed constitution made up largely from the draft presented by Hon. W. Lair Hill. Mr. Sucksdorf presented a resolution providing that private business carried on under the auspices of the state shall not be declared unlawful without compensation. Mr. Buchannan presented a resolution providing for a railway commission and defining their duties. Mr. Turner introduced a laborer's and mechanic's lien law, and also laws for protecting life and health in mines. A resolution was also presented providing that it shall be a crime punishable by law for the president or any officer of a bank to receive deposits or create debts after a reasonable knowledge of failing circumstances and such officer shall be personally liable for losses in such cases. In the judiciary committee the discussion of the California judicial system was continued. A division arose over the number of the members of the supreme court, and it was agreed that the number should be increased from three to five. It was also agreed that the smaller counties should be grouped in judicial districts. The committee on state, county and municipal corporations considered the proposition of the county of Walla Walla to subsidize the Hunt railway system for two hundred thousand dollars. Many objections were made to this provision, and it was decided to take no immediate action, but to hear the citizens of Walla Walla on the subject. On July thirteenth many propositions passed to the second reading, but only two propositions attracting outside interest, might be said to be of a local or original nature; first, the one limiting municipal indebtedness. This, as did the matter fixing the number of members of the legislature, gave opportunity for original discussion and suggestion, from which the origin of that clause of the constitution became apparent. The other proposition discussed provided for the

alienation of the tide lands immediately before the cities, and to make them the property of the municipalities. The published notes of the convention show that this proposition was favored by a powerful lobby of tide land jobbers, whose only hope of reward lay in what they could gain from the legislature or municipality, should the constitution fail to make definite disposition of the same. It was shown in the debates that the people of the entire state were interested in keeping the road to and from these lands free from the hands of the speculator and from special tolls.

As soon as the proposition limiting municipal indebtedness became known, a virogous protest was made by the larger cities, and soon thereafter the Seattle Spirit entered into the contest and dominated the convention. Representatives from the Chamber of Commerce and other citizens appeared on the floor of the convention and urged that the limit of indebtedness be raised to ten per cent, and the following petition embodying the views of the city officials and many prominent citizens was presented:

"To the Constitutional Convention of the State of Washington at Olympia now assembled. Your memorialists, the common council of the city of Seattle, respectfully present for the consideration of your honorable body:

"First—That by reason of the great disaster that took place in this city on the sixth day of May, 1889, all of the city wharves, inclines and slips of the city of Seattle, together with all the public buildings, and streets, and approaches to the waterfront of said city were completely destroyed by fire, thus necessitating the rebuilding of all wharves, slips, inclines and approaches to the waterfront, and many of the public streets of said city, together with the municipal buildings thereof.

"Second—That the city of Seattle, with a population of thirty-five thousand people, has a sewer system totally inadequate for the health, comfort and safety of the public, and by reason of the city being destroyed by fire, we are in a position to construct such a system of sewerage as will be of great and lasting benefit to the city and public at large. The system can now be placed throughout the city by laying all the sewers in the city at this time at much less expense, and more convenience to the public, than by laying sewers in different parts of the city on different streets as the public may demand. In view of this fact, it is of great importance to the city that a thorough and complete sewerage system be at once laid throughout the city.

"Third—All of the fire department buildings, jail, city hall, and other municipal buildings were destroyed by fire, which necessitates the

rebuilding of the same at great expense to the city, and it is impossible for the city to transact its business without these much needed improvements.

"Fourth—The destruction of the city was largely due to an insufficient supply of water, and the city has taken measures to prevent similar disasters by submitting a proposition to the legal voters of the city, on July 8, 1889, for the city to own, construct, and operate its own water works. We need only to call your attention to the fact that upon the submission of the question to the public, the citizens, by a vote of fifty-one against to one thousand eight hundred and twenty-four in favor of the proposition, authorized the city to issue bonds to the amount of one million dollars for that purpose.

"Fifth—Under the charter of the city, we are authorized to incur an indebtedness of sixty thousand dollars, for all purposes, which sum is totally inadequate to meet the wants and requirements of the rapidly expanding city. In view of the foregoing, it is of the highest importance to the growing city that the matter of the regulation of the indebtedness of the city be left to the citizens thereof by a popular vote. Recognizing the great hardship that would necessarily be entailed on the city in its now dilapidated condition, should any restraint be placed on its borrowing power, your memorialists respectfully urge upon your honorable body the great importance of allowing the city, by a two-thirds vote at any general or special election, to authorize the expenditure of any sum of money for purely municipal purposes. Respectfully, Mayor and Common Council of the City of Seattle. By C. W. Ferris, Clerk."

In the debate following the introduction of this memorial that the true rule would be to limit the purposes of indebtedness rather than the amount, and, as a result the following provision was added to section six: "Provided, further, that any city or town with such assent may be allowed to become indebted in a larger amount, but not exceeding five percentum addition for supplying such city or town with water, light and sewers, when the same shall be owned and controlled by the municipality." On July 16, the committee on the judiciary reported a complete draft for the constitution following the California judicial system and the form laid down in the draft of a constitution prepared by Mr. Hill. The Hill constitution gave the supreme court revisionary instead of appellate jurisdiction, but the California plan was adopted by the convention, and it may be said that the constitution of the state of California contains the original of our judiciary system. The draft as reported by the committee contained provision for three supreme judges, to hold office for three, five, and seven years, the full term after the first election to be six years. It also provided for eighteen superior judges with a salary of

thirty-six hundred dollars per annum. The convention went into committee of the whole to consider the report of the commitete on judiciary and took up for consideration each article separately. Section 1 was adopted without change. It was proposed to change the term, superior court, to district court, as was the style adopted by the convention of Montana. The change was opposed on the ground that the name would conifict with the district court of the United States. Section two, which provided for three judges, was then taken up, and Mr. Griffiths proposed that the number be increased to five. Mr. Kinnear opposed the resolution on the ground of economy, and believed that five judges were unnecessary. Mr. Stutrevant said that the plea of economy was the only one against having five judges, while it was admitted that after three or four years more would be needed. As for himself, he thought the territory to be like a new ship just being launched and started on her trial trip, and the supreme court was the pilot which was to guide her on her most important voyage, and he considered it to be of the highest importance to have good guidance now. Mr. Turner believed that quality on the bench is of far more importance than quantity, and if the bench were to be filled with weak men or bad men, the more of them there were, the worse off the new state would be, while, on the other hand, if the judges were to be up to the proper standard intellectually and morally, the difference in efficiency between five judges and three would be inappreciable. Only those states that are strongest in wealth and population have more than three judges. He did not take any stock in one-man control, or of corrupt influences affecting the bench, for, since the time of Francis Bacon, the courts, both in England and America, have been remarkably free from corruption, and in spite of much frivolous talk about the dishonesty of attorneys, he declared himself to be proud of the fact that the courts, where judges have been chosen from the ranks of the attorneys, have always been far above corruption. Mr. Buchannan indorsed Mr. Turner's views. He thought there would be very little business to come before the supreme court until the state should have a much larger population, and thought that three judges would have a "soft snap" and that to make the number five would be altogether ridiculous. Mr. Dyer favored the substitute, believing that three judges could not begin to do the work, and stated that even now with three judges the work of the Territorial court was at least six months behind hand. After a long debate along the lines indicated, the substitute fixing the number of judges at five was adopted. A strenuous effort was made by some of the delegates, notably, Mr. Buchannan, against the election of supreme court judges, and he introduced a substitute providing for the

appointment of supreme court judges by the governor. "This," he said, "is perhaps the most important subject that will come before us, and it behooves us to well consider how we lay the foundation of the state. I feel that this is the most solemn duty and hour of my life, and I cannot escape the responsibility of my position. The voice of the people, may be the voice of God. I admit it when it is the deliberate voice of the people, not the voice of the rabble, I wish to get the selection of supreme court judges away from the voice of the rabble. If they are nominated in political conventions, they will be selected for their ability to strengthen the ticket rather than for their legal ability or strength of character. I, therefore, propose that the supreme court judges shall be selected by the governor, and confirmed with the consent of two-thirds of the senate." This substitute was lost by a decided vote. After a lengthy debate and many suggestions the committee of the whole fixed the term of supreme court judges at six years, and their salary at four thousand dollars per annum. The term of the superior court judges was fixed at four years. An effort was made to extend the appellate jurisdiction of the supreme court to all cases, both law and equity, but the proposition was defeated. Mr. Sullivan, of Tacoma, presented a new and original section for the judiciary bill, providing that the superior court judges shall report each year in writing to the supreme court judges, such defects and omissions as their experience observes in the law, and the supreme court judges shall make a like report to the governor, on or before the first day of January of each year, such defects or omissions in the law as they believe to exist. Mr. Power thought that such a proposition was a very peculiar and unique one to put in a constitution. Mr. Turner thought it was an excellent one, and said the Territory had been struggling along with a code full of defects because it had been nobody's business to remedy it, and it was eminently proper for the judges to suggest these defects and remedies from time to time. The section was adopted and incorporated in the constitution as section two. The next question discussed by the commitee of the whole, while considering the judiciary bill, related to minority representation, and an earnest effort was made to obtain it on the amendment by Mr. Griffiths, namely, to strike out all after the words "by lot" and insert, "two shall hold office for the term of three years, and three for the term of five years, and that at each election, each elector shall vote for three of such judges and no more, and at each successive election thereafter, when more than one judge is to be elected, each elector shall vote as follows: if two judges are to be elected no person shall vote for more than one candidate therefor, if three judges are to be elected at such

election, each voter shall vote for two candidates therefor and no more." Mr. Warner said the object of this amendment was to secure the non-political character of the bench which would do much to secure the purity of the courts. Mr. Dunbar opposed the amendment on the ground that it would take away or abridge the rights of citizens to vote. Mr. Brown favored the amendment because he thought it represented a good principle in our government, and it divested the bench of politics so far as an elective office can be divested of politics. Mr. Sullivan was opposed to minority representation, and especially minority representation obtained as proposed by this amendment because it contained an assumption that the court was or would become corrupt. The vote taken shows that the amendment was defeated by the decided vote of twenty-four to forty-three. These debates, resolutions and suggestions show that the convention was not ready to adopt the formal report of committees, without due and careful consideration, and all the resolutions introduced and the debates thereon show a determination on the part of the members to make a constitution advanced and liberal that should reflect the ideas and wishes of the great majority of the people of the state. While the draft of the judiciary committee was accepted in the main, the debates on the minor details and the substitution of one section entirely new and original shows that the provisions were understood and sanctioned by the convention. The composition of the courts and the workings of the judiciary have since demonstrated the wisdom of those who drafted the bill.

The article of the constitution on school and other lands contains much that is original, and the present and coming generations must be deeply grateful to the members of the convention for their wisdom and foresight in providing a foundation upon which our magnificent school systems, with its great revenue rests. Probably the origin of these sections, at least the portion not found in the older constitutions, may be traced to the following resolutions: "Resolved, That the proceeds arising from the sale of school lands be loaned to the State of Washington, and to municipal corporations created by the state for the purpose of funding the indebtedness created by the same, for the erection of buildings, and for such other improvements and purposes as are authorized by law, on bonds running not less than fifteen or more than twenty-five years, and bearing not less than four per cent interest, payable anually." But the followig letter to the committee on state, school, and granted lands, from the territorial board of education, probably contains more of the ideas on the subject as adopted by the convention than were obtained from any other source:

"Olympia, July 11, 1889.

"To the Honorable Committee on State, School, and Granted Lands, of the Constitutional Convention: We, the undersigned, members of the Territorial Board of Education, respectfully ask you to incorporate into your report the following suggestions relative to school lands if they meet your favor, in addition to the Enabling Act. That no school land be sold for less than ten dollars per acre, or leased for a longer term than five years, and that the funds arising therefrom in case of sale or lease shall be an irreducible fund whose interest only shall be used to support the public schools. We would recommend that not more than one-third of these lands be sold in five years, nor more than two-thirds in ten years, and that the time for selling the last one-third be decided after ten years by the legislature, and that such lands as are not sold be subject to lease, and that all lands sold or leased, shall be sold or leased at a duly advertised public auction, in quantities not exceeding one section to any one person or company, provided that the most valuable lands be sold first, and provided further, that any school land situated within a radius of five miles from any incorporated town or city of five thousand inhabitants shall be subject to the following special regulations in addition to those already mentioned, namely, that they shall be subject to special appraisal and where the land is available for town or city lots, it shall be platted into lots or blocks and sold in quantities not exceeding one missioner of schools and public lands, who, with the state auditor, county surveyor, and county superintendent of schools for each county, shall constitute boards for the appraisal and grading of lands; the board of apblock to any one person. These sales to be conducted through a compraisers to have the right to consider the value of timber lands both with reference to the land and the timber thereon, and decide whether timber and land be sold separately or together. The proceeds of all of said lands to be invested in school bonds, municipal bonds, county bonds, state bonds, or first farm mortgages, at not less than six per cent interest."

These suggestions were adopted by the committee, and with slight modifications became part of the constitution. There were only slight changes made in the form and wording of the communication of the territorial Board of Education, but it was provided in the committee of the whole that the school fund should never be loaned to private persons or to corporations. The committee on education also provided an original section, defining and enumerating the sources of the common school fund, and providing that losses to the school fund or other state educational funds, which shall be occasioned by defalcation, mismanagement, or fraud of the agents or officers controlling or managing the same, shall, when

audited by the proper authorities of the state, become a permanent funded debt against the state in favor of the party sustaining such loss, upon which not less than six per cent annual interest shall be paid. With this foundation a magnificent and efficient school system has been built up. The sections of land donated for school purposes by the national government have given the western states an advantage over the eastern in educational matters, for there the public lands were disposed of before their great value was realized. Democracy demands free, universal education, and that demand to the fullest extent has been recognized in the state of Washington.

A resolution was introduced for the constitution providing that any citizen shall have a right to sue the state upon any claim or demand, legal or equitable. Many of the states had forbidden, either by constitutional or legislative enactment, the bringing of suits by citizens against the state, a theory that probably arose from the ancient protection accorded to the sovereign, but no longer potent in reason or equity. Some of the states recognizing the injustice of the custom, made provision by statute that the citizen may sue the state; and an act of Congress allows actions by citizens against the United States in certain courts. It was recognized by the convention that if this clause was incorporated in the constitution, that it would insure to the citizen a right not then found in the constitution of any other state, and the convention concluded that the right to bring suit existed without constitutional sanction, and changed the resolution to a clause providing that the legislature should determine in what courts such suits might be brought.

A sharp discussion arose in the convention over the constitutional prohibition of the sale of intoxicating beverages. The committee having the same under consideration reported the petition praying for such prohibition back to the convention, with the recommendation that the prayer thereof be not granted. As the judicial committee had already reported that it was within the power of the convention to submit for ratification, in addition to the constitution, separate propositions to be inserted therein, provided a majority of the electors so decide; therefore the following minority report was submitted: "The undersigned, members of the committee on miscellaneous subjects, schedule, and future amendments, submit for your consieeration the following minority report: 'Whereas, certain petitions and memorials representing many thousands of our citizens, praying for insertion in the constitution of the state of Washington, a clause forever prohibiting, within the limits of the state, the manufacture and sale of alcoholic and malt liquors as a beverage, have been referred to this committee for a report thereon; therefore, believing that the voice of so large

a number of people should receive proper recognition, and realizing the fact that it is the right of the majority to rule, as the underlying principle of free government, we recommend that the following separate proposition be submitted with the constitution for ratification by the people, and be inserted in the constitution should a majority of the electors so decide.: "It shall not be lawful for any individual, company or corporation, within the limits of this state, to manufacture or cause to be manufactured, to sell, offer for sale, or in any way dispose of any alcoholic, malt or spirituous liquors, except for medical or scientific purposes." " " This resolution, together with a clause providing for female suffrage, was submitted to a separate vote, at the time of the adoption of the constitution and was defeated. Some of the members received some very interesting, and even threatening letters from the more radical advocates of prohibition and suffrage, but the large majority of the delegates were unwilling to give their consent to a provision in the constitution that they believed would defeat its ratification, and while not opposed to the enactment of either provision as part of the organic law of the state, preferred that it should at first be indorsed by the people.

In the committee of the whole a division of opinion arose on the following clause contained in the original report of the committee on corporations other than municipal: "Each stockholder of a corporation, or joint stock company, shall be individually and personally liable for such portion of all the debts or liabilities contracted or incurred during the time he was a stockholder as the amount of stock or shares owned by him is to the whole amount of stock or shares of the corporation or association. The directors or trustees of corporations or joint stock companies shall be jointly and severally liable to the creditors for all the money embezzled or misappropriated by the officers of said corporation or joint stock company during the time of office of such director or trustee." The object of this resolution was doubtless to discourage the operation of wild cat companies, which had reaped such a great harvest of unjust gain by the incorporation of mining companies. The members of the convention considered this clause fixing the liability of stockholders, who were usually persons ignorant of the management or resources of the company in which they might invest, as unjust. It was also shown that the adoption of this clause would place a burdensome restriction on the organization of corporations in this state, for, with it, no man would care to lend his name to any speculative enterprise, for it fixes a liability on stockholders which no prudent man would think of assuming. It would be practically impossible to get money abroad to develop the resources of the state with this provision in the constitution, and it was

shown that such a law instead of preventing monopolies, would lay the foundation of one of the greatest monopolies with which a state was ever burdened. After a lengthy discussion the committee modified the clause, making the stockholders individually liable for the debts of the corporation only to the extent of their unpaid stock, and as finally adopted is the same as in found in the statutes of many of the Western states.

The Veto Power

Shall the veto power of the governor be sustained, restricted or abolished, was he theme of a long discussion by the members, and arose on a motion of Mr. Powers to require a three-fifths vote of the legislative assembly to pass a measure over the governor's objection. After debating the question for the period of a whole session, the friends of the order prevailed and the usual power of the governor to veto was sustained. The report of the committee on the executive branch of government vested the pardoning power in the governor under such provisions and restrictions as might be prescribed by law, but a substitute resolution was offered in the committee of the whole providing that the pardoning power should be vested in the governor and a board to be styled the governor's council, consisting of the secretary of state, and the attorney general. The fears of usurpation of power contrary to the principles of democratic government was made manifest in the debates on this resolution, and its subsequent defeat on the ground that it would pave the way for the creation of political combinations.

The draft of the article providing for county and city organization follows the ordinary provision of the organic law of other states with few exceptions. It provides for a township organization on a vote of the qualified electors favoring such organizatin. It requires a three-fifths vote to remove a county seat, and cities of over twenty thousand population are given power to frame and adopt a charter of their own. A proposition was submitted calling for an annual grand jury. In this matter Mr. Sullivan seemed to voice the sentiments, as well as the experience of the convention, by remarking: "A grand jury never does anything, and it is of no use to call it." This great inquisitorial body, powerful in ancient law, virtually passed out of existence when it was reduced to seevn in number and made subject to the call of the superior judge.

The convention, in committee of the whole, by a close vote, refused to agree with the committee on military affairs. The first section, declaring for a state militia, passed without a division, but the convention split on the second section, and voted to strike out the eight sections after the first. The objections made to the bill by Judge Turner were as follows

"I feel that we should place in the constitution only those provisions that are fundamental. Is it fundamental that the militia be called the National Guard for all time to come? Are the details of the organization of the militia as set forth in the article fundamental? I challenge the chairman to show me any constitution that contains any such provision. I think this is a step toward military despotism." As a result of these objections the article on the militia was shorn of its objectionable features, and its organization left to the legislature.

The exertme fears of the convention concerning the usurpation of power by the legislature are shown by the remarks of a member along that line. "If," said he, "a stranger from a foreign country were to drop into this convention, he would conclude that we were fighting a great enemy and that this enemy is the legislature."

Fears for the rejection of the constitution by the people, and that they were drifting into a legislative body were expressed by Mr. Weir. "Already," he said, "there is a wail of discontent coming up from all over the state, that the convention is running into all sorts of details and enacting a complete code of laws. If the constitution is finally rejected by the people, it will be because it is too cumbersome and contains too many laws." Mr. Weir cited the remarks of the venerable and distinguished jurist, Judge Thomas M. Cooley, before the North Dakota constitutional convention, where Judge Cooley said: "In your constitution making, remember that times change, that men change, and that new things are invented, new devices, new schemes, new plans, new uses of corporate power, and that such things are going on hereafter for all time, and, if that period should ever come, which we speak of as the millennium, I still expect the same thing will go on there, and even in the milleninium people will be studying ways whereby, by means of corporate power, they can circumvent their neighbors. Don't in your constitution legislate too much. In your constitution you are tying the hands of your people. Do not do that to the extent as to prevent the legislature from performing all purpose that may be within the reach of proper legislation. Leave something for them. Take care to put proper restrictions upon them, but at the same time leave what properly belongs to legislation, to the legislature of the future. You must trust somebody in the future, and it is right and proper that each department of government shall be trusted to perform its legitimate functions." No evidence is stronger, nor can it be made stronger than that found by a comparison of the five constitutions created simultaneously, that the suspicion of the people, that the state officials, legislative, judicial and administrative, cannot be trusted by their constituents, and from this sentiment is coming a revolution that

will speedily overturn the old order of things. The people will insist on the honest, capable administration of public affairs, irrespective of party or the wording of state constitutions. The foundation of this distrust is both political and social. Society is superior to government, and government under fixed constitutions containing the limitations found necessary on all branches of government, has not kept pace with the advanced conditions and demands of society. Existing institutions have not in all cases given the results demanded in an economical and expeditious manner. Party administrations have not been such as to commend themselves to the great mass of citizens. Machine politics in cities and counties has been supreme, holding power by distributing political favors to those who have no meritorious qualifications for positions of trust. The same eager desire for spoils by the appointing power has placed many men in office whose only qualification is that they will strengthen the power of the dominant party. The branches of legislative corruption have been multiform, and the temptation to accept and grant favors will not soon be eradicated. A field for legislative corruption is always open under the present plan of electing United States senators and from this field have arisen causes for popular distrust of legislative bodies.

The form of special legislation in the interest of spoils is curtailed by the provision of the constitution providing that, "In all cases where a general law can be made applicable, no special law shall be enacted." Probably there would be little cause for complaint of corporate corruption of the legislature if provisions like that inserted in the constitution of California, making lobbying a crime, were strictly enforced. But with all conceivable constitutional and legislative restrictions, public officials and legislators will continue to be criticised and censured. So long as human interests are a controlling motive, and human judgment fallible, legislators honestly erring will be accused of corruption. Of this no more appropriate illustration can be found than appears in the debates and discussions of the convention, where twenty-five members whose integrity is unquestioned voted for the incorporation of a principle in the constitution, which all experience and every fundamental right of society demonstrates to be vicious and dishonest; and this in the face of the fact that scores of counties and townships in the country were then seeking to repudiate the obligations formed under the very acts sought to be incorporated into our constitution. This was the Walla Walla proposition for the subsidy for railroad and other transportation companies. This distrust of the formation of government as now constituted is even now taking more definite form through the proposed plan of doing away with the election of state and township officers and adopting the cabinet form

for the government of county and state. This plan has the objection of doing away with popular elections, and is, without question, a step away from the popular idea of democracy, but it might, if tested under proper limitations, secure an economical and business like administration of public affairs.

The Importation of Armed Detectives

Probably no original clause introduced for the constitution is of more importance and more in accord with strict democratic principles than that introduced by Mr. Kinnear, prohibiting the importation of armed bodies of men into the state for the purpose of keeping order. About the time of the meeeting of the convention a business had sprung up in the country of peculiar interest to great corporations. Through the preceding period of strikes and labor agitations and incident rioting, these corporations had sought protection by the employment of armed bodies of men, which afterward became organized and known as Pinkerton detectives. These men, in large and small numbers, were hired out to the corporations to preserve order on their premises and protect their property. They operated for several years without legislative restrictions and eventually became a fruitful source of contention with organized labor, often being a direct cause of rioting and bloodshed. The great objection to these organizations was that they were acting as a body of troops with no responsible head save the person by whom they were organized, and it was generally believed that if troops must be employed, they should consist of state militia or regular soldiers with responsible leaders. These Pinkerton men were hired out to the highest bidder, and the viciousness of this system was too plain for argument. It was shown that the state, and the state alone, should protect its citizens in life and property in the time of disturbance and riot, and that under no consideration should a person or corporation be permitted to call in an armed body of men, owing responsibility only to those who call them. The Cœur d'Alene rioting was cited as an incident of their employment and consequent lawlessness that followed. Mr. Kinnear's resolution was favorably acted upon and became a part of the constitution.

Debate on County Division

Mr. Kinnear moved the following amendment to section three. To strike out, "there shall be no portion stricken from any county unless a majority of the voters living in such territory petition for such division." Mr. Kinnear urged the adoption of the amendment, claiming that the wording of the clause sought to be stricken was so loose that the legislature would be flooded with petitions for the division of any county with which the

smallest fraction of voters were dissatisfied. He thought there should be some general law having in view the interests of the entire territory and the entire county in which the division should be requested. Mr. Durie had two objections to the clause as it stood, the fraction of voters would have the entire say and the rest of the county nothing, and then he objected to the provision about petitions, which were an uncertain indication of the feelings of any partizan of the county. Mr. Comegys thought the amendment harmless, and he considered it very unjust to coerce any section of any county to remain within the county which it desired to leave. Mr. Sullivan thought the clause as introduced, both a limitation and a privilege, a limitation upon the legislature and a privilege to the people. Dr. Minor said: "I am at a loss to understand how this most extraordinary sentence should have been incorporated into the section unless it was for a selfish and vicious purpose. No constitution in any state has such a provision standing alone and unlimited by any conditions. The section seems to have been adopted from the Illinois constitution, with this section designedly interjected into the middle, for purposes that do not appear on the surface. It was done in the interest of one section against another by interested parties. Stripped of its subterfuge, the real meaning of the section narrows down to a contest between two counties, to the attempt of one county to forward its interests at the expense of another." Mr. Sullivan denied the statement that there are no constitutions that contain such a provision as is here sought to be stricken out. The California constitution and the Texas constitution contain such a provision. The object of this clause is to prevent jobbery, and it will thus prevent schemes of lobbying and gerrymandering which have been undertaken so often in the past. "I expect when the gentleman reads over the section again," said Mr. Stiles, chairman of the committee, "he will see the mistake he is committing. I am thoroughly convinced the wording is all right. I do not remember how the section he objects to got there, or who put it there. It is taken, however, from the constitution of California, and there is no furore about it in that state." Mr. Sohns was in favor of the amendment. He condemned the article as it read, and asserted that it was entirely wrong in principle. With it in operation one-sixth of any county could divide the whole country. Mr. Buchannan could not see the danger of leaving the section as reported by the committee. He thought it fair that a majority of the voters of any of the precincts of a county, if they desire it, shall have the right to petition the legislature to add them to any other county. He considered this sentence as simply a limit on the legislature, declaring that it shall not act except in certain cases. Dr. Minor modified his

statement before made, and stated that Maryland, as well as California, had such a provision in her constitution, and that one very similar was contained in the constitution of Arkansas. This amendment was lost and the section was adopted as first reported by the committee.

A plan for a railway commission based on the laws of the state of Iowa, where the relation between the state and railways has been studied as a science, and where practical experience demonstrates that there is no other way to deal with such problems as are constantly arising, was reported for the action of the convention. It has been found impossible to devise any general system of rules for the government of railroads, that will operate as a restraint in those particular cases where restraint is most needed, hence the absolute necessity of a court or commission with ample power, to be constantly in session, ready at all times to deal with emergencies as they may arise.

Shall the Constitution Recognize Deity?

This question led to an extended debate. The discussion arose on the report of the committee on preamble and bill of rights, which made a simple declaration of the purposes of the foundation of the constitution without the customary resolutions in recognition of a Supreme Being. The resolution as first reported was, "We, the people of the State of Washington, to preserve our rights, do ordain this constitution." In committee of the whole, several amendments were at once offered. Mr. Dyer offered an amendment inserting the words, "grateful to Almighty God for the blessings of liberty and self government." Mr. Turner offered a substitute for the original preamble, similar to the preamble of the constitution of the United States. In support of his substitute, Judge Turner said that it was all purely a matter of sentiment, but the sentiment accords with that of ninety-nine out of every hundred citizens of Washington. "We are here to make a constitution for the sovereign people of the state of Washington, and it would be a disregard of their desires to omit a reference to Deity." Mr. Griffiths cited constitutions that do not contain the name of Detiy, and thought it wiser to leave the name out. Mr. Sullivan thought that the report of the committee should be sustained. The committee considered the question carefully before the report was made. The argument made in favor of inserting the name in the constitution as an expression of our gratitude is certainly on a very low basis. Mr. Eshelman declared that the constitution without God would be the forest without verdure, a bed of flowers without buds. Mr. Moore thought it would be setting a bad example before the youth of Washington not to mention Deity in the constitution. "Atheism goes hand in hand with

nihilism and communism, and the latter has its origin in the former." Mr. Tibbetts thought it was all for show. "We are now the laughting stock of this Territory for burdening the constitution with needless provisions." "Is it necessary to go back to the dark ages and copy the example of the people who taught their children to speak and say as little as possible?" Mr. Goodman reiterated the statement that it was merely "a matter of sentiment." If a thousand men asked to have a thing done for sentiment, and one opposed it from principle, he would stand with the man of principle. After an extended debate the following substitute was carried by a vote of fifty-six to eighteen: "We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for liberties, do ordain this constitution." This substitute seems to have been carried by substituting the words Supreme Ruler of the Universe for the word God, and while other constitutional expressions were referred to in the debates the wording of the preamble is a personal expression of the sentiments of the delegates.

Township and County Subsidies

This was known in the convention at the Walla Walla scheme, because it was advocated by the delegates from the south and eastern parts of the state, for the purpose of relieving them from the burdens of transportation placed upon them by the Oregon Railway and Navigation Company and for securing for that whole section better transportation facilities. It was shown in the convention that many thousands of dollars were annually lost to the people of that section by the unreasonable rapacity of that corporation. A competing company was ready to enter the field, but demanded a subsidy from the people, preliminary to commencing or continuing operations. The matter came before the convention on a majority report of the committee favoring such subsidies, and a minority report opposed to them. Mr. Crowley spoke in favor of the majority report. He thought that the restrictions placed in the article would make such subsidies as Walla Walla desire to give entirely safe. Other townships and counties in the east, that had been ruined by such subsidies, had had no such restrictions placed upon them. Mr. Weir was opposed to the resolution, and thought if the state was prohibited from loaning its credit to individuals and corporations the prohibition should be extended to counties and cities, and named counties in Missouri and Kansas that had been ruined by allowing such subsidies and cited the instances of the interference of the United States court to enforce and collect a judgment obtained against a county for refusal to pay a pledged subsidy. He said that it was wrong to saddle such an enormous load upon

the people of any county. In referring to the Walla Walla scheme, he said a corporation had absolved subscribers to a certain fund if they would work through a scheme on the constitutional convention, legalizing the granting of subsidies to corporations. Mr. Dunbar thought he detected a selfish spirit among those who wished to deny this means of relief to counties suffering from want of communication with the outside world. When they were on the line of a transcontinentl road, and were allowed to get competition with some other railroad, the people of Klickitat county alone would be able to give eighty thousand dollars which would be nearly brought back in one year. Yet there is a theory existing that the principle is wrong, and many would therefore deny this means of securing improvements and the attending benefits. Mr. Griffitts declared that the constitution is for all time and not to tide over the temporary embarrassment of any county, but this principle runs against a greater principle, namely, private property shall never be condemned for the benefit of another private individual. Mr. Buchannan thought that subsidies were neither right, just, nor constitutional. If the constitution permitted a subsidy, any Jack Sharp might come along with a proposition to build a cheese factory, a distillery, or a brewery, and, if two-thirds of the taxpayers so decide, the county may be bonded for that or any other inflated scheme. Self interest and corporate influence would thus have a new field to exploit. Mr. Prosser desired to indorse the measure. He thought the people were entitled to do what they believe would promote the general welfare, whether it was voting a subsidy or any other measure; and that in these matters affecting local conditions and local improvements, they were far more able to determine than was the convention, and he believed the restriction of requiring a two-thirds vote of all the qualified voters would prove an ample safeguard against any scheme to railroad an unjust burden through the county. Mr. Moore thought that the principle that was sought to be engrafted in the constitution was indefensible and vicious from any standpoint. Mr. Warner was greatly surprised that there were any considerable number in the convention that would give their consent to the establishment of a principle so generally recognized as wrong and unjust. Wherever this principle had been tried it had always been found to work a hardship. Official corruption had invariably been charged in the passage of the law granting the subsidy, and following it have been many discreditable attempts at repudiation, followed with the interference with the operation of the state courts by federal authority, and the forcible collection of the tax money voted for the subsidy. Dr. Blalock failed to see the viciousness of such a proposition. So far as he was advised, none of the states mentioned had the restric-

tions contained in the report of the majority. It would be impossible with this restriction to control the election by jobbery, undue influence or the lavish use of money for a proposition not in the interest of the public at large. Mr. Browne closed the debate against the majority report. He denounced the system as the most corrupt of any influence under the sun. Another evil was that the communities would be set to bidding against each other for the purpose of securing railroads, and if the proposition carried not another mile of railroad would be built in the state without a subsidy. The motion to adopt the majority report was lost by a vote of twenty-seven to forty-two, and the minority report, which was identical with a provision of the proposed constitution of 1878, was adopted by a vote of forty-eight to twenty-four.

Corrupt Solicitation

The origin of this section, number 30, of the Article on the Legislative Department clearly appears in the debate that preceded its adoption. The debate alone shows the fear that the convention entertained of possible legislative corruption, and the idea was developed that there might be more danger from personal interests in the form of "log rolling" than from outside attempts to bribe. Mr. Dunbar moved to strike out the whole section dealing with the offense of corrupt solicitation. Mr. Moore wished to know why the section should be stricken out. He said it was from the Pennsylvania constitution, and, supplemented by proper legislation, had become a very effective provision in that state. Mr. Stiles favored the retention of the section, and stated that as incorporated in the proposed constitution, it is the work of the great jurist, Judge Black. The motion to strike out was lost by a vote of twenty-four to twenty-nine.

Alien Ownership of Land

A discussion arose over this proposition on Mr. Sullivan's motion to strike out the whole section. He declared that the proposed restriction was a step backward, one hundred years. Mr. Suksdorf supported the motion, claiming that there was nothing to be feared in this country from foreign land owners. Mr. Griffitts read an extract from the American Citizen showing that thirty foreign landlords own twenty million acres of land in the United States. Mr. Moore said this was a truly American idea, and advocated the holding of American lands by Americans. The motion to strike out the section was lost by a vote of thirteen to thirty-six. And the legislative article being complete was adopted by a vote of forty-two to twelve.

Article XXVIII., called the Schedule, was adopted with little

discussion, and was taken from the proposed constitution of 1878 to which few additions and unimportant changes were made.

The convention adjourned on August 23, having been in session fifty days, and one of the very last articles passed was that declaring in favor of the state ownership of tide lands.

During the session of the convention, every interest was given leave to present its views, and every point of contest was gone over fully and intelligently. It was found to be a much more difficult task to make a constitution than it would have been fifty years previous, for many new and conflicting questions were before the convention. If there were mistakes, and time has not demonstrated that there were any of a serious nature, they may be said to be:

First, in the failure to positively define the policy of the state in the matter of the tide lands, instead of leaving all of the details to the legislature.

Second, the positive constitutional enactment against the holding of landed property by aliens.

Third, a failure to provide a practical plan for the control of railroads and transportation companies. But far more serious than any defects of the constitution has been the failure of the legislature to provide laws giving force to constitutional provisions and details of which were left to legislative enactment.

This constitution is the last complete expression of republican government, guaranteed by organic law, and, in conclusion, it may be well to inquire what is meant by the constitutional guarantee to the states of that form of government. The sovereign states of the Union constitute a nation bound together by the indissoluble ties of common interest, common purpose, and common language, and permeated with the indomitable spirit of patriotism, progress, and righteousness. Here is demonstrated the unity and strength of republican government, the government of the people, by the people, and for the people. Absorbed in the pursuits of personal interests, the people have been criticised for indifference in the exercise of their political rights, and in times of general prosperity they let pass unheeded the cry of the pessimist and demagogue; but, as has been often demonstrated in the great crises of our history, at the first approach of real danger, great strength, vigor and energy are manifest. If the national interest slumbers, we know it is not the slumber of weakness or decay, but for the conservation of greater energy. With this nation, in time of danger, an enlightened, individual public opinion supports, encourages and sustains the government. This is the American spirit, demonstrated in war as well as in peace, and this force is efficient because

of the sovereignty of the people, and because they believe in the integrity of the government which they have created, and which is but a reflection of their own righteous wills.

Just what is meant by the Republican form of government guaranteed by the federal constitution is not clear. It was surely not pure democracy. The history and experience of the past gave the framers of the federal constitution little ground for faith in the stability and security of unlimited democracy. The framers of the constitution met, primarily, to form a more perfect union, but also to establish justice, provide for the general welfare, and to secure the blessings of liberty to all. They desired neither the arrogance of imperial despotism, nor aristocracy, nor an irresponsible pure democracy. They desired to present to the whole people the greatest possible measure of liberty and security, and this they believed could be done only by distributing the powers of government, with mutual balances, making each a check upon the other. The Republican form of government mentioned did not contemplate the entry upon a period of untested or irresponsible vagaries of government by the colonial states. All of these states had well planned Republican forms of government when the constitution was adopted, and the people participated in these governments by their representatives. The governments of all the colonies were administered through three distinct departments, and these the federal government did not seek to modify or change. It may, therefore, be assumed that these are the Republican forms of government which the constitution guarantees, and which it becomes the duty of the states to provide. We need to be but little exercised as to the outward constitutional forms of democracy in this country. Liberty and democracy will always thrive on Anglo-American soil. It will always insist on the sovereignty of the people and that governments shall exist solely to promote their happiness and welfare, and it will eventually insist on an expeditious, honest, and business like administration of its government. We must measure the growth of democracy by the manifestations of its spirit. It must be placed upon a firmer foundation than naked authority. It must always recognize and promote justice and righteousness. If, under our government, we find there is a deep-seated determination and purpose to deal justly with all, to beat our swords into pruning hooks, to make the desert to bloom and bring forth fruit, to restrain our selfish desires for the public good, to recognize the divinity of labor, to deal kindly with the erring and unfortunate—in fact to make the earth the Kingdom of the Lord and His righteousness, we may be sure that the spirit of true democracy is performing her perfect work in our midst.

Bibliography

Bryce, American Commonwealth. Vol I., 287-396.
Ashley, The American Federal State.
Wilson, The State, 469-506.
Hinsdale, The American Government, 369-391.
Cleveland, The Growth of Democracy, 109-315.
American State Constitutions.
Jamesson, Constitutional Conventions, Chapters IV., VI., VII., VIII.
Cooley, Constitutional Limitations.
Shaw, American State Legislatures. Cont. Review, Vol. LVI., 555-573.
Stinson, American Statute Law.
Poore, Charters and Constitutions.
New York Constitutional Manual.
Post-Intelligencer, July 1-August 23, 1889.
Thorpe, Montana and Washington. Have they made a mistake in their constitutions? Century, Feb., 1890.
Story, The American Legislature, Law Review.
Bridgman, Legislatures, American Journal of Politics, V. 589.
Lieber, Civil Liberty and Self Government.
Lowell, Legislative Shortcomings, Atlantic Monthly, LV. 839.

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